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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB63

Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions and Wheat Crop Insurance Winter Coverage Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement. The intended effects of this action are to add provisions for the insurance of Khorasan and buckwheat, include additional insurance benefits, clarify existing policy provisions to better meet the needs of the insured, improve actuarial soundness, and restrict the effect of the current Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement to the 2003 and prior crop years.

EFFECTIVE DATE: June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds the effect of proposed changes on crop insurance payments is expected to be small. The greatest impacts are expected from: (1) Increasing the amount of replant payments for wheat and providing replant payments for crops that have not had them in the past; and (2) changes to the winter coverage endorsement.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On April 20, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 21144–21151 to revise 7 CFR 457.101 Small Grains Crop Insurance and section 457.102 Wheat Crop Insurance Winter Coverage Endorsement. Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of 82 comments were received from reinsured companies, and grower and trade associations. The comments received and responses are as follows:

Comment. Two reinsured companies stated these revised provisions are being proposed for the 2002 crop year rather than the 2001 crop year as referenced in

the proposed rule. It is also understood some provisions of the Agricultural Risk Protection Act of 2000 (ARPA) will impact the proposed policy, and these legislated items are not reflected in the proposed rule.

Response. The new provisions will be effective beginning with the 2004 crop year, provided this final rule is made effective prior to the applicable contract change date. The provisions of ARPA affect most crops. Therefore, most policy provisions affected by ARPA are contained in the Basic Provisions of the Common Crop Insurance Policy (§ 457.8). However, ARPA provisions regarding insurance for more than one crop grown on the same acreage in the same crop year do require clarification as they pertain to the winter coverage endorsement. Accordingly, section 10 has been added to the Wheat Winter Coverage Endorsement.

Comment. Two reinsured companies were concerned the definition of ''Prevented planting'' seems to be in conflict with section 7(a)(2)(iii), which allows a winter wheat insured to elect to destroy all winter wheat acreage damaged to the extent that replanting is necessary and receive 15 percent of the winter wheat guarantee, rather than replanting to spring wheat. The commenters contend that the grower who was originally prevented from planting winter wheat should be allowed the same option, such as 15 percent of the winter wheat guarantee. The commenters ask that if the insured elects to destroy the acreage in return for 15 percent of the winter wheat guarantee, whether that acreage can be planted to spring wheat and insured. Two reinsured companies recommended that section 9(f) be removed from these provisions because it provides a disincentive to add optional coverage provided by the winter coverage endorsement. They state that if the producer wants the type of coverage offered by the endorsement, they should purchase such coverage. They also state that the proposed coverage gives the producer an incentive to ''buy down.'' The companies argue that this provision also adds unnecessary complexity, increases company expense and in some cases will result in an unhappy insured if the payment is nil or negligible. They state that the insured should be required to replant as specified in the current provisions and, if they do not replant, no premium is owed and no loss is payable. A grower association was also concerned with section 9(f) because full premium would be charged for only 15 percent coverage. Another reinsured company stated they had received different degrees of opposition to the proposed provisions in this section. The company stated that in the past this acreage would be deleted from the acreage report and no premium would be due. They further stated this concept would detract from sales of Options A or B, at least in South Dakota, and they were not sure there is an advantage in the proposed change.

Response. The proposed provisions were not in conflict. To qualify for a prevented planting payment, planting must be prevented until the spring final planting date. Similarly, the ''15 percent benefit'' in section 9(f) for winter wheat would not be provided if the insured planted spring wheat following a failed winter wheat crop. When acreage is replanted to spring wheat, a replant payment may be provided and insurance would continue based on the guarantee, premium, and price election applicable to the winter type. Although the proposed provisions are not in conflict, FCIC does agree that the proposed provisions would have: (1) Provided a disincentive to purchase full protection of winter wheat offered under the Wheat or Barley Winter Coverage Endorsement; (2) provided only a small benefit in exchange for full premium; and (3) increased program complexity. Therefore, the proposed provisions in section 9(f) have not been included in this final rule.

Comment. A growers association and four producers recommended hull-less barley be insurable under the Small Grains Crop Provisions. A growers association also questioned if hull-less oats were included or excluded from coverage.

Response. FCIC agrees that hull-less barley should be insurable. The Federal Grain Inspection Service (FGIS) has issued a directive providing instructions for determining quality factors for hull-less barley. This provides the means to adjust production to count when there is a loss due to low quality. FCIC and insurance providers have also received requests to insure hull-less oats, and a FGIS directive similar to that prepared for hull-less barley has been completed for hull-less oats. Therefore, the definition of ''small grains'' and section 11(d)(2) has been revised to include provisions for both hull-less barley and hull-less oats.

Comment. A reinsured company recommended that since the issue of grazing has been a hot topic in the past year, the definition of ''harvest'' be changed to include producers who harvest their small grain by grazing the acreage.

Response. In some areas it is common to allow animals to graze wheat acreage in the fall through the early spring and then to remove the animals to allow the wheat to mature and produce a grain crop. In these cases, it would be confusing to include ''grazing'' in the definition of ''harvest'' since the actual grain harvest would occur much later than the time the acreage was grazed. However, FCIC agrees wheat that is grazed instead of being harvested for grain should be considered ''harvested'' for the purpose of determining insurable acreage under the provisions of section 9(a)(1) of the Basic Provisions. That provision will be amended accordingly.

Comment. A reinsured company accepts the addition of Khorasan (a variety of wheat) and buckwheat to these provisions as long as FCIC provides detailed, well researched handbook procedures for adjusting these crops. Also, appraisal procedures must be accurate and based on university tested methods.

Response. FCIC will not issue actuarial materials for Khorasan or buckwheat unless appropriate loss adjustment procedures can be issued in a timely manner. Insurance programs for these crops will become available only after county actuarial materials are released.

Comment. A reinsured company asked if buckwheat would be considered a pilot crop program. The commenter also asked what studies have been undertaken (including draft loss procedures) that are generally done for a new (pilot) crop.

Response. The insurance program for buckwheat is not considered to be a pilot program since the regulatory process is being used to implement it. A report on the feasibility of insuring buckwheat was completed by the Economic Research Service (ERS). The report provides significant detail regarding uses, varieties, supply, demand, prices, environmental requirements, cultural practices, risks, etc. Loss procedures have not yet been developed. As stated above, insurance will not be made available for buckwheat until the loss procedure has been developed and provided to the reinsured companies. However, the feasibility report suggests procedures used for buckwheat will be very similar to those currently in use for other small grains.

Comment. A reinsured company is concerned with including ''buckwheat'' in the Small Grains provisions. The term ''small grains'' usually refers to annual cool season grass species grown for grain that is milled into flour, used for cattle feed or used for production of malt. Flax has been included in this group even though it is a broadleaf crop

because it is similar to the other small grains that are grown. Generally, buckwheat does not follow the same growth habit or management system as other small grains. Buckwheat is a warm season broadleaf crop with recommended planting dates of late May and June. Buckwheat is very frost sensitive in all stages of development. Fertilization of buckwheat is basically the same as for other small grains except the level of nitrogen is usually kept low because of crop lodging. Buckwheat is indeterminate in flowering habit; it will start flowering approximately four to five weeks after emergence and continue until frost. Buckwheat is so sensitive to many stress factors it is hard to predict a yield. Currently there are no herbicides approved for buckwheat production. Buckwheat is sensitive to herbicide residues from dinitroanalines (triflurilin, ethafluralin), atrazine, and sulfonylureas (Glean, Ally). The major use of buckwheat is for making flour for soba noodles or as a pancake mix.

Response. The determination of which policy to add a crop to is based on which policy contains the terms that best cover the risk. Buckwheat is being added to the Small Grains policy because most provisions applicable to wheat, barley and other small grains can also be applied to buckwheat. Buckwheat is also generally produced by growers who already have a Small Grains Crop Insurance Policy in force. Therefore, it will be possible to use one policy document for these growers instead of two. Combining the crops into one policy document when possible reduces paperwork, administrative costs, etc. The difference in the growth and management systems will be reflected in the good farming practices for the crop and, therefore, covered under the policy.

Comment. The president of Kamut International, Ltd., requested references to ''Kamut'' be replaced with the name ''Khorasan,'' which is the common name for Triticum Turanicum. ''Kamut'' is not a variety of wheat but rather a registered trademark owned by Kamut International, Ltd. Also, plant classification specialists have recently shown that Khorasan should be classified as T. Turanicum rather than T. polonicum.

Response. FCIC agrees with the suggestions and has revised the provisions accordingly.

Comment. A grower association was concerned with the language in the definition of ''Prevented planting.'' The definition does not allow a prevented planting payment for winter wheat if a producer is able to plant spring wheat. Given the yield superiority of winter vs. spring varieties, this provision adversely affects producers who are prevented from planting winter wheat. A possible solution to the problem would be to insure spring wheat and winter wheat separately.

Response. The Wheat Winter Coverage Endorsement does provide separate insurance for spring wheat when it is planted to replace damaged winter wheat and separate insurance units are allowed for initially planted spring and winter wheat in certain counties. In the future it may be possible to add provisions to the endorsement to provide separate prevented planting coverage for winter wheat. However, a change like this, which would impact a large number of producers and acreage, cannot be made without being published in a proposed rule for public comment.

Comment. A reinsured company recommended changing the definition of ''Local market price'' to the Commodity Credit Corporation (CCC) price established by the Farm Service Agency (FSA) county office, and removing the reference to ''local market price'' for a loss standard.

Response. FCIC believes the comment recommends changing quality adjustment procedures by using the ''posted county price'' that is available in FSA county offices rather than the ''local market price.'' The posted county price has been used in the past. However, damaged grain can have reductions in value in the local market greater than the posted county price. This resulted in zero production to count even though the production still had value and was sold. FCIC stopped using the posted county price because of this program vulnerability. FCIC has not discovered a means to eliminate this program vulnerability if it again uses the posted county price. Therefore, no change has been made.

Comment. Two reinsured companies asked if premium rates will be adjusted to address the increased risk by allowing separate optional units for durum and club wheat.

Response. FCIC will review the adequacy of premium rates for all changes made by this rule, including optional units for durum and club wheat and ensure that all risks are covered by the premium.

Comment. A grower association commented that while durum wheat coverage is available as an optional unit, there are no specific provisions for durum wheat. The market price for durum is different than the predominant white wheat market, and the same terms for durum wheat in other areas of the country should be available for the northwest. The association recommends these provisions should allow a specific durum price election, coverage level, and national availability in counties where durum is produced or is being introduced. Furthermore, separate price elections and coverage levels should be established for hard red spring wheat, hard white wheat, and club wheat.

Response. Language has been added to the Small Grains Crop Provisions to provide for separate units and price elections for durum and club wheat if these wheat types and prices are designated in Special Provisions. Expansion of the durum type and establishing separate price elections and coverage levels for certain types of wheat will be considered by FCIC in the future based on availability of data, program interest, and underwriting issues. FCIC lacks the information at this time so no change can be made in this rule. FCIC has added language to clarify that fall planted durum wheat may be a separate unit from spring planted durum wheat and that fall planted club wheat may be a separate unit from spring planted club wheat provided the Special Provisions specify both fall and spring types of the applicable wheat type.

Comment. A reinsured company recommended allowing optional units for durum wheat when it is listed as a separate insurable type. This would simplify administration of the actual production history (APH), since durum wheat producers raise, store, and market durum wheat separate from spring wheat.

Response. The proposed rule and this final rule allow optional units for durum wheat when it is designated as a separate type in the Special Provisions. Therefore, no change needs to be made.

Comment. A reinsured company agreed optional units for durum and club wheat will be an improvement but that quality factors for durum (milling) should be addressed.

Response. FCIC understands certain quality requirements for durum wheat are not covered by the current Small Grains Crop Insurance Policy. A method of providing insurance coverage for these quality requirements has not yet been developed. Section 508(m) of the Federal Crop Insurance Act requires FCIC to contract with a qualified person to review quality loss adjustment procedures to determine if they accurately reflect local quality discounts. FCIC has executed the contract and after the results have been analyzed, FCIC will determine if coverage for these quality requirements is feasible. If feasible, FCIC will review

the policy at that time. However, no change will be made in this rule.

Comment. FCIC requires all wheat in a given county to be insured under the contract. A grower association advises as a result of this requirement many producers do not purchase wheat insurance. The association recommends allowing selection of different coverage levels and price elections by FSA farm serial number, by irrigated and non-irrigated practice, and by type and class of wheat. Other grower associations recommended allowing different price election percentages or coverage levels for summer-fallow, continuous cropping, and direct seeded acreage.

Response. These recommendations would constitute significant changes to the proposed rule and would be a departure from insurance provisions used in other crop insurance policies. Therefore, the suggested changes cannot be made in this rule. Additionally, sufficient data has not been established or provided to effectively support separate insurance coverage by FSA farm serial number, practice, or wheat type or class. However, these changes would appear to add significant program vulnerabilities due to shifting of production and other manipulation of yields.

Comment. A reinsured company asked whether durum wheat, which has a separate type code and price election in the county actuarial documents, can be insured as regular spring wheat or must it be separately insured at the higher durum price. The commenter also asks if everything is reported as spring wheat and it is discovered at loss time that some of the wheat is durum, whether the policy has to be revised to reflect the higher durum price and if liability would be increased at that point in time. The commenter also asked about being able to duplicate the APH records for durum wheat at that time. The commenter suggested that section 3(a) be clarified to address how these situations are to be handled.

Response. The provision has been revised to clarify that if a durum wheat price election is provided, it must be used to insure durum wheat. When a durum wheat type is misreported as spring wheat, the provisions contained in section 6 of the Basic Provisions regarding misreporting will apply. The APH for durum wheat must be based on production records for durum wheat or a T-Yield for durum wheat.

Comment. A reinsured company is concerned with the language in section 3(b) which allows the insured to change coverage levels or price elections by the spring sales closing date ''only if they do not have any fall-planted acreage of the insured crop.'' The company asked whether this applies if there is any fall-planted acreage, or only if there is insured fall-planted acreage (for example, the insured has some fall-planted acreage but it is an uninsured practice/type or not intended for harvest as grain.)

Response. The provision is intended to prevent changes in coverage levels or price elections in the spring only if there is insured fall planted acreage. Section 3(b) has been clarified accordingly.

Comment. A growers association was concerned with the insurability of acreage on which Conservation Reserve Program (CRP) contracts are expiring. In some cases, only a summer fallow practice is insurable and the acreage cannot be insured the first year unless the producer takes an early out with a reduction in the final payment from CRP, or summer fallows the ground the first year out of CRP. The growers association requests FCIC and FSA work together to resolve this dilemma so producers in these counties can have insurance. This could be accomplished by permitting producers in these counties to obtain an early release from the CRP contract in order to meet the criteria to classify this ground as summer fallow.

Response. FCIC cannot comment on possible CRP program changes since FSA administers that program and would be required to make any modifications or exceptions to it. However, FCIC is willing to work with interested parties to help coordinate program benefits. Although a premium rate is not published for continuous cropped acreage in some counties, insurance may still be obtained for the practice if the producer requests a written agreement through the producer's insurance provider. If approved, the written agreement would provide a premium rate for continuous cropped acreage.

Comment. A growers association recommended FSA and FCIC allow the regional office the ability to change final planting dates when agronomic conditions are such that many farmers cannot complete planting by the final planting date of the policy.

Response. The final planting date is a part of the crop insurance contract and changing the final planting date after the contract change date would violate the terms of the crop insurance policy and the agreement FCIC has with insurance providers. Regional Offices can recommend changes to final planting dates if program integrity would not be adversely impacted but must do so prior to the applicable contract change date for it to be considered for that crop year. A late planting period is provided for most crops so producers who plant late may still have insurance coverage.

Comment. A grower association stated that wheat producers insured under the multiple peril crop insurance policy (MPCI), the Income Protection (IP) policy or the Crop Revenue Coverage (CRC) policy have a final planting date of December 31 to February 15, which is seldom applicable and diminishes the value of the replant provision of the policy. The association recommends all final planting dates be established on a county-by-county basis at the earliest practical date for the Pacific Northwest.

Response. The replant provision referred to in the comment has recently been amended in the Income Protection policy provisions to address this concern. The provisions in section 9(a)(5) also address this issue by providing that damage must occur after the fall final planting date for acreage covered under the winter coverage endorsement (the ''earlier'' or first fall final planting date in counties with two fall final planting dates). Changes made to the MPCI Small Grains Crop Insurance Policy will also be made to the CRC wheat policy.

Comment. A growers association recommended RMA provide winter damage protection for fall planted barley. Having no winter coverage and the mandatory replant provisions are a disincentive to plant winter barley.

Response. RMA agrees that winter coverage for barley should be provided and has modified the winter coverage endorsement to include barley. This optional coverage will be available only if the county actuarial table provides an additional premium rate factor for it.

Comment. Two reinsured companies recommended changing the section reference in section 7(a)(2)(iii) from 9(e) to 9(f).

Response. As stated above, section 9(f), and the reference to it, has been removed in this final rule.

Comment. A grower association is concerned with section 7(a)(2)(iii) which requires producers to replant fall-planted barley or wheat that is damaged prior to the spring final planting date with a winter type of the crop if practical. Mandatory replanting requirements reduce flexibility for producers who may want to destroy the crop and replant a spring type of the crop. This section also provides that damaged wheat acreage can be put to another use and an indemnity will be paid, but does not describe what alternative uses are permitted.

Response. Producers are free to plant a spring type of the crop after the fall

type has failed if they choose. The requirement to replant the fall type if practical only applies if the producer wants to maintain the fall planted crop production guarantee. So, if it is not practical to replant to a fall type and the producer replants a spring type, insurance will remain in force based on the production guarantee for the fall type. If a producer does not replant a fall type when it is practical to do so and plants a spring type on the acreage, insurance will still be provided based on a spring type production guarantee. Section 7(a)(2)(iii) has been clarified to distinguish when the producer will have insurance based on spring or fall types in replant situations. Since section 9(f) has been removed from this rule for the reasons stated above, the provisions regarding a benefit when damaged acreage is put to another use have also been removed in this final rule.

Comment. Two reinsured companies recommended that section 7(a)(2)(v) be clarified to indicate that fall barley or fall wheat that has an adequate stand in the spring will be insurable as spring barley or spring wheat.

Response. FCIC agrees and has revised the provisions accordingly.

Comment. A growers association recommended allowing the winter wheat guarantee to apply to initially planted spring wheat when cropland has been summer fallowed for one year and agronomic conditions are such that the winter wheat crop cannot be seeded.

Response. Current provisions do not allow the winter wheat guarantee to apply on acreage that is initially planted to spring wheat under any circumstance. This is because there are different yields and premiums associated with spring and winter wheat. To allow spring planted wheat to be insured as fall planted wheat would adversely affect program integrity. Allowing spring planted wheat to be insured as fall planted wheat when it has been replanted after a failed winter wheat crop is permitted because insurance has already attached to the winter wheat crop and replanting to the spring crop is a means to mitigate the damages associated with the failed winter wheat crop. Therefore, no change has been made.

Comment. A reinsured company recommended Virginia be included with the states that have a July 31 end of insurance date. The commenter stated that FCIC should consider using the same date for states such as Oklahoma, Missouri and Kansas. Another reinsured company recommended that the end of insurance date for small grains in Kansas should be reviewed because October 15 is not an appropriate date for the end of insurance since harvest is generally completed by August 1.

Response. Since a proposal to change the end of the insurance period for Virginia was not included in the proposed rule, and the public was not given the opportunity to comment, the recommended change cannot be adopted in this final rule.

Comment. Two reinsured companies are concerned that replant payments for barley, oats, flax and buckwheat will add additional loss adjustment expenses for reinsured companies. Another reinsured company commented that allowing companies to pay the amount of replant payment specified in the policy without requiring calculation of actual expenses will save time in working replant claims and will be more suitable for self-certification procedures. Another reinsured company commented that allowing replant payments for all small grains will provide consistency in the Small Grains provisions, should not have a large impact on the loss payments and will benefit producers who need to replant. An insurance association also supported the proposed change.

Response. FCIC agrees reinsured companies may incur some additional expenses. However, FCIC has taken steps to reduce loss adjustment expenses for small grains by no longer requiring insurance providers to calculate the actual cost of replanting. This means that there is not expected to be any significant net increase in costs to the reinsured companies. Therefore, no change has been made.

Comment. A reinsured company asked whether or not fall planted wheat accepted for insurance in a county with only a spring planted practice would qualify for a replant payment.

Response. Fall planted wheat in a county with only a spring final planting date would not qualify for a replant payment. Section 9(a)(4) states that ''the acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date.''

Comment. A reinsured company recommended increasing the policy replant payment limits to four bushels for wheat since three bushels or $9.45 hardly covers labor costs. The company also advised that the five bushel replant payment limit on oats does not seem worthwhile for the producer.

Response. Provisions in both the proposed and final rules use four bushels when calculating the amount of a replant payment for wheat. Replant payments are not intended to cover all the costs associated with replanting. They are intended to defray a portion of the costs and are set at a level which will provide assistance but not significantly increase the premium. Therefore, no changes have been made.

Comment. Two reinsured companies were concerned with the provisions in section 9(a)(6) which allow a replanting payment when less seed is replanted than the original planting, as long as the resulting stand will produce the guarantee. The companies asked if this will require additional inspections and more expense to the company. A growers association also did not agree with the revision to allow a replanting payment when the amount of seed used is less than the amount normally used for the initial seeding.

Response. The replanted crop must be seeded at a rate sufficient to produce the approved APH yield not just the guarantee. Therefore, for crops that have totally failed, the amount of seed that was originally planted to produce the APH yield must be used. It is only when some of the crop still exists that reduced seeding rates can be used. Providing replant payments under these circumstances will provide a greater incentive to improve poor crop stands, thereby improving production levels and reducing claims. There are also agronomic benefits associated with improving a crop stand in this manner. Plants with established root systems are allowed to remain in place and can provide protection to newly seeded plants. Insurance providers may have to perform additional inspections and may incur some additional expenses. However, the benefits associated with reduced claims should outweigh the costs. Therefore, no change has been made.

Comment. Two reinsured companies asked whether a specific number of bushels is used to determine the maximum replant payment for rye and Khorasan or will 20 percent of the guarantee be used.

Response. Insurance for rye is available only in counties with ''fall only'' final planting dates. Therefore, in accordance with section 9(b), replant payments are not available for rye. As stated in section 1, Khorasan is considered to be a spring wheat for the purposes of this policy. Therefore, the replant payment is based on four bushels—the amount applicable to all types of wheat.

Comment. Two reinsured companies recommended allowing disinterested grain handling facilities to determine test weight and moisture of the grain.

Response. The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) specifies qualifications for persons allowed to determine grain

quality for crop insurance purposes. Section 11(d)(3) of the Crop Provisions has been amended in accordance with the provisions of the 2002 Farm Bill. Therefore, no change has been made.

Comment. Two reinsured companies recommended, for quality adjustment purposes, that the test weight for oats be changed to 32 pounds per bushel in the Special Provisions to be more in line with current market requirements.

Response. Section 508(m) of the Act requires FCIC to contract with a qualified person to review quality loss adjustment procedures to determine if such procedures accurately reflect local quality discounts. Based on recommendations, FCIC may revise quality adjustment provisions for oats and other grain crops. Until recommendations are analyzed, FCIC does not have sufficient information to make the requested change. Therefore, no change has been made.

Comment. A grower group commented RMA is proposing changes to the Settlement of Claim section to allow adjustment for excess moisture before any adjustment for quality deficiencies. They asked if production would also be adjusted in the case of a drought.

Response. The provisions of section 11(d) apply when any insured production is damaged due to any insured cause of loss, including drought. The proposed changes just set the order in which such adjustment will occur, with moisture adjustment, if applicable, occurring before any other adjustments.

Comment. Two reinsured companies do not agree with the quality adjustment procedures which allow a local elevator to determine the salvage price for low quality grain. This process will result in indemnity differences for similar grain from area to area and may increase loss adjustment expenses as adjusters canvas local elevators for the highest salvage bid price.

Response. FCIC has not found reliable data on which discount factors for extremely low quality grain can be based. Therefore, quality adjustment methods based on the value of the damaged grain will continue to be used when grain is of such low quality that discount factors for it are not contained in the Special Provisions. No changes have been made.

Comment. A grower association asked whether the definition of ''heat damaged kernels'' is the same as used by the Grain Inspection, Packer and Stockyards Administration (GIPSA), for consistency and lack of confusion, or whether RMA has a different definition. The provisions in section 11(d)(2)(i)(A–E) specify that ''heat damaged kernels'' will not be considered to be damaged.

Response. The definition of ''heat damage'' is the same as that used in the Official United States Standards for Grain. Section 11(d)(2)(i) has been clarified to reflect this.

Comment. A grower association recommended that FCIC continue to review quality loss adjustment factors for barley. Market losses from weather-related quality degradation generally far exceed those permitted under current quality loss adjustment provisions.

Response. As stated above, FCIC has contracted to conduct a review of the quality loss adjustment procedures. Once the review is completed and fully analyzed, FCIC will make appropriate changes to the quality loss adjustment factors.

Comment. A reinsured company asked if the provisions in section 11(d)(2)(iii) mean that the test weight for durum wheat will start at 54.0 pounds when the test weight normally starts at 50.9 pounds for durum wheat?

Response. Under the existing quality provisions, durum wheat quality adjustment for test weight begins when the test weight falls below 54.0 pounds. Therefore, this rule is not a change from the previous provisions. The language in this rule simply provides that the same quality adjustment threshold applies to Khorasan. Provisions have been added to clarify that quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to Khorasan at the same levels applicable to durum wheat. The same clarification has been made for hull-less barley and hull-less oats.

Comment. A reinsured company recommended that quality adjustment factors for durum wheat (milling) should be addressed. Low quality on durum has a more adverse effect on marketing than on regular wheat.

Response. FCIC understands discounts for low quality durum wheat are significant. As stated above, FCIC has contracted for a review of the quality loss adjustment procedures. Once the review and FCIC's analysis is completed, FCIC will revise that procedure as appropriate. However, no change is being made to this rule.

Comment. A reinsured company asked if the proposed provisions in section 11(d)(4) replace all of the current provisions in section 11(d)(4)(i)–(iii) or just the sentence in (4).

Response. The proposed revision will replace sections 11(d)(4)(i), (ii) and (iii).

Comment. A reinsured company agreed late planting provisions should apply to winter wheat. However, the company is concerned with how the time period for late planting will be determined and what the reduction percentage will be. The company recommends the reduction be not less than the prevented planting reduction percentage. In addition, two companies stated that in previous policies, winter wheat in counties with only a fall final planting date did not have a late planting period or replanting payments as the final planting dates were so late. The companies asked whether under the current proposed changes, the final planting dates will be revised to earlier dates and what will be the length of the late planting period for winter wheat.

Response. The late planting period reduction is already provided in section 16 of the Basic Provisions of the Common Crop Insurance Policy. This rule simply makes it applicable to certain winter wheat. The length of the late planting period or the final planting date for certain winter wheat will be adjusted in the Special Provisions where necessary. Therefore, no change has been made.

Comment. A grower's association recommended prevented planting payments be based on winter wheat guarantees when producers are prevented from planting in the fall and also cannot plant in the spring.

Response. Since a proposal to change the basis of prevented planting payments was not included in the proposed rule, and the public was not given the opportunity to comment, the recommended change cannot be adopted in this final rule.

Comment. Two reinsured companies asked if companies would have an opportunity to review and comment on any significant changes to the Special Provisions.

Response. FCIC does not anticipate significant changes to the Special Provisions as a result of this rule. Special provisions vary from county to county due to differing rotation requirements, planting dates, etc. This results in large numbers of documents being generated each year, sometimes within short time frames. Due to these time restrictions and the large number of documents involved, it is not practical to provide a comment period for the Special Provisions.

Comment. A growers association recommended products that represent significant product revisions should be in place and available to agents and growers 90 days prior to sales closing dates. The sales closing date for fall planted wheat in the Pacific Northwest is September 30. Program prices are futures based and are not established until mid-September leaving farmers

with little time to evaluate policy options. For this reason, two grower associations recommended a later sales closing date than September 30 be established for winter wheat in the Pacific Northwest. Seeding starts in September and ends in October. One association recommended an October 31 sales closing date but would accept an October 15 sales closing date. Another recommended the sales closing date be changed to 30 days after price release or October 31.

Response. All policy changes must be made by the contract change date, which is at least 90 days prior to the sales closing date. All price elections are also released prior to the sales closing date. Moving the sales closing date 30 days later, when planting is almost complete, would result in adverse selection as producers would have additional knowledge of growing conditions at that point. Therefore, no change has been made.

Comment. A growers association recommended making the increased premium subsidy permanent after the 2000 crop year.

Response. Section 508(e) of the Act provides for increased subsidies that are applicable each year unless Congress acts to reduce them. Therefore, no change has been made.

Comment. A growers association recommended keeping Option A and Option B at the current percentages rather than the proposed percentages. A reinsured company also disagreed with the changes to Option A and Option B as these changes will not be popular with the insureds. The company does not know of any change to Option A that would make insureds select this option. It states that reducing the coverage for Option B is a mistake since companies, Congress and special interest groups have worked hard to improve coverage for farmers, not decrease coverage. The company also stated that, in the past, Option B with the MPCI policy has worked well for insureds and the insureds believe they have a positive coverage. Another reinsured company supported the change of Option B coverage from 100 percent to 70 percent because it believed the coverage provided by the option was too lucrative and that it was abused. This company also stated that by reducing Option B and increasing Option A the coverage becomes similar and that it might reduce confusion by offering a single option.

Response. FCIC agrees it is confusing to have two options and that option A has not been popular with producers. Therefore Option A has been removed from the final rule. FCIC also agrees with the comments that recommend retaining 100 percent coverage under Option B (now the only option) and has revised the proposed provisions accordingly. One hundred percent coverage is being retained to keep a more meaningful level of coverage in place, particularly when the indemnity for the first crop, winter wheat, may be reduced if a second crop is planted.

Comment. Two reinsured companies recommended that the coverage under Option A and B be provided when 20 percent of the insured planted acreage in the unit is damaged rather than the current requirement of 20 acres or 20 percent of the acreage in the unit. They state that this change will be consistent with language in the replanting payment section of the Basic Provisions.

Response. FCIC agrees that the replant provision in the Basic Provisions of the Common Crop Insurance Policy refers to at least the lesser of 20 acres or 20 percent of the insured planted acreage in the unit. The provision has been revised to be consistent with this requirement.

Comment. Two reinsured companies recommended the sentence ''You may use such acreage for any purpose, including planting and separately insuring any other crop.'' in both Option A and B, be clarified. If an insured plants back to barley, and barley was not on the policy, and it is past the sales closing date, it could not be insured. Likewise if barley was on the policy already, such acreage would have to be insured per the terms of the policy.

Response. FCIC agrees and has clarified the language accordingly.

Comment. A grower association commented that under the proposed winter coverage endorsement all winter wheat acreage must be insured, which reduces flexibility of producers who may wish to have the endorsement for one tract of land but not for another. The association recommended additional endorsements be made available at the option of the producer for additional premium.

Response. This change would allow insureds to select insurance on acreage with a higher likelihood of loss. This adverse selection could reduce program integrity and adversely impact premium rates for all producers. Therefore, no change has been made.

Comment. A grower association recommended since Option A provides for a coverage increase and an increase in premium, then with coverage being reduced under Option B, the premium should also be reduced.

Response. The coverage level under Option B (now the only option) has not changed. However, FCIC does review all premium rates periodically, and may revise those applicable to the winter coverage endorsement based on those reviews. Option A of the endorsement has been removed for the reasons stated above.

Comment. A reinsured company recommended making the Wheat Crop Insurance Winter Coverage Endorsement a part of the Small Grains Crop Provisions to be elected on the application or policy change form as with other crop options or endorsements.

Response. The Wheat Crop Insurance Winter Coverage Endorsement is used only in counties for which the Special Provisions designate both fall and spring final planting dates. Making the Wheat Crop Insurance Winter Coverage Endorsement a part of the Small Grains Crop Provisions would increase the amount of paper sent to all producers who have the Small Grains Crop Provisions and might result in confusion for those in counties in which the endorsement is not available. Therefore, no change has been made.

Comment. A reinsured company asked that if an insured has selected Option B and elects to destroy the winter wheat and then replant to spring wheat, whether will it be mandatory for the insured to insure the spring wheat. Another reinsured company agrees with the change that requires spring wheat to be insured after winter wheat has been destroyed rather than having an option to do so.

Response. The proposed provisions did require the spring wheat to be insured. However, due to the provisions of the Act that reduce indemnities for a first crop when a second crop is planted and has a loss on the same acreage in the same crop year, FCIC has elected to return to previous provisions that allowed producers to elect whether or not they wanted insurance for the spring wheat. Section 11(c) has been amended accordingly.

In addition to the changes described above, FCIC has made the following changes:

1. Revised the definition of ''local market price'' to specify quality levels for Khorasan, hull-less barley, hull-less oats and buckwheat, and to specify the applicable subclasses for durum and hard red spring wheat.

2. Changed the cancellation date for wheat from October 31 to September 30 in Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California. This change makes program dates consistent between these Northern California counties and Oregon, which has similar agronomic conditions.

3. Changed the October 31 cancellation date and November 30 termination date for barley to March 15 in Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California. This change makes program dates consistent between these Northern California counties and Oregon, which has similar agronomic conditions.

4. Revised section 11(d)(2)(ii) to base the level at which buckwheat production can be quality adjusted on a certain grade rather than specific quality factors. This change is made to allow quality adjustment at levels appropriate for the crop type (large or small seed) and to avoid the need for revision if grading standards should change.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to the public interest to delay implementation of improved insurance benefits until the 2005 crop year. The public interest is served by improving the insurance product as follows: (1) Providing insurance for producers of hull-less barley, hull-less oats, and Khorasan. Insurance coverage for these crop types is not available under the current Small Grains Crop Provisions; (2) increasing insurance flexibility by providing for separate insurance units for durum and club wheat; (3) moving the contract change date earlier to provide a greater amount of time between the contract change date and the sales closing date to allow producers more time to make insurance decisions; (4) changing program dates to provide coverage for winter wheat in certain counties where coverage for winter wheat is not currently provided; (5) adding replanting payment benefits for barley, oats and flax and increasing the replanting payment amount for wheat. Replanting payments help defray costs incurred by producers who have to replant their crops under the terms of these provisions; (6) allowing winter protection for fall planted barley which is not provided for under current provisions; and (7) improving clarity of the insurance policy.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the 2005 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective upon filing with the Office of the Federal Register.

List of Subjects in 7 CFR Part 457

Barley, Buckwheat, Crop insurance, Flax, Oats, Rye, Wheat.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2004 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

■ 2. Amend the crop insurance provisions in § 457.101 as follows:
■ a. Revise the introductory text;
■ b. Amend section 1 of the crop provisions by adding a definition for ''Khorasan'' and revising the definitions of ''local market price,'' ''prevented planting'' and ''small grains;''
■ c. Revise section 2;
■ d. Revise section 3;
■ e. Revise section 4;
■ f. Revise section 5;
■ g. Delete the period before the parenthetical phrase in section 6(b)(1);
■ h. Revise section 6(c);
■ i. Revise section 6(b)(2) and add section 6(d);
■ j. Revise the introductory text of section 7;
■ k. Revise sections 7(a)(1) introductory text, 7(a)(2)(iii), 7(a)(2)(v) and 7(b)(4);
■ l. Revise section 9;
■ m. Revise sections 11(b), 11(c)(1)(iv) and 11(d); and
■ n. Revise section 12, all to read as follows:

§ 457.101 Small Grains Crop Insurance.

The small grains crop insurance provisions for the 2004 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Khorasan. The common name for a variety of wheat (*Triticum turanicum*) that is marketed under trademarks such as Kamut. Khorasan is considered to be spring wheat for the purposes of this policy.

* * * * *

Local market price. The cash grain price per bushel for the applicable quality level indicated below and offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the applicable quality level indicated below. Factors not associated with the specified quality levels, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

(1) U.S. No. 2 for Wheat (subclass hard amber durum for durum wheat and subclass northern spring for hard red spring wheat), except Khorasan; barley (including hull-less barley); oats (including hull-less oats); rye; and flax.

(2) The quality factor levels required for durum wheat to grade U.S. No. 2 for Khorasan.

(3) No. 2 grade buckwheat determined in accordance with the applicable state grading standards.

* * * * *

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the applicable late planting period following the latest final planting date. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

* * * * *

Small grains. Wheat, including only common wheat (*Triticum aestivum*), club wheat (*T. compactum*), durum wheat (*T. durum*) and Khorasan (*T. turanicum*); barley (*Hordeum vulgare*), including hull-less barley and excluding black barley; oats (*Avena sativa,* and *A. byzantina*), and hull-less oats (*A. Nuda*); rye (*Secale cereale*); flax (*Linum usitatissimum*); and buckwheat (*Fagopyrum esculentum*).

* * * * *

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, for wheat only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat, only initially planted spring wheat, only initially planted club wheat or only initially planted durum wheat. Separate optional units for initially planted winter wheat and initially planted spring wheat may be established only in counties having both winter and spring type final planting dates as designated in the Special Provisions. A separate optional unit for club wheat may be established only in counties for which the Special Provisions designate club wheat as a wheat type (separate optional units may be established for initially planted winter club and initially planted spring club wheat if the Special Provisions specify both as wheat types). A separate optional unit for durum wheat may be established only in counties for which the Special Provisions designate

durum wheat as a separate wheat type (separate optional units may be established for initially planted winter durum wheat and initially planted spring durum wheat if the Special Provisions specify both as wheat types).

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for each crop in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case each type must be insured using the price election for the respective type. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) In addition to the requirements of section 3 of the Basic Provisions, in counties with both fall and spring sales closing dates for the insured crop, you may only change your coverage level or price election until the spring sales closing date if you do not have any insured fall planted acreage of the insured crop. If you have any insured fall planted acreage of the insured crop, you may not change your coverage level or price election after the fall sales closing date.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

The cancellation and termination dates are:

Crop, state and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Nevada; and Utah.	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	March 15.
Barley:		
All New Mexico counties except Taos; Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	September 30	September 30.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas Counties, Colorado, and all Colorado counties south and east thereof; Connecticut; Kansas; Massachusetts; New York; and Rhode Island.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Clark, Humboldt, Nye and Pershing Counties, Nevada; and Box Elder, Millard and Utah Counties, Utah.	October 31	November 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas, and all Colorado counties south and east thereof; all Nevada counties except Clark, Humboldt, Nye and Pershing; Taos County, New Mexico; all Utah counties except Box Elder, Millard and Utah; and all other states except Arizona, and (except) Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	March 15	March 15.
Oats:		
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; All New Mexico counties except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia, and all Virginia counties east thereof.	September 30	September 30.
Arizona; All California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity.	October 31	October 31.
Del Norte, Humbolt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California; Taos County, New Mexico; all Virginia counties except Patrick, Franklin, Pittsylvania, Campbell, Attomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland, and all Virginia counties east thereof; and all other states except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	March 15	March 15.
Rye:		

Crop, state and county	Cancellation date	Termination date
All states	September 30	September 30.
Flax:		
All states	March 15	March 15.
Buckwheat:		
All states	March 15	March 15.

6. Insured Crop

* * * * *

(b) * * *

(2) May report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage except as set forth herein. If the Special Provisions allow a reduced premium amount for acreage intentionally destroyed prior to harvest, you may qualify for such reduction only if you notify us in writing on or before the date designated in the Special Provisions of the intended destruction, and do not claim an indemnity on the acreage. No premium reduction will be allowed if the required notice is not given or if you claim an indemnity for the acreage. Upon receiving timely notice, insurance coverage on the acreage you do not intend to harvest will cease and we will revise your acreage report to indicate the applicable reduction in premium. If you do not destroy the crop as intended, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions.

(c) In counties for which the actuarial table provides premium rates for the Wheat or Barley Winter Coverage Endorsement (7 CFR 457.102), additional coverage is available for wheat or barley damaged between the time coverage begins and the spring final planting date. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

(d) In counties for which the actuarial table provides premium rates for malting barley coverage, an endorsement is available (7 CFR 457.118) that provides additional insurance protection for malting barley. This endorsement provides coverage for producers who grow malting barley under contract and for those who do not have a contract. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

7. Insurance Period

In lieu of the requirements under section 11 (Insurance Period) of the Basic Provisions (§ 457.8), and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (§ 457.102) if you have elected such endorsement, the insurance period is as follows:

(a) * * *

(1) For oats, rye, flax and buckwheat, the following limitations apply:

* * * * *

(2) * * *

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, any winter barley or winter wheat that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of wheat or barley but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force. Any winter barley or winter wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the spring type and the production guarantee, premium and price election applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type. If you have elected coverage under a barley or wheat winter coverage endorsement (if available in the county), insurance will be in accordance with the option.

* * * * *

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or fall planted wheat is not insured unless you request such coverage on or before the spring sales closing date, and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. The fall planted barley or fall planted wheat will be insured as a spring type for the purpose of the production guarantee, premium and price election. Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date. Any acreage of such fall planted barley or fall planted wheat that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant. If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(b) * * *

(4) The following applicable date of the calendar year in which the crop is normally harvested:

(i) September 25 following planting in Alaska;

(ii) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(iii) October 31 in all other states; or

* * * * *

9. Replanting Payments

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these crop provisions;

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 9(a)(1)) and in any winter coverage endorsement for which you are eligible and which you have elected;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) Damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated (If the Special Provisions provide more than one fall final planting date, the fall final planting date applicable to policies with the Wheat or Barley Winter Coverage Endorsement will be used for this purpose, regardless of whether or not the endorsement is actually in effect.); and

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) No replanting payment will be made for acreage initially planted to a winter type of the insured crop (including rye) in any county for which the Special Provisions contain only a fall final planting date (including final planting dates in December, January and February).

(c) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or the number of bushels for the applicable crop specified below, multiplied by your price election and your share:

(1) 2 bushels for flax or buckwheat;

(2) 4 bushels for wheat; or

(3) 5 bushels for barley or oats.

(d) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using the price election and production guarantee for the crop type that is replanted and insured. For example, if damaged spring

wheat is replanted to durum wheat, the price election applicable to durum wheat will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type guarantee and price election; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

* * * * *

11. Settlement of Claim

* * * * *

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable (see sections 11(c), (d), and (e)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

(c) * * *

(1) * * *

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

* * * * *

(d) Mature wheat, barley, oat, rye, and buckwheat production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only. If a moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of:

(i) 13.5 percent for wheat;

(ii) 14.5 percent for barley;

(iii) 14.0 percent for oats; and

(iv) 16.0 percent for rye and buckwheat.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain including the definition of terms used in section 11(d), result in:

(A) Wheat, except Khorasan, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight; total damaged kernels (heat-damaged kernels will not be considered to be damaged); shrunken or broken kernels; defects (foreign material and heat damage will not be considered to be defects); a musty, sour, or commercially objectionable foreign odor (except smut odor); or grading garlicky, light smutty, smutty or ergoty;

(B) Barley, except hull-less barley, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight; percentage of sound barley (heat-damaged kernels will be considered to be sound barley); damaged kernels (heat-damaged kernels will not be considered to be damaged); thin barley; black barley; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading blighted, smutty, garlicky or ergoty;

(C) Oats, except hull-less oats, not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight; percentage of sound oats (heat-damaged kernels will be considered to be sound oats); a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading smutty, thin, garlicky or ergoty;

(D) Rye not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of test weight; percent damaged kernels (heat-damaged kernels will not be considered to be damaged); thin rye; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading light smutty, smutty, light garlicky, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to test weight; damaged kernels (heat-damaged kernels will not be considered to be damaged); or a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor);

(ii) Deficiencies in the quality of buckwheat, determined in accordance with applicable state grading standards, result in it not meeting No. 3 grade requirements due to test weight; a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or grading garlicky, smutty or ergoty if such grades are provided for by the applicable state grading standards;

(iii) Quality factors for Khorasan fall below the levels contained in the Official United States Standards for Grain that cause durum wheat to grade less than U.S. No. 4. For example, if durum wheat grades less than U.S. No. 4 when its test weight falls below 54.0 pounds per bushel, Khorasan would be eligible for quality adjustment if its test weight falls below 54.0 pounds per bushel. The same quality factors considered for quality adjustment of durum wheat will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of Khorasan seed. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to Khorasan at the same levels applicable to durum wheat;

(iv) Quality factors for hull-less barley fall below the levels contained in the Official United States Standards for Grain that cause barley to grade less than U.S. No. 4. For example, if barley grades less than U.S. No. 4 when its test weight falls below 40.0 pounds per bushel, hull-less barley would be eligible for quality adjustment if its test weight falls below 40.0 pounds per bushel. The same quality factors considered for quality adjustment of barley will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less barley. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less barley at the same levels applicable to barley;

(v) Quality factors for hull-less oats fall below the levels contained in the Official United States Standards for Grain that cause oats to grade less than U.S. No. 4. For example, if oats grade less than U.S. No. 4 when its test weight falls below 27.0 pounds per bushel, hull-less oats would be eligible for quality adjustment if the test weight falls below 27.0 pounds per bushel. The same quality factors considered for quality adjustment of oats will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less oats. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less oats at the same levels applicable to oats; or

(vi) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us;

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjustor), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Small grain production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

* * * * *

12. Late Planting

A late planting period is applicable to small grains, except to any barley or wheat acreage covered under the terms of the Wheat or Barley Winter Coverage Endorsement. Barley or wheat covered under the terms of the Winter Coverage Endorsement must be planted on or prior to the applicable final planting date specified in the Special Provisions. In counties having one fall final planting date for acreage covered under the Wheat or Barley Winter Coverage Endorsement and another fall final planting date for acreage not covered under the endorsement, the fall late planting period will begin after the final planting date for acreage not covered under the endorsement.

* * * * *

■ 3. Amend the crop insurance endorsement contained in § 457.102 as follows:

■ a. Revise the section title; and

■ b. Revise the endorsement, all to read as follows:

§ 457.102 Wheat or barley winter coverage endorsement.

United States Department of Agriculture

Federal Crop Insurance Corporation

Wheat or Barley Winter Coverage Endorsement

(This is a continuous endorsement)

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of the Small Grains Crop Provisions subject to the terms and conditions described herein.

2. This endorsement is available only in counties for which the Special Provisions for the insured crop designate both a fall final planting date and a spring final planting date, and for which the actuarial documents provide a premium rate for this coverage.

3. You must have a Small Grains Crop Insurance Policy in force and elect to insure barley or wheat under that policy.

4. You must select this coverage, by crop, on your application for insurance. Failure to do so means you have rejected this coverage for both wheat and barley and this endorsement is void.

5. In addition to the requirements of section 34(b) of the Basic Provisions and section 2 of the Small Grains Crop Provisions, optional units may be established for barley if each optional unit contains only initially planted winter barley or only initially planted spring barley.

6. If you elect this endorsement for winter barley, the contract change, cancellation, and termination dates applicable to wheat in the county will be applicable to all your spring and winter barley.

7. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

8. The provisions of section 14 of the Basic Provisions are amended to require that all notices of damage be provided to us by the spring final planting date designated in the Special Provisions.

9. All eligible acreage of each crop covered under this endorsement must be insured.

10. The amount of any indemnity paid under the terms of this endorsement will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

11. Whenever any winter wheat or barley is damaged during the insurance period and at least 20 acres or 20 percent of the insured planted acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement.

(b) Replant the acreage to an appropriate variety of the insured crop, if it is practical, and receive a replanting payment in accordance with the terms of section 9 (Replanting Payments) of the Small Grains Crop Insurance Provisions. By doing so, coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement, and the production guarantee for winter wheat or barley will remain in effect.

(c) Destroy the remaining crop on such acreage. By doing so, you agree to accept an appraised amount of production determined in accordance with section 11(c)(1) of the Small Grains Crop Insurance Provisions to count against the unit production guarantee. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 11 (Settlement of Claim) of the Small Grains Crop Insurance Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available. If you elect to plant and elect to insure a spring type of the same crop (you must elect whether or not you want insurance on the spring type of the same crop at the time we release the winter type acreage), you must pay additional premium for the insurance. Such acreage will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted to a spring type of the insured crop, and you must:

(1) Plant the spring type in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining acreage of the winter type; and

(2) Store or market the production in a manner which permits us to verify the amount of spring type production separately from any winter type production. In the event you are unable to provide records of production that are acceptable to us, the spring type acreage will be considered to be a part of the original winter type unit.

Signed in Washington, DC, on June 3, 2003.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–14413 Filed 6–4–03; 2:15 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 03N–0068]

Beverages: Bottled Water; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 8, 2003, for the direct final rule that appeared in the **Federal Register** of March 3, 2003 (68 FR 9873). The direct final rule amends the bottled water quality standards regulations by establishing an allowable level for uranium. This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1640.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 2003 (68 FR 9873), FDA published a direct final rule that amends the bottled water quality standards regulations (21 CFR part 165) by establishing an allowable level for uranium. Interested persons were given until May 2, 2003, to

comment on the direct final rule. FDA stated that the effective date of the direct final rule would be December 8, 2003, and, if the agency received no significant adverse comments, it would publish a notice of confirmation of the effective date no later than June 11, 2003. FDA received no significant adverse comments within the comment period. Therefore, FDA is confirming that the effective date of the direct final rule is December 8, 2003. As noted in the direct final rule, FDA is publishing this confirmation document 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their bottled water products into compliance with the quality standard imposed by the new rule.

Dated: June 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–14477 Filed 6–6–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 350, and 369

[Docket No. 78N–0064]

RIN 0910–AA01

Antiperspirant Drug Products For Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) antiperspirant drug products are generally recognized as safe and effective and not misbranded as part of FDA's ongoing review of OTC drug products. FDA is issuing this final rule after considering public comments on its proposed regulation, issued as a tentative final monograph (TFM), and all new data and information on antiperspirant drug products that have come to the agency's attention.

DATES: *Effective Date*: This rule is effective December 9, 2004.

Compliance Dates: The compliance date for products with annual sales less than $25,000 is June 9, 2005. The compliance date for all other products is December 9, 2004.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

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I. Background

In the **Federal Register** of October 10, 1978 (43 FR 46694), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC antiperspirant drug products, together with the recommendations of the Advisory Review Panel on OTC Antiperspirant Drug Products (the Panel), which evaluated the data on these products. The agency's proposed regulation (TFM) for OTC antiperspirant drug products was published in the **Federal Register** of August 20, 1982 (47 FR 36492).

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency issued a final rule establishing that certain active ingredients in OTC drug products are not generally recognized as safe and effective and are misbranded. These ingredients included seven antiperspirant ingredients, which are included in § 310.545(a)(4) (21 CFR 310.545(a)(4)). In this rulemaking, the agency is adding one additional ingredient to this section. (See section III.1 of this document.)

In the **Federal Register** of March 23, 1993 (58 FR 15452), the agency requested public comment on two citizen petitions, and a response to one of the petitions, related to the safety of aluminum compounds in OTC antiperspirant drug products. This final monograph completes the TFM and provides the substantive response to the citizen petitions.

Twenty-four months after the date of publication in the **Federal Register**, for products with annual sales less than $25,000, and 18 months after the date of publication in the **Federal Register**, for all other products, no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application (NDA) or abbreviated new drug application. Further, any OTC drug product subject to this final monograph that is repackaged or relabeled after the compliance dates of the final rule must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

In response to the TFM on OTC antiperspirant drug products and the request for comment on the citizen petitions, the agency received 20 comments. One manufacturer requested an oral hearing before the Commissioner of Food and Drugs on six different issues. Copies of the information considered by the Panel, the comments, and the hearing request are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. ''OTC Volumes'' cited in this document refer to information on public display.

The agency received some ''feedback'' communications under the OTC drug review procedures (see the **Federal Registers** of September 29, 1981 (46 FR 47740) and April 1, 1983 (48 FR 14050)). The agency has included these communications in the administrative record and addressed them in this document.

The safety issues raised by the citizen petitions are discussed in section II.F of this document. The agency believes it has adequately responded to the six issues related to the hearing request; therefore, a hearing is not necessary.

II. The Agency's Conclusions on the Comments

A. General Comments on OTC Antiperspirant Drug Products

(Comment 1) One comment requested that FDA reconsider its position that OTC drug monographs are substantive, as opposed to interpretive, regulations.

The agency addressed this issue and reaffirms its conclusions as stated in

paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products (May 11, 1972, 37 FR 9464 at 9471 to 9472) and in paragraph 1 of the preamble to the TFM in the present proceeding (47 FR 36492 at 36493).

(Comment 2) Three comments disagreed with the agency's proposed definition of an antiperspirant: ''A drug product that, when applied topically to the underarm, will reduce the production of perspiration (sweat) at that site,'' (47 FR 36492 at 36503). One comment contended it was unduly restrictive and unnecessary to limit use only in the underarm area because it is not the only area of the body upon which these products could potentially be applied. The comment asked the agency to modify the definition to parallel the pharmacologic activity of the active ingredients and suggested: ''A drug product that, when applied topically, will reduce the production of perspiration (sweat) at that site.''

A second comment stated that the definition limiting use to the underarm only would adversely affect its products labeled for use on the hands and for use with orthotic and prosthetic appliances (to keep appliance-skin contact areas dry). Noting that the agency and the Panel recognized the similarities and differences between axillary and foot perspiration, a third comment stated that ingredients effective in the underarm area are probably effective to control foot perspiration.

The agency agrees with the first comment that it is not necessary to specify the area of use on the body in the definition of an antiperspirant because that information is included in the product's labeling. Accordingly, the agency is deleting the phrase ''to the underarm'' from the definition of an antiperspirant in § 350.3 (21 CFR 350.3) of this final monograph to read: ''*Antiperspirant.* A drug product applied topically that reduces the production of perspiration (sweat) at that site.'' The use of an antiperspirant on other areas of the body, as mentioned by the second and third comments, is discussed in section II.A, comment no. 4 and section II.C, comment 14 of this document.

(Comment 3) One comment stated that the TFM for OTC antiperspirant drug products was substantively and procedurally defective because it failed to address adequately the Panel's Category III recommendations concerning ''enhanced duration of effect'' and ''problem perspiration'' and failed to state what testing was required to substantiate these claims. The comment requested that FDA issue a new or amended TFM to address these issues.

The agency has determined that there is no need to withdraw, amend, or initiate a new TFM. Since the Panel's report was published in 1978, the procedural regulations for the OTC drug review were revised to comply with the Court ruling in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The revised regulations (46 FR 47730, September 29, 1981) provide that TFMs and final monographs will no longer contain recommended testing guidelines. The agency is not required by statute or regulation to include testing guidelines as part of OTC panel reports or TFMs. The agency stated in proposed § 350.60 of the TFM (47 FR 36492 at 36504) and states in § 350.60 of this final monograph (21 CFR 350.60) that ''To assure the effectiveness of an antiperspirant, the Food and Drug Administration is providing guidelines that manufacturers may (emphasis added) use in testing for effectiveness.''

The ''enhanced duration of effect'' and the ''problem perspiration'' issues are discussed in section II.C, comments 10 and 12 of this document. Extended duration of effect claims have been placed in Category I based on data submitted by other comments (see also comment 12). The agency has determined that claims for problem perspiration are outside the scope of this monograph because no data were submitted to support such claims (see also comment 10).

(Comment 4) One comment contended that the proposed monograph would have a disastrous economic effect on its company, which markets an antiperspirant product first formulated in 1902 and labeled for excessive perspiration, including keeping the hands free of perspiration (labeled for use on the hands for tennis, racquetball, bowling, football, and other sporting uses), and marketed for prosthesis and orthotic use (for amputees to keep their appliance contact areas dry).

To qualify for exemption from the ''new drug'' definition under the 1938 grandfather clause of the act, the drug product must have been subject to the Food and Drug Act of 1906, prior to June 25, 1938, and at such time its labeling must have contained the same representations concerning the conditions of its use (21 U.S.C. 321(p)(1)). Under the 1962 grandfather clause of the act, a drug product which on October 9, 1962 was: (1) Commercially used or sold in the United States; (2) not a ''new drug'' as defined in the 1938 act; and (3) not covered by an effective NDA under the 1938 act, would not be subject to the added requirement of effectiveness ''when intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on that day.'' (Public Law 87–781, section 107(c)(4), 76 Stat. 788, note following 21 U.S.C. 321).

The person seeking to show that a drug comes within a grandfather exemption must prove every essential fact necessary for invocation of the exemption. See *United States* v. *An Article of Drug* * * * ''*Bentex Ulcerine*,'' 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973). Furthermore, the grandfather clause will be strictly construed against one who invokes it. See *id.*; *United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966). A change in composition or labeling precludes the applicability of the grandfather exemption. See *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 663 (1973).

Although the comment stated that its drug products have been marketed since 1902 with hand perspiration labeling claims, no evidence was submitted to show that the labeling and composition of the products have remained unchanged since either 1938 or 1962, so that they qualify as grandfathered products. The agency requested product labeling from these years on several occasions (Refs. 1, 2, and 3), but none was ever provided. Without such evidence, the products do not qualify for either grandfather exemption. The burden of proof with respect to the grandfather exemption is not on FDA, but on the person seeking the exemption. See *An Article of Drug* * * * ''*Bentex Ulcerine*,'' *supra*.

The 1938 and 1962 grandfather clauses apply only to the new drug provisions of the act (see 21 CFR 314.200(e)) and not to the adulteration and misbranding provisions. The OTC drug review was designed to implement both the misbranding and the new drug provisions of the act. (See § 330.10 (21 CFR 330.10), 37 FR 9464 at 9466.) The grandfather clauses do not preclude the agency from reviewing any currently marketed OTC drug product, regardless of whether it has grandfather protection from the new drug provisions, in order to ensure that it is not misbranded.

Although the comment claimed this final rule would have a disastrous economic effect on its company if antiperspirants can be labeled only for underarm use, it provided no documentation about this impact. The agency notes that while the company's products would need to be relabeled to bear different indications, as long as the monograph conditions are met, the

products could remain in the marketplace after relabeling occurred. The economic impact of this final rule is discussed in section VI of this document.

B. General Comments on Labeling of OTC Antiperspirant Drug Products

(Comment 5) Several comments contended that FDA should not incorporate the ''exclusivity policy'' in the final monograph by prescribing specific labeling terminology to the exclusion of other truthful nonmisleading language.

After these comments were submitted, in the **Federal Registers** of May 1, 1986 (51 FR 16258) and March 17, 1999 (64 FR 13254), the agency published final rules changing its labeling policy for stating the indications for use of OTC drug products. Under § 330.1(c)(2) (21 CFR 330.1(c)(2)), the agency provides options for labeling OTC drug products. The final monograph in this document is subject to the labeling provisions in § 330.1(c)(2). In addition, the monograph labeling follows the format and content requirements of § 201.66 (21 CFR 201.66).

(Comment 6) One comment objected to limiting the terms proposed in § 350.50(b)(1), (b)(2), and (b)(3) to ''reduces,'' ''decreases,'' ''diminishes,'' and ''lessens.'' The comment stated that ''lower'' and ''mitigate'' are synonyms for ''reduce'' and other words and phrases state, truthfully and accurately, the effect of antiperspirants.

Several comments disagreed with the agency that words such as ''stop,'' ''check,'' ''halt,'' ''end,'' ''eliminate,'' and ''protect'' should not be used in the labeling of antiperspirant drug products, even if preceded by the word ''helps,'' because these words imply the ability to stop underarm perspiration totally and would therefore mislead the consumer about the effectiveness of antiperspirant drug products. The comments mentioned the minority Panel position that ''The Panel did not see scientific data to indicate that a consumer can differentiate between such words as 'halts,' 'checks,' 'stops,' and 'ends,' as disallowable words versus 'diminishes' and 'reduces' as allowable words,'' (43 FR 46694 at 46725). One comment agreed with the minority because a review of the entire record of this proceeding found no studies or data to support a decision to disallow ''protects,'' ''halts,'' ''checks,'' and ''stops.'' Another comment requested a hearing on this issue.

One comment disagreed with the Panel's Category II status for the following labeling claims (43 FR 46694 at 46724): ''Dry,'' ''dry formula,'' ''super dry,'' ''helps stop wetness,'' ''completely guards your family,'' ''helps stop embarrassing perspiration wetness,'' ''complete protection,'' ''really helps keep you dry,'' and ''gentle enough for sensitive areas of the body.'' The comment asked the agency to allow these claims in the final monograph.

The agency has re-evaluated these claims in light of the comments' arguments and its current policy to provide consumer friendly OTC drug product labeling. The agency is deleting one previously proposed word (''diminishes'') and adding some more consumer-friendly words (''sweat'' and ''sweating'') to antiperspirant product labeling.

The agency proposed the word ''diminishes'' in § 350.50(b) as one of the optional terms that could be used as the first word of the indications statement. While the word ''diminish'' means to ''reduce,'' the agency does not consider it as consumer-friendly as the other optional words ''reduces,'' ''decreases,'' or ''lessens.'' Therefore, the agency is not including ''diminishes'' in § 350.50(b) of this final monograph as an FDA-approved term. The agency rejected the words ''mitigate'' and ''lower'' in the TFM (comment 14, 47 FR 36492 at 36496 to 36497). The agency's position has not changed. While the terms ''mitigate,'' ''lower,'' and ''diminishes'' are not in the monograph and the agency does not favor their use, manufacturers may use these terms, or other words or phrases that truthfully and accurately express a similar meaning, under the flexible labeling policy in § 330.1(c)(2).

The agency is not changing its position on the use of the word ''helps'' in conjunction with the words ''stop,'' ''halt,'' ''check,'' ''end,'' and ''eliminate.'' In the TFM (comment 14), the agency stated that these words imply the ability to stop underarm perspiration totally and would therefore mislead consumers about antiperspirant effectiveness. Although neither the Panel nor the agency had any consumer comprehension studies to support a decision to disallow this information, the comments also did not provide any data to support these terms. The agency would consider these terms if data are provided to show that consumers would not be misled about the effect of antiperspirant drug products. The agency is not including ''helps protect'' before ''underarm dampness,'' ''underarm perspiration,'' or ''underarm wetness,'' because the language is not clear and could confuse consumers.

The agency is not including any ''dry'' or similar claims (''dry,'' ''dry formula,'' ''super dry,'' ''really helps keep you dry'') in this final monograph because no criteria have been established to define ''dry.'' Thus, what may be ''dry'' for one manufacturer's product may not be ''dry'' for another manufacturer's product. The agency would consider including ''dry'' claims in the monograph if appropriate criteria for such claims are developed.

The agency is not including claims such as ''complete protection'' or ''completely guards your family'' in the monograph because there is no evidence that antiperspirant drug products provide ''complete'' protection. The agency is not including the claim ''gentle enough for sensitive areas of the body'' because the words ''sensitive areas'' may imply that the product can be used on other body areas in addition to the underarm. The agency is not including the claim ''helps stop embarrassing perspiration wetness'' because what is ''embarrassing'' or ''problem'' perspiration for one individual may not be ''embarrassing'' or a ''problem'' for others. (See section II.C, comment 10 of this document.)

The agency is not including both ''perspiration'' and ''wetness'' in the same claim because it considers the duplicative wording unnecessary. The currently allowed claims are ''* * * underarm wetness'' or ''* * * underarm perspiration.'' The agency would have no objection to ''* * * underarm perspiration wetness,'' but such would have to be done under the flexible labeling provisions of § 330.1(c)(2). The agency is adding the words ''sweat'' and ''sweating'' in § 350.50(b) as other ways to describe ''wetness'' and ''perspiration,'' because consumers regularly use these terms to describe perspiration. Based on the previous discussion, the agency concludes that a hearing is not warranted on these issues.

(Comment 7) Three comments requested that OTC antiperspirant drug products be exempted from the keep out of reach of children and accidental ingestion warnings in § 330.1(g) because these products are not toxic by oral ingestion. One comment noted only one reported ingestion in 30 years of marketing antiperspirant products. Another comment stated that aerosols, in particular, should be exempt from the ingestion warning due to the characteristics of the delivery system and the warnings already required for aerosols pressurized by gaseous propellants under § 369.21 (21 CFR 369.21).

Although the comments did not submit any data to show that antiperspirant drug products are safe if ingested, the agency believes these products should not be toxic by oral

ingestion for most individuals. However, individuals with renal dysfunction or immature renal function (i.e., infants) are at a higher risk from any exposure to aluminum. Further, ingestion of the various inactive ingredients present in these products may make young children ill or cause other undesirable consequences. Without adequate proof of safety if accidental ingestion were to occur, the agency has no basis to exempt OTC antiperspirant drug products from the accidental ingestion warning.

Although aerosol antiperspirant drug products are unlikely to be accidentally ingested by most consumers, the agency notes that the product containers are similar to those used for some food products. Spraying an aerosol into the mouth and ingesting it could be more hazardous than ingesting other dosage forms of the product because of the aerosol propellants. The warnings required under § 369.21, for those drugs in dispensers pressurized by gaseous propellants, are not related to ingestion, but state the following: ''Avoid spraying in the eyes. Do not puncture or incinerate. Do not store at temperatures above 120 °F. Keep out of reach of children.'' The agency does not consider these warnings a basis to exempt aerosol antiperspirants from the accidental ingestion warning required by § 330.1(g) for topical drug products. The last statement of the warning required by § 369.21 and the first warning required by § 330.1(g) (i.e., ''Keep out of reach of children.'') are identical as of March 17, 1999 (64 FR 13254 at 13294). Section 350.50(c)(4)(ii)) of the final monograph requires aerosol antiperspirant drug products to bear the language in § 369.21. These products do not have to repeat the first general warning required by § 330.1(g) but need to have the accidental ingestion warning required by § 330.1(g).

(Comment 8) Two comments objected to the proposed warning in § 350.50(c) for aerosol antiperspirants, which states: ''Avoid excessive inhalation.'' The comments argued that the warning duplicates and gives less information than the current warning required for aerosol drug products under § 369.21.

Section 369.21 requires the following warning statement for a drug packaged in a self-pressurized container in which the propellant consists in whole or in part of a halocarbon or hydrocarbon: ''Use only as directed. Intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal.'' The agency does not consider this warning (which addresses deliberate misuse) as being the same as a general statement warning people to avoid excessive inhalation. There are many people who would not deliberately misuse the product who should be alerted to keep away from their face and mouth and to avoid excessive inhalation. The warning appears in the final monograph in more consumer friendly language and in the new labeling format as follows: ''When using this product [bullet] keep away from face and mouth to avoid breathing it.'' (See § 201.66(b)(4) for description of a ''bullet.'')

C. Comments on Category III Effectiveness Testing

(Comment 9) Several comments objected to user perception testing to substantiate Category III effectiveness claims. (See comment 24, 47 FR 36492 at 36499.) The comments contended that the user perception test is not reliably indicative of product effectiveness and offers at best a crude index of activity that is difficult to employ for precise qualitative and quantitative evaluations. The comments considered objective gravimetric sweat collection procedures more reliable than user perception testing to assess antiperspirant activity levels and requested that user perception testing be deleted. Three comments submitted data on user perception testing of Category III claims, including extra effective, 24-hour duration, emotional sweating, and foot perspiration (see section II.C, comments 11 through 14 of this document).

The agency has determined that user-perception test data support emotional sweating, 24-hour protection, and extra effective claims. Accordingly, the agency concludes that there are sufficient data on user perception tests (including both user and independent observer perception tests) for use of antiperspirants for the underarm. No further user perception tests are necessary if an underarm antiperspirant shows at least 20 percent sweat reduction by gravimetric tests for emotional sweating and 24-hour protection claims or 30 percent sweat reduction for extra effective claims. Adequate user perception tests have not been conducted for parts of the body other than the underarms, such as the hands or feet. The agency will still require user perception and other effectiveness data to support use of antiperspirants on the hands and feet (see section II.A, comment 4 and section II.C, comment 14 of this document).

(Comment 10) Several comments objected to the Category III status of the claims ''problem perspiration'' and ''especially troublesome perspiration.'' One comment contended these claims are not inherently misleading or untruthful and many people who do not perspire heavily may, at times, consider themselves to have ''problem'' or ''troublesome'' perspiration.

Other comments objected to the agency's definition of problem perspiration as affecting the upper 5 percent of perspirerers, contending that a more realistic approach would be to let consumers define the meaning of these words by running efficacy studies on people who identify themselves as having problem or especially troublesome perspiration. One comment objected to the economic consequences of testing the top 5 percent of the population to establish a ''problem perspiration'' claim, because this could raise the price for one efficacy evaluation from the current $5,000 to $10,000 up to $200,000. The comment requested a hearing on this issue if FDA did not revise its approach.

No data were submitted to the agency to show that any OTC antiperspirant drug product is effective in reducing ''problem'' or ''especially troublesome'' perspiration. The agency is not aware of any products that currently qualify as effective for those conditions. If products are found to be effective in the future, the agency will include a definition and labeling for ''problem'' or ''especially troublesome'' perspiration in the monograph. The agency proposed in the tentative final monograph that a 30 percent reduction in sweat production in the upper 5 percent of perspirerers is necessary for a ''problem perspiration claim'' (47 FR 36492 at 36500). As discussed in section II.C, comment 9 of this document, gravimetric testing is sufficient to prove these claims. The agency would find acceptable an antiperspirant effectiveness study on a population of individuals who perceive themselves to have ''problem perspiration,'' as one comment suggested. Based on changes in the testing to support these claims, the agency concludes that a hearing is not needed.

(Comment 11) Several comments objected to the agency's proposed Category II classification of the claims ''extra strength,'' ''extra effective,'' or any other comparative effectiveness claims (see comment 19, 47 FR 36492 at 36498). The comments argued that if manufacturers can demonstrate by appropriate testing and methods of statistical analysis that one product is more effective than another, they should be permitted to so inform consumers. The comments noted that the agency had approved an NDA for an acetaminophen ''extra strength'' product and allowed sunscreen products to label

their degree of effectiveness. One comment requested a hearing on this subject.

To prove the validity of comparative claims, two comments submitted both gravimetric and perceptual data (Refs. 4 and 5). Another comment submitted gravimetric data only (Refs. 6 and 7) and stated that one study showed that a 10 percent difference in antiperspirant effectiveness can be measured with currently marketed antiperspirant products. This comment stated that adequate data (Ref. 8) had been submitted to the Panel (43 FR 46694 at 46715) to show that as differences in antiperspirant performance levels increase, larger numbers of consumers perceive the difference. These data included a chart plotting differences in sweat reduction against the percentage of subjects who noted variations in axillary wetness. The chart shows that at 20 percent sweat reduction, approximately 45 to 50 percent of the subjects noticed a difference; at 35 percent sweat reduction, approximately 60 percent noticed a difference; and at 50 percent sweat reduction, approximately 75 percent noticed a difference. The comment contended that this study confirmed the Panel's determination that the user can perceive a shift of at least 10 percent in antiperspirant effectiveness and that a product providing a 30 percent or greater sweat reduction is perceived as more effective than a standard antiperspirant. The comments requested monograph status for ''extra strength'' and ''extra effective'' claims, as qualified by gravimetric studies.

The agency has determined that some of the studies (Ref. 4) meet the Panel's ''guidelines for user perception test to be done for claims of 'extra-effective' to be classified as Category I'' (43 FR 46694 at 46730). In these studies, two solid stick antiperspirant products (containing either 10 percent or 25 percent aluminum chlorohydrate) were compared by both a gravimetric and a user perception test. In the gravimetric test, 91 female subjects used the 10-percent product, and 88 used the 25-percent product. A 17-day conditioning period with no antiperspirant use was followed by four daily applications of one of the products to a randomly selected axilla (armpit or underarm). The opposite axilla received no treatment and served as the control. Baseline sweat production was determined the first day of the test. On days two and three, the antiperspirant was applied and 1 hour later a sweat production sample was collected. On day five, 24 hours after the fourth application, a sweat production sample was collected. Both the 10- and 25-percent products were more effective than the no treatment control for all time periods according to the statistical methods (Wilcoxon signed rank test) in the agency's guidelines for effectiveness testing of OTC antiperspirant drug products (Ref. 9). Evaluation of the Z values for the two 1-hour test days and the 24-hour test day showed that both products were statistically (Wilcoxon test) at least 20 percent better than the control axilla for all time periods ($p < 0.001$ for all three cases). Thus, both products met the requirements for standard effectiveness, i.e., a minimum of 20-percent reduction in underarm perspiration. Applying the same statistical methods to a 30-percent reduction in underarm perspiration on the last 24-hour data showed that the 25-percent product was more effective than no treatment ($p < 0.001$) and, thus, met one of the extra effective criteria.

The same study design was used in the user perception test except that the subjects applied the 10-percent product under one axilla and the 25-percent product under the other axilla. On day five, 24 hours after the fourth application, the 100 female subjects were asked ''Under which arm do you feel drier?'' All subjects had a preference: 33 favored the 10-percent product and 67 favored the 25-percent product. A statistically significant number of the subjects were able to perceive that the 25-percent product was more effective than the 10-percent product ($p = 0.0005$ one-sided). This result exceeded the Panel's requirement that 58 out of 100 subjects have a preference for the test antiperspirant (43 FR 46694 at 46731). Thus, these studies showed that the 25-percent aluminum chlorohydrate met the Panel's criteria (gravimetric measurements and user perception) for an extra effective claim.

The agency has determined that the studies indicate that gravimetric testing shows an adequate difference between a standard antiperspirant (with a 20-percent reduction in sweat) and an antiperspirant with at least a 30-percent reduction in sweat, as required by the Panel, to support an ''extra effective'' claim. The agency stated in the tentative final monograph (47 FR 36492 at 36499) that once the level of activity that is perceivable by users has been established using the Panel's recommended guidelines, it will not be necessary to perform user perception testing on individual products. Accordingly, the agency concludes that no further user perception testing is necessary for an ''extra effective'' claim, which is being included in the monograph for those antiperspirant products that reduce underarm perspiration by 30 percent or more using the guidelines for effectiveness testing of antiperspirant drug products referred to in § 350.60.

The Panel placed ''extra-strength'' claims in Category II because it concluded that ''the presence of more active ingredient in an antiperspirant product cannot be used as a basis for a claim of added effectiveness because additional amounts of antiperspirant active ingredient do not necessarily result in improved product effectiveness'' (43 FR 46694 at 46724). The Panel also stated that ''the term 'extra-strength' normally refers to increased concentration of the active ingredient which would normally mean added effectiveness.'' Several comments agreed that more active ingredient may not yield more effectiveness. Thus, a product containing 20 percent of an active ingredient (compared to 15 percent) that did not provide 30 percent or more sweat reduction could not claim ''extra strength'' or ''extra effective.''

The agency does not believe that for antiperspirants the claim ''extra strength'' is as informative to consumers as the claim ''extra effective.'' The agency considers ''extra effective'' to be the key information that consumers want to know to select an appropriate antiperspirant product. The agency is including this new labeling claim in § 350.50(b)(4) of this final monograph. Based on this discussion, the agency concludes that a hearing is not needed on this subject.

(Comment 12) Several comments objected to the Panel's Category III classification of claims for enhanced duration of effect, such as ''24-hour protection,'' ''one spray keeps you comfortably dry all day,'' ''prolonged protection,'' etc. (43 FR 46694 at 46728). One comment stated that if an antiperspirant product can be shown to provide the required 20-percent reduction in perspiration under hotroom conditions for 24, 48, etc. hours after application, then duration claims have been substantiated.

Three manufacturers submitted gravimetric studies (Refs. 4, 7, 10, and 11) that used a hotroom to induce sweating and measured sweat collected in cotton pads twice over a 24-hour period. The tested ingredients showed a 20-percent or more reduction in sweat production for both collection times, which the comments contended satisfied enhanced duration claims such as ''24 hour protection'' and ''all day protection.'' One comment added that its data (Ref. 11) support a variety of product forms (cream, roll-on, solid

stick) and, thus, the enhanced duration effect is not limited to product form.

The agency has determined that the data support a claim of enhanced duration for 24 hours according to the Panel's criteria. The protocols in seven of the studies (Refs. 7 and 10) varied only slightly from the Panel's recommended protocol. Subjects in one study abstained from antiperspirant use for 2 weeks prior to the study. Subjects in the other six studies stopped using antiperspirants 4 weeks prior to the studies. The subjects were pretreated with an antiperspirant for the 5 days prior to beginning sweat collection procedures. Sweat was collected 4 and 24 hours following the last antiperspirant application. Five studies included untreated axilla controls, and two studies included placebo controls. One product was tested in two different studies (one with a placebo and one without), and the results were virtually identical. The tests supported enhanced duration efficacy of 20 percent sweat reduction over the 24-hour period for aluminum zirconium tetrachloride (15.5 percent roll-on and 18.2 percent stick), zirconium tetrachloride (20 percent roll-on), aluminum chlorohydrate (6.8 percent aerosol), and aluminum chloride (20 percent solution).

Other data (Ref. 4) also supported enhanced duration of effectiveness for antiperspirant solid sticks containing 10 and 25 percent aluminum chlorohydrate. Subjects, who abstained from antiperspirant use for 17 days prior to the study, were pretreated with an antiperspirant for the 3 days prior to sweat collection, 1 and 24 hours after the last antiperspirant application. Standard hotroom and sweat collection procedures were used. Over the 24-hour period, both 10 percent and 25 percent aluminum chlorohydrate sticks reduced sweat production in the treated axilla by 20 percent compared to the untreated axilla. The 25-percent aluminum chlorohydrate product also showed a 30-percent reduction in sweat production.

Six other studies (Ref. 11) support enhanced duration claims. Most products showed a 20-percent reduction in sweat production compared to an untreated axilla for both the 4- and 24-hour evaluation periods, with several products showing a 30-percent sweat reduction. However, the studies did not identify the antiperspirant active ingredients.

The agency is including the following enhanced duration claims in § 350.50(b)(3) of this final monograph: ''all day protection,'' ''lasts all day,'' ''lasts 24 hours,'' or ''24 hour protection.'' In order to make such a claim, an antiperspirant product must reduce sweat production by at least 20 percent over a 24-hour period after application using the guidelines for effectiveness testing referred to in § 350.60. Antiperspirant products that meet the extra effective criteria (see section II.C, comment 11 of this document) over a 24-hour period can be labeled with both extra effective and enhanced duration claims (e.g., ''24 hour extra effective protection,'' ''all day extra effective protection,'' ''extra effective protection lasts all day,'' etc.). Claims of enhanced duration for more than 24 hours are nonmonograph because the agency has not received any data to demonstrate antiperspirant effectiveness for more than 24 hours according to the Panel's criteria.

(Comment 13) Several comments objected to the Panel's Category III classification of claims for control of emotional sweating, e.g., induced by tension or stress (43 FR 46694 at 46728). The comments contended that a product's antiperspirant activity is the same whether the sweat is due to thermal conditions or emotional factors. Some comments disagreed with the need for additional testing, especially consumer perception testing, to establish these claims. One comment requested a hearing.

One comment submitted clinical data (Refs. 7 and 12) which it contended showed: (1) There is a valid scientific protocol that combines a gravimetric sweat test with a word-quiz stress test to measure reduction in emotionally-induced sweat; (2) an antiperspirant is not washed from the axillae during controlled emotional stressing, and excessive sweat does not diminish antiperspirant effectiveness; (3) an antiperspirant effective in reducing thermally-induced sweat is effective in reducing emotionally-induced sweat also; and (4) an antiperspirant that reduces emotionally-induced sweat by 20 percent or more meets the standard for antiperspirant effectiveness for which user perception and benefit has already been accepted and, thus, there is no need for additional user perception testing. The studies included aerosol, roll-on, and stick products containing aluminum chlorohydrate or aluminum zirconium tetrachlorohydrate, the major antiperspirant active ingredients.

The agency has determined that gravimetric sweat tests combined with mental stress tests support an emotionally-induced sweating claim. The data included 12 studies with the same design of 5 days each on panels of approximately 25 female subjects: Pretest-abstention from all antiperspirants for at least 4 weeks prior to the study; day one—pretreatment control sweat collection under no stress; day two—pretreatment control sweat collection under emotional stressing; days two through five—apply test product; and days four and five—posttreatment sweat collection under emotional stressing. Subjects applied the antiperspirant test formulation to one axilla and used either a comparative formulation, a control placebo formulation, or no treatment on the opposite axilla. A control emotional challenge test, which lasted for about 60 minutes, was done on day two and an emotional challenge test was done on days four and five of the study.

Emotional sweating was induced by having subjects do a word definition test conducted by a moderator experienced at insuring optimum stress. The subjects received monetary rewards for a correct definition, but forfeited some of their rewards for incorrect or untimely definitions. Subjects had a 5-second time limit to begin a response and a 15-second maximum time to give the actual word definition. After 60 minutes, sweat was measured gravimetrically from the preweighed absorbent pads. Standard sweat collection and statistical evaluation procedures were used. The median sweat output for the 12 studies was 1,257 milligrams (mg) for the pretreatment control under emotional stressing compared to 415 mg for the pretreatment control under no stress. This word definition test effectively elicited a sweat response.

In the 12 studies using the word definition test, there was at least a 20-percent reduction of sweat production. The top 10 percent of heavy sweaters from each study (25 subjects) having the highest sweating rates on the untreated axilla had a 36.8 percent average sweat reduction compared to 38.2 percent reduction in the remaining 90 percent of each population (196 subjects), showing no significant difference in effectiveness in the two groups. Majors and Wild (Ref. 13) obtained similar results when comparing individual percent reduction in thermal sweating in the antiperspirant-treated axilla to rate of sweating from the untreated axilla in 89 subjects. They found that heavy sweating did not affect the rate of reduction.

The products tested under the emotional sweat protocol were also evaluated under a standard thermal sweat protocol at 100 °F with 30 percent relative humidity. The average percent sweat reduction for aerosols was 37.0 percent for emotional sweating and 34.0 percent for thermal sweating, for sticks it was 46.0 percent for emotional

sweating and 41.4 percent for thermal sweating, and for roll-ons it was 51.3 percent for emotional sweating and 53.3 percent for thermal sweating. These data show that the same products have similar average percent sweat reduction for both emotional and thermal sweating.

The agency concludes that gravimetric sweat tests combined with mental stress tests are sufficient to show effectiveness for control of emotionally-induced sweating; the data show antiperspirant drug products that are effective for thermal sweating are also effective for emotional sweating. The agency has determined that no additional testing (e.g., user perception tests) is required for an emotionally-induced sweating claim for products containing monograph ingredients that meet the guidelines for effectiveness testing of antiperspirant drug products referred to in § 350.60.

The agency is including the following emotionally-induced sweating claim in § 350.50(b)(2) of this final monograph: ''also [select one of the following: 'decreases,' 'lessens,' or 'reduces'] underarm [select one of the following: 'dampness,' 'perspiration,' 'sweat,' 'sweating,' or 'wetness'] due to stress''. Based on the previous discussion, the agency concludes that a hearing is not needed on this subject.

(Comment 14) One comment requested monograph status for 25 percent aluminum chlorohydrate to control foot perspiration based on gravimetric and perceptual data from four randomized, double-blind, bilateral, paired-comparison trials, each having 12 female subjects (Ref. 14). Treatment was randomly assigned; aluminum chlorohydrate was used on one foot and placebo on the other foot. A 25 percent aluminum chlorohydrate solution in 50 percent ethanol:50 percent water and a placebo control consisting of 50 percent ethanol:50 percent water were used in the first study. The same solutions in aerosol form were used in the other three studies. The procedure in the agency's ''Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products'' (Ref. 9) was modified for foot testing: (1) A 3-day pre-treatment period during which subjects were not to use any foot care products, with each subject receiving four daily product applications prior to final hotroom posttreatment testing collection; (2) sweat collection media were cotton socks rather than absorbent pads; (3) a required 5-minute period of mild exercise (walking around the hotroom at the beginning of each collection period); and (4) a modified method to calculate effectiveness due to the erratic rate of sweat collections for both treated and control feet.

The comment stated that the calculation technique included in the agency's guidelines could not be used for the following several reasons: (1) The increased number and higher concentration of sweat glands in the foot area, (2) the occlusive nature of the foot area, and (3) the erratic rate of sweat collections for both treated and control feet. The comment contended that by considering the baseline, the posttreatment sweat collections, and the preferential subject perception data, statistically significant differences could be shown between sweat collection values for the treated foot compared to baseline values.

The comment stated that based on at least a 5-percent difference between the measured sweat output of each foot, sweat reduction was achieved for the treated foot in 25 of 48 subjects (52 percent) compared to only 10 of 48 subjects (21 percent) for the control foot. The comment added that, based on the user perception questionnaire, 75 percent of the subjects (29 out of 39 subjects who were able to discriminate) were able to perceive after the hotroom exposure that the treated foot was drier compared to only 21 percent of the subjects (10 out of 48) who perceived the control foot to be drier.

A second comment submitted a proposed clinical protocol (Ref. 15), but never submitted any clinical data.

The agency has found the data are insufficient to support a foot antiperspirant claim. In axillary sweating tests submitted to the Panel, the range of effectiveness (average percent sweat reduction) of antiperspirants was 20 to 40 percent in most tests, with aerosols having a reduction range of 20 to 33 percent (43 FR 46694 at 46713). In the comment's studies on aluminum chlorohydrate for foot antiperspirancy (Ref. 14), the average percent sweat reduction was below 10 percent, which is considerably below the 20 percent minimum level of sweat reduction recommended by the Panel for efficacy testing of OTC antiperspirant drug products on the foot (43 FR 46728). In addition, the agency has a number of concerns about the comment's data treatment methods: (1) The particular sweat collections selected for analysis were not chosen consistently across studies but were based on arbitrarily chosen final sweat measurements that varied with the different studies, (2) the choice of a 5-percent difference between the measured sweat output of each foot as ''clinically significant'' seems arbitrary and was not prespecified in the protocol, (3) the efficacy criterion used (greater than 15 percent reduction from baseline) was apparently defined after the data were collected and the results are therefore potentially biased, and (4) comparison with baseline is not an adequate basis upon which to conclude product efficacy because it ignores placebo and time effects that are accounted for in between product comparisons. The agency's analysis of ''across study'' data (using the average of the two sweat collections on day four, or average of the four collections on day four and five as the baseline, and the average of the two final collections as a measure of the final sweat product) did not show a statistically significant mean (or mean percent) sweat reduction from baseline in treated or control feet.

The agency does not agree with the comment's evaluation of its user perception data, but considers the product as ineffective both in subjects who preferred placebo and in subjects with no preference. It appears that the comment chose to ignore tied preferences. However, when subjects with no preference were included in the analysis, 22 out of 48 subjects (45.8 percent) and 29 out of 48 subjects (60.4 percent) preferred the treated foot, before entering and after leaving the hotroom, respectively. Both proportions are not significantly different from 1/2 (two-tailed, $p = 0.28$ and 0.15, respectively). Furthermore, the subjects apparently could not perceive which foot, treated or untreated, was drier. More subjects failed to choose the drier foot, than chose it correctly, both at baseline and posttreatment. Thus, the wetness perception study failed to show that subjects are able to tell marginal differences in sweating of the feet.

The agency has concluded that no statistically significant treatment effect was found in sweat reduction or in subject's perception of sweat (Ref. 16). Thus, 25 percent aluminum chlorohydrate has not been shown to be an effective foot antiperspirant. The agency provided the second comment suggestions on its protocol; a revised protocol was acceptable (Ref. 17), but no test data were ever submitted. The agency is not including foot antiperspirancy claims in the final monograph.

D. Comments on Testing Guidelines

(Comment 15) Several comments requested that the background section of the effectiveness testing guidelines include the following: ''FDA recognizes that alternative methodologies may be appropriate to qualify an antiperspirant drug product as effective. These

guidelines do not preclude the use of alternative methodologies that provide scientifically valid results.''

The agency is adding this statement (but changing the words ''alternative methodologies'' to ''alternate methods'') and adding ''subject to FDA approval'' to provide for alternate methods and statistical evaluations of effectiveness test data.

(Comment 16) Several comments requested that the relative humidity of 35 to 40 percent in the effectiveness testing guidelines be lowered to 30 percent, the hotroom condition widely used by industry. One comment submitted the results of effectiveness studies (Refs. 7, 10, and 18) that used a hotroom operated at 30 + 3 percent relative humidity. The comment stated that 30 percent relative humidity accurately measures antiperspirant effectiveness without causing excessive discomfort to test subjects. Two other comments submitted effectiveness test data where the relative humidity in the hotroom was ''about 35 percent'' (Refs. 19 and 20) or ''35 percent ± 5 percent'' (Ref. 21).

Based on these data, the agency is revising the relative humidity range for hotroom conditions in the antiperspirant effectiveness testing guidelines from 35 to 40 percent to a range of 30 to 40 percent. Seven studies (Ref. 10) that showed an enhanced duration of effectiveness of 20 percent sweat reduction over a 24-hour period for several antiperspirant products (see also section II.C, comment 12 of this document) used a protocol (Ref. 18) in which the subjects were placed in a controlled environment with the temperature held at 100 ± 2 °F and the relative humidity held at 30 ± 3 percent. Because the subjects were able to generate at least 150 mg of sweat per axilla per 20 minute period, the agency considers the results of the gravimetric tests valid. In other studies (Refs. 20 and 21), sweating was induced by having the subjects sit in a hotroom maintained at a temperature of 100 ± 2 °F and at a relative humidity of about 35 percent or 35 ± 5 percent. These studies support claims of extra effectiveness and enhanced duration (24–hour claims). See section II.C, comments 11 and 12 of this document. To assure that test subjects sweat adequately during the hotroom test, the agency is adding the following baseline perspiration rate condition: ''*Baseline perspiration rate.* Test subjects must produce at least 100 milligrams of sweat from the untreated or placebo control axilla in a 20-minute collection in the controlled environment.''

(Comment 17) Two comments requested revision of the part of the antiperspirant effectiveness testing guidelines that involves application of a control formulation to the alternate axilla during testing. Noting that the guidelines state that the control formulation is to be ''devoid of any antiperspirant activity * * * determined in a test compared to no treatment,'' a comment contended that it should be appropriate to compare antiperspirant activity directly against an untreated axilla and, thereby, reduce the time, complexity, and cost of the testing, especially the cost of developing a control formulation ''devoid'' of antiperspirant activity. The comment requested that the testing guidelines be revised to provide for the application of a control formulation or no treatment to the other axilla of each test subject. The other comment submitted data from two studies (Refs. 22 and 23) where one antiperspirant formulation was tested against both a placebo control and an untreated axilla control with virtually identical results; therefore, a placebo control was unnecessary to evaluate product effectiveness.

The data (Refs. 22 and 23) involved an aerosol spray containing 6.8 percent aluminum chlorohydrate tested by two gravimetric sweat tests under hotroom conditions to substantiate the claim that the product provides ''all day wetness protection.'' Both studies had the same design: Day one—pretreatment control collection; days two, three, and four—application of antiperspirant; and days four and five—posttreatment sweat collection 4 and 24 hours after application. The data were evaluated using one of the statistical methods recommended in the antiperspirant testing guidelines. In one study (Ref. 22), the product was tested against a placebo aerosol in 44 subjects. The placebo was identical to the test formulation and supposedly devoid of antiperspirant activity; the formula difference was adjusted with aerosol propellant. The results were statistically significant and showed that the aluminum chlorohydrate aerosol effectively reduced sweat production by at least 20 percent more than the placebo aerosol at 4 and 24 hours after application. However, the placebo showed some antiperspirant activity. In the second study (Ref. 23), the same product was tested against an untreated axilla control in 49 subjects with statistically significant results. The aluminum chlorohydrate aerosol effectively reduced sweat production by at least 20 percent more on the treated axilla than the untreated control axilla at 4 and 24 hours after application.

The agency is unable to conclude from these data that an untreated comparator is equivalent to use of a placebo. The observed effect of a treatment (e.g., antiperspirant) may represent the sum of the pharmacological effects of the test drug and other effects associated with the intervention effort, which may include psychological effects and the effects of the excipients used in a product formulation. Although studies have been conducted in the past using no treatment for one axilla, the use of a placebo control for that axilla allows for assessment of the net treatment effects of the test article. Therefore, the agency is retaining the requirement for a placebo/vehicle control in the antiperspirant effectiveness testing guidelines.

The proposed guidelines stated that the control formulation is as similar as possible to the test formulation and devoid of any antiperspirant activity. As the placebo used in one study (Ref. 22) was not completely devoid of antiperspirant activity, the agency is revising the guidelines to state:

Hotroom procedure. (1) For gravimetric and user perception testing, treatments consist of the application of the test formulation to one axilla and the application of a placebo control formulation to the other axilla of each test subject. Except for the active ingredient, the placebo control formulation should be as similar as possible to the test formulation.

The agency concludes that this revised testing procedure will reduce the time, complexity, and cost of testing because it eliminates the cost of developing a control formulation ''devoid'' of antiperspirant activity.

E. Comments on Antiperspirant Active Ingredients

(Comment 18) Several comments noted a discrepancy in a heading in an active ingredient table in the Panel's report (43 FR 46694 at 46697), where ''Metal:Halide'' is used, and in proposed § 350.10 (47 FR 36492 at 36504), where ''Al:Cl'' is used. Two comments suggested that ''Al:Cl'' in the table heading and in § 350.10 should be changed to ''Metal:Cl,'' because the ratio range in the table is for the ratio of the ''Cl'' to either aluminum (''Al'') or aluminum plus zirconium (''Al+Zr'').

The agency notes that the ratio range designated as ''A1:Cl'' in the TFM should have been ''Metal:Halide,'' as it was in the Panel's report. The agency is not including the ratio range table in § 350.10 of this final monograph because this information is now included in the U.S. Pharmacopeia-

National Formulary (USP–NF) monographs for each active ingredient included in § 350.10, where applicable. The agency is changing the introductory text of § 350.10 to state: ''Where applicable, the ingredient must meet the aluminum to chloride, aluminum to zirconium, and aluminum plus zirconium to chloride atomic ratios described in the United States Pharmacopeia-National Formulary.''

(Comment 19) Two comments agreed with the agency that buffer components present in the compound, such as glycine or glycol, should be omitted when calculating the maximum allowable concentration of active ingredients in an antiperspirant product (47 FR 36492 at 36495). One comment noted a potential source of confusion because the active ingredients table in proposed § 350.10 included the buffer names along with the active ingredient names. To minimize confusion and to be consistent with the agency's policy regarding buffers, the comment requested the agency to remove the buffer names from the ''active ingredient'' column in § 350.10. The comment proposed a number of changes in the active ingredient section.

When the Panel first discussed terminology for aluminum chloride and aluminum chlorohydrate antiperspirant active ingredients, the buffer additives were not included (Ref. 24). Subsequently, the Cosmetic, Toiletry, and Fragrance Association (CTFA) Antiperspirant Task Force developed definitions for aluminum chlorohydrex complexes with propylene glycol or polyethylene glycol, and for aluminum zirconium chlorohydrex complexes with glycine (Ref. 25). The Panel adopted these definitions, including those for ingredients with buffered additives, in its report (43 FR 46694 at 46696 and 46697), and the agency proposed this nomenclature in the TFM (47 FR 36492). Since the comment was submitted, the USP–NF developed names for these antiperspirant active ingredients that include the names of the buffers, where applicable, and active ingredient names in this final monograph include the buffer, where applicable.

The agency considers calculation of the concentration of an antiperspirant ingredient present in a product based on the amount of anhydrous ingredient to be appropriate. Buffered antiperspirant ingredients contain the same active chemical moiety as the corresponding nonbuffered ingredients, and the antiperspirant activity of both ingredients is similar.

(Comment 20) One comment requested the agency allow concentrations of antiperspirant active ingredients above those proposed in the monograph as long as the amount of ingredient applied to the skin is not greater than the amount judged safe by the Panel. The comment noted that, in the TFM (comment no. 12, 47 FR 36492 at 36495 to 36496), the agency had disagreed with earlier comments on this issue and stated that ''the comments included no new data to show that a higher concentration of antiperspirant active ingredient marketed in a particular container would deliver no more than the amount of active ingredient judged safe by the Panel.''

The comment submitted new data from eight usage studies (Ref. 26) to support a higher (up to 35 percent) active ingredient concentration for powder roll-on antiperspirant drug products. Fifty male and female subjects, between the ages of 18 and 55, participated in each study. Subjects were given a preweighed product and instructed to use only that product, to keep a record of how many times they used it, and not to allow anyone else in the household to use the product. An average of 43 subjects completed the 1-week studies and returned their product to the laboratory where it was reweighed.

The amount of product applied with each use was calculated. The four powder roll-ons, which contained 33 percent aluminum zirconium tetrachlorohydrate, were found to deliver between 23 and 44 mg of antiperspirant ingredient per axilla per use. The other product forms (solid stick, cream, or liquid roll-on), containing 18 to 19 percent of either aluminum chlorohydrate or aluminum zirconium tetrachlorohydrate, were found to deliver between 54 and 98 mg of antiperspirant ingredient per axilla per use. The comment contended these data show that higher concentrations of active antiperspirant ingredients, as used in powder roll-on systems, deposit no more and, in fact, deposit less active ingredient than is deposited in a liquid roll-on, solid stick, or cream product containing proposed monograph concentrations of active ingredients. Thus, the comment argued that concentrations up to 35 percent of Category I active ingredients should be allowed in powder roll-on antiperspirants.

This issue was specifically brought before the Panel, which did not agree to change the maximum concentration (Ref. 27). The Panel noted that aluminum antiperspirants can be irritating, expressed concern that a small amount of a concentrated formulation may be more irritating than a large amount of a more dilute formulation, and concluded that antiperspirant products with a higher concentration would need an NDA with additional safety studies. The agency notes that increasing the concentration of aluminum antiperspirant ingredients increases the acidity of the material and irritation of the skin (Refs. 28, 29, and 30). The agency concludes that safety data are needed to show that powder roll-on dosage forms containing up to 35 percent aluminum chlorhydrates or aluminum zirconium chlorhydrates are not irritating.

Since the TFM was published, several citizen petitions have raised concerns about the amount of aluminum absorbed from topical antiperspirant drug products. (See section II.F, comment 23 of this document.) The agency has no data showing that products containing up to 35 percent aluminum chlorhydrates or aluminum zirconium chlorhydrates increase aluminum absorption and is not revising the monograph to provide for powder roll-on dosage forms containing up to 35 percent antiperspirant active ingredient, without additional safety data being provided.

(Comment 21) One comment requested monograph status for aluminum sesquichlorohydrate prepared by neutralizing aluminum chloride with magnesium hydroxide even though the aluminum to chloride (Al:Cl) ratio of the ingredient prepared in this manner does not fall within the range specified for aluminum sesquichlorohydrate in the TFM. The comment stated that during the course of the rulemaking all aluminum chlorhydrates placed in Category I were prepared by conventional techniques: Either by neutralization of aluminum chloride with aluminum monochlorohydrate or by a controlled reaction of aluminum metal with hydrochloric acid. Thus, the comment argued that it was both appropriate and convenient to characterize the various aluminum chlorhydrates in terms of their Al:Cl ratios.

The comment stated that its data showed that the reaction of aluminum chloride with magnesium hydroxide yields aluminum sesquichlorohydrate equivalent to that listed in the TFM and the neutralizer magnesium hydroxide does not contribute either aluminum or chloride ions to the neutralization process; thus, the Al:Cl ratio of aluminum sesquichlorohydrate prepared this way will always remain 0.33, the same as aluminum chloride alone. The comment was concerned because this Al:Cl ratio of 0.33 does not fall within the ratio range of 1.9 down

to but not including 1.25:1 proposed for aluminum sesquichlorohydrate in the tentative final monograph (47 FR 36492 at 36504). The comment contended that if the final product is regarded as a mixture of aluminum sesquichlorohydrate and magnesium chloride, and if the amount of chloride that serves as counter ions for the magnesium ions were subtracted from the total chloride, then the Al:Cl ratio of the aluminum sesquichlorohydrate component of the mixture would have the Al:Cl ratio specified in the TFM. The comment submitted data (Ref. 31) using gel permeation chromatography and elemental analysis of the eluates (the substance separated out by washing) to show that aluminum sesquichlorohydrate prepared by this neutralization method is chromatographically indistinguishable from that prepared by conventional methods. The comment suggested designating the ingredient prepared by the neutralization method as ''aluminum sesquichlorohydrate MAG.''

The agency does not find these analytical data sufficient to support the comment's claim that the ingredient prepared by this neutralization method is chemically equivalent in composition to aluminum sesquichlorohydrate. The chromatographic indistinguishability from aluminum sesquichlorohydrate prepared by conventional methods only demonstrates that the chromatographic method in this study is insufficient to support the claim. This result perhaps is to be expected because the gel permeation chromatographic method used in this study is based primarily on a size exclusion principle; however, the agency doubts that any chromatographic method will provide such support.

USP 23–NF 18 Fifth Supplement (Ref. 32) added a monograph for aluminum sesquichlorohydrate and described it as consisting of complex basic aluminum chloride that is polymeric and loosely hydrated and encompasses a range of aluminum-to-chloride atomic ratios between 1.26:1 and 1.90:1. Its chemical formula is stated as: $Al_y(OH)_{3y-z}Cl_z.nH_2O$.

According to the method described in the comment, when aluminum sesquichlorohydrate is prepared by the reaction of aluminum chloride with magnesium hydroxide, the product must be a mixture of aluminum sesquichlorohydrate and magnesium chloride. The agency does not consider it suitable from a technical point of view to simply designate this material as aluminum sesquichlorohydrate. Information provided by the comment shows that the alternate process material is not ''equivalent in composition'' because the aluminum to chloride ratio of 0.33 is outside the specified range for aluminum sesquichlorohydrate and because the material contains measurable amounts of magnesium. Also, as discussed in section II.E, comment 18 of this document, because the atomic ratio range should be metal to halide, magnesium should be counted as a metal in the atomic ratio range of the comment's material. Using the name aluminum sesquichlorohydrate for an ingredient prepared by neutralization of aluminum chloride with magnesium hydroxide would be misleading because this would imply that the drug is the same identifiable ingredient as aluminum sesquichlorohydrate prepared by neutralization of aluminum chloride with aluminum chlorohydrate. The agency believes the material described in the comment should be classified as a new ingredient, perhaps an aluminum magnesium chlorohydrate, rather than aluminum sesquichlorohydrate.

The agency concludes that additional information on the chemical characterization of the proposed material, particularly its ionic structure, is needed to permit a more scientific review. The submitted information does not provide a technical basis for allowing the substitution of aluminum sesquichlorohydrate manufactured by neutralization with magnesium chloride for that neutralized with aluminum monochlorohydrate. The USP–NF monograph (Ref. 32) does not contain information to characterize or identify an aluminum sesquichlorohydrate containing magnesium (e.g., no identification or content test, and no assay involving magnesium calculations).

Further, the agency notes that no clinical efficacy data were provided to show that the material proposed in the comment would be equally effective as aluminum sesquichlorohydrate prepared in the conventional manner. Even minor variations in formulation, such as the addition of emollients or buffers, can alter the effectiveness of an antiperspirant ingredient. (See comment no. 8 in the TFM (47 FR 36492 at 36494).) The new mixture may be just as effective. However, whether such a finding would apply to equal amounts, or whether an equivalent effect could be achieved with a greater or lesser amount of aluminum sesquichlorohydrate prepared with magnesium hydroxide, should be determined by effectiveness testing that follows the guidelines referred to in § 350.60 of the final monograph. The agency needs appropriate effectiveness data and an appropriate USP–NF monograph amendment (see 21 CFR 330.14(i)) before the ingredient prepared by the new method can be generally recognized as safe and effective and included in the final monograph.

(Comment 22) One comment objected to the agency's rejection of its earlier request (discussed in comment no. 9 of the TFM, 47 FR 36492 at 36495) that combinations of two or more Category I antiperspirant ingredients should be Category I. The comment stated that the combination policy in § 330.10(a)(4)(iv) allows combinations of two or more safe and effective active ingredients; thus, the Panel should be reversed.

In the TFM (47 FR 36495), the agency concurred with the Panel (43 FR 46694 at 46718) that both combinations of antiperspirant active ingredients and combinations of antiperspirant active ingredients with other types of active ingredients (except for a deferred antiperspirant/antifungal combination) are Category II because of no information on the existence of any such combinations or any data to support their safe and effective use.

The agency classified antiperspirant/antifungal combination drug products in Category III in the TFM for OTC antifungal drug products (December 12, 1989, 54 FR 51136 at 51148 and 51149). No additional data were submitted to support this combination, and in the final monograph for OTC antifungal drug products (September 23, 1993, 58 FR 49890 at 49891), the agency classified all antifungal combination drug products as nonmonograph.

The comment did not provide any supporting data or specific examples of Category I antiperspirant ingredients that would be suitable for use in combination with other antiperspirant or nonantiperspirant Category I ingredients. Thus, the combination policy does not apply. These combinations remain nonmonograph. However, new clinical data may be submitted to support safety and effectiveness.

F. Comments on the Safety of Aluminum Ingredients

(Comment 23) The information and arguments presented by the citizen petitions that questioned the safety of aluminum-containing ingredients in OTC antiperspirant drug products and the comment that disagreed with one of the citizen petitions were discussed in detail in the **Federal Register** of March 23, 1993 (58 FR 15452 at 15453 and 15454). One petition was concerned that aluminum can be absorbed and get into the blood and that some of the aluminum in the blood enters the brain,

where it remains and accumulates. The petition cited a study by Perl and Good (Ref. 33) that suggested that inhaled aluminum compounds could have a direct nasal-olfactory pathway to the brain. The other petition contended that two inhalation studies (Refs. 34 and 35) provided by industry showed aluminum absorption in the peribronchial lymph nodes, brain, and adrenal glands of the animals after 12 and 24 months. Both petitions expressed concern about the potential neurotoxicity of aluminum upon chronic use, especially a possible link to Alzheimer's disease.

The comment that disagreed with one petition contended that the majority of the petitioner's references described findings from in vitro studies that did not consider the blood-brain barrier, which is the brain's main defense against potentially toxic substances such as aluminum. The comment contended that extraordinarily high concentrations of aluminum were used in these studies, and that aluminum from antiperspirants would never reach a biologically significant level to be of concern. The comment stated that the majority of researchers investigating the etiology of Alzheimer's disease would consider current evidence insufficient to link aluminum to Alzheimer's disease. The comment concluded that current scientific information does not support the need to reclassify the safety of aluminum-containing antiperspirants.

The agency does not find the current evidence sufficient to conclude that aluminum from antiperspirant use results in Alzheimer's disease. Both petitions mention the widely quoted study by Perl and Good (Ref. 33) as showing that inhaled aluminum compounds may get directly into the brain by a nasal-olfactory pathway. The agency does not consider this animal study (published as a one-page Letter to the Editor in *Lancet*) as adequate to establish a direct nasal-olfactory pathway for aluminum. This study was only a small pilot animal study, about which the agency has a number of concerns.

First, the method of introducing the aluminum to these animals was not physiologically relevant. Two strips of Gelfoam (absorbable gelatin sponge, USP) saturated with high concentrations of aluminum salts (15 percent aluminum lactate or 5 percent aluminum chloride) were inserted into rabbits' left nasal recess through a hole drilled into the frontal bone. While the authors attempted to demonstrate the accessibility of aluminum from the nasal recess to the brain, the agency questions whether the normal use of antiperspirant aerosols would ever produce a high aluminum concentration in this relatively distant anatomic site. Second, the size of this study was very small (only three rabbits in each group). The agency is concerned that any error in this complicated surgical procedure to introduce the aluminum salts or in preparing the specimens for analysis could have caused a major difference in the final results. Third, the results were not consistent. Of the three animals exposed to aluminum lactate, besides the involvement of the left olfactory bulb and the cerebral cortex, only one rabbit had a lesion in the hippocampus while the other two rabbits had granulomas found in the pyriform cortex. In the group exposed to aluminum chloride, only one rabbit had a granuloma in the olfactory bulb while the other two rabbits were free of lesions. The distribution of lesions in this study was fairly random. If a nasal-olfactory pathway exists for neuronal aluminum transport, the agency believes that the distribution of these lesions should follow a more persistent anatomical pattern. In addition, the authors were unable to explain why two of the six rabbits were free of lesions. Finally, although some of the rabbits had granulomas, these lesions did not resemble the plaques or neurofibrillary tangles found in Alzheimer's disease, and none of the rabbits had any symptomatic neurologic deficit. While this study implied that access to the brain via the nasal recess may be possible under nonphysiological conditions, a direct nasal-olfactory pathway and any relationship to Alzheimer's disease cannot be established. Several other studies, which were not done with aluminum, are of no value in establishing a direct nasal-central nervous system pathway for aluminum antiperspirants.

Aluminum lactate, one aluminum salt used in this study (Ref. 33), is not included in this final monograph. Sodium aluminum lactate has been used as a buffer for aluminum sulfate in a nonaerosol dosage form, but that product is nonmonograph.

In one of the inhalation studies (Ref. 34), the life-span of the male hamsters exposed to the aluminum chlorhydrate aerosol was shorter (583 days) than that of the controls (661 days). The female hamsters exposed to aluminum chlorhydrate had a slightly longer life-span (489 days) than the controls (481 days). Male hamsters exposed to aluminum chlorhydrate coated with a high concentration of isopropyl myristate, an emollient frequently used to increase the retention on the skin of the aluminum salts used in antiperspirant products, had a life-span (646 days) comparable to the controls (661 days). Overall, these numbers do not follow a consistent pattern and could be affected by other experimental conditions.

The same petition criticized the other inhalation study (Ref. 35), contending that the results showed that the animals had suffered significant weight loss and increased terminal brain-to-body weight ratios, results it considered consistent with clinical aluminum toxicity, and that the increase in brain weight was possibly due to cerebral edema. The petition claimed that because aluminum was found to be deposited in the animals' brains, peribronchial lymph nodes, and adrenal glands, this proved that systemic absorption of aluminum had occurred and that aluminum had been transported to the brain. Other comments disagreed with the petition's argument that the rats in this study were found to have detectable aluminum levels in their brains after 12 months, contending that this finding may only be artificial considering the analytical methods used. The comments added that if aluminum did accumulate in the rats' brains, those rats should have had symptoms of neurotoxicity, which they did not have. The comments concluded that the artificial finding should be ignored.

The agency does not concur with the petition's extrapolations. The weight loss occurred only in rats and not in guinea pigs that were similarly treated. The increase in terminal brain-to-body weight ratio occurred only in the female rats at 12 months in the low- and high-dose groups. The female rats in the middle-dose group and all the males were not affected. At 24 months, this same ratio was found to increase only in the high-dose groups of both sexes; however, the increase in the female high-dose group was not statistically significant. The agency notes that all of these findings did not follow any predictable pattern or a pattern that would be expected from a dose-related or cumulative toxin exposure.

The pattern of deposition was not consistent. In the guinea pigs, aluminum was found in the peribronchial lymph nodes, but not in the adrenal glands and brains (as occurred in the rats). The agency finds it possible that aluminum absorption and deposition may be animal dependent. If this were the case, then even if the rat data were evidence of a problem, the same situation may not apply to humans. The agency is not aware of other investigators having similar results.

The petitions and the comment had different views on a study by Rollin,

Theodorou, and Kilroe-Smith (Ref. 36) in which rabbits were exposed to aluminum oxide dust for 8 hours a day, 5 days a week, for 5 months. The authors of the study found that the brains of these rabbits had a significant increase in aluminum at the end of the study. The first petition contended that this study showed that the inhalation of aluminum antiperspirants poses a special risk because this route of delivery bypasses the blood-brain barrier. The comment calculated that this study would be equivalent to a person using spray antiperspirants for approximately 10 seconds daily for 789 years to experience the same toxicity. The second petition contended that this 10-seconds-exposure assumption was incorrect because the aluminum particles in an antiperspirant aerosol remain suspended in the air for a long period of time, and the exposure will be more than the comment calculated.

The agency finds this study has a number of limitations: (1) The extraordinary high concentrations of aluminum oxide exposure in the animals, (2) the small sample size (eight animals in each group), and (3) an overlap in the standard deviations of the results obtained decreases the power and generalizability of the study. While the study shows an accumulation of aluminum in the rabbits' body tissues under certain exposure conditions, the agency does not consider the study as providing evidence of a direct nasal-olfactory pathway or that normal use of aluminum-containing antiperspirants would provide comparable results. Further, the second petition's position includes a number of assumptions, which might not occur: (1) That the place where the product is used is a confined, poor-ventilated airspace, and (2) that the user remains in the vicinity of the dispersed aerosol for a period of time during which significant inhalation would occur.

One petition claimed that an epidemiology study by Graves et al. (Ref. 37) has shown that Alzheimer's disease was associated with the use of aluminum antiperspirants and that a high incidence of amyotrophic lateral sclerosis (ALS) and Parkinson's disease in Chamorro natives of Guam, as reported by Garruto (Ref. 38), may be related to high environmental aluminum. The agency has looked closely at the Graves et al. study (Ref. 37) because it explored the association between exposure to aluminum through the lifetime use of antiperspirants and antacids and Alzheimer's disease. This was a case-control study of 130 matched pairs, where the controls were friends or nonblood relatives of the case. Subjects (cases and controls) were matched by age, sex, and the relationship between the case/control and his or her surrogate (spouse or child).

The authors mentioned that, in general, antiperspirants contain aluminum and deodorants do not, except for some deodorants marketed for women. The authors reported that there was no association between the use of ''any'' antiperspirant/deodorant and Alzheimer's disease. However, when the data were stratified by aluminum-containing antiperspirants the overall odds ratio showed a modest increase in risk and a statistically significant trend emerged between increasing lifetime use of aluminum-containing antiperspirants and the estimated relative risk of Alzheimer's disease.

The authors commented that, to their knowledge, this was the first epidemiological study of this association between antiperspirants and Alzheimer's disease, and there were several methodologic limitations that made interpretation of their results difficult. First, there were missing data because the case surrogate and the control surrogate could only recall all variables (frequency and duration of use, and product brand name) in about one-half of the matched pairs. Second, there might have been some misclassification because the analyses were based on the most common brand provided, while some subjects may have used multiple brands. Third, the authors considered the validity of the data, resulting from difficulty in learning the subjects' exposure using telephone interview methods, to be a critical limitation. Despite these limitations, the authors considered an association between aluminum-containing antiperspirants and Alzheimer's disease as biologically plausible, but concluded that their findings are provocative and, due to methodologic problems, should be considered preliminary.

Garruto (Ref. 38) described efforts to establish models of chronic motor neuron degeneration in a long-term effort to understand the cellular and molecular mechanisms of aluminum neurotoxicity. He studied foci of dementia (ALS and Parkinson's disease) in western Pacific populations. He mentioned experimental models in rabbits and cell culture as demonstrating that chronic, rather than acute, toxicity is the cause of human neurodegenerative disorders with a long latency and slow progression. However, Garruto stated that he and his colleagues had been most deficient in the design and implementation of good epidemiological studies, particularly of Alzheimer's disease and the epidemiology of aluminum intoxication per se, and described what he felt was needed for future well-designed studies.

The petitions/comment also discussed environmental exposure to aluminum, percutaneous absorption after topical use, inhaled absorption after aerosol use, aluminum neurotoxicity (and a possible relationship to Alzheimer's disease), and possible mechanisms of action. Numerous references were provided. The agency has reviewed these references and other literature published on aluminum since the petitions were submitted. Many early references were simply hypotheses and different theories that have not been adequately substantiated in humans or any animal models. A number of studies were pilot projects in a few animals, and the agency is unable to draw any definite conclusions based on the small sample sizes.

The agency notes Priest's (Ref. 39) statement that most investigators now agree that aluminum is unlikely to be implicated in causing Alzheimer's disease, whereas Rowan (Ref. 40) contended it would be considerably more correct to state that the issue is controversial. More recently, Savory et al. (Ref. 41) stated that the question whether aluminum presents a health hazard to humans as a contributing factor to Alzheimer's disease is still subject to debate.

The agency finds the literature shows the issue of aluminum toxicity and Alzheimer's disease remains controversial and is not resolved. Scott et al. (Ref. 42) reported that aluminum has been detected in Alzheimer neurofibrillary tangles, but the significance of its presence is unknown. Kasa, Szerdahelyi, and Wisniewski (Ref. 43) reported that histochemical staining showed that aluminum was present in brain samples from Alzheimer's disease victims, but the structural localization indicated that it is not primarily involved in the etiology of the disease. Candy et al. (Ref. 44) reported that data from post mortem brain examinations of patients with chronic renal failure who did not have dialysis encephalopathy suggest that it is unlikely that aluminum plays any major role in neurofibrillary tangle formation and that its role in senile plaque formation is likely to be only part of a complex cascade of changes. Savory et al. (Ref. 41) stated that the lack of agreement on the question whether the brain content of aluminum is increased in Alzheimer's disease attests to the complexity of the issue.

Savory et al. (Ref. 41) indicated that most of the data linking aluminum

exposure to Alzheimer's disease have been derived from several epidemiological studies of aluminum in drinking water, which represents only a small percentage of the total exposure. They concluded that quantification of the risk of Alzheimer's disease from other sources of aluminum (such as food additives, cosmetics, deodorants, antiperspirants, pharmaceuticals, and respiratory dusts) is needed before the total risk from all environmental sources of aluminum can be fully evaluated.

Despite Graves et al.'s acknowledgment of the limitations of their study (Ref. 37), other authors, e.g., Anane et al. (Ref. 45), report that Graves et al. found an increased risk of Alzheimer's disease with lifetime use of aluminum-containing antiperspirants after an epidemiological study. Anane et al. applied low aqueous concentrations (0.025 to 0.1 micrograms (µg)/square centimeter) of aluminum chloride ($AlCl_3.6H_2O$) to healthy shaved Swiss mouse skin for 130 days. They reported that this led to a significant increase in urine, serum, and whole brain aluminum, especially in the hippocampus area, compared to control animals. They mentioned that this percutaneous uptake and accumulation of aluminum in the brain was greater than that caused by dietary exposure to 2.3 µg per day in feed and water.

Anane et al. conducted in vitro and in vivo mouse skin studies and showed for the first time that aluminum is absorbed through mouse skin and this contributes to a greater body burden than does oral uptake. They also mentioned that several antiperspirant preparations containing $AlCl_3.6H_2O$ are applied to sensitive regions of the skin, which may increase penetration and could be an important source of body aluminum burden. Anane et al. recommended that an epidemiological study be conducted to ascertain whether use of $AlCl_3.6H_2O$-containing antiperspirants correlates with neurodegenerative disease, because such cannot be excluded based on the results of their study.

Forbes and Agwani (Ref. 46) stated that there is uncertainty about how aluminum-containing substances enter the body, but current information suggests that the skin and/or the lung are important. They mentioned that Priest (Ref. 39) noted that at least some antiperspirant sprays contain aluminum compounds of a particle size of about 1 micrometer (micron) (µ), which is ideally sized for deposition in the deep lung, and that such deposition may also be relevant for skin.

Salib and Hillier (Ref. 47) examined clinically diagnosed Alzheimer's disease patients and controls (other dementias and nondementias) and collected information to examine the association between Alzheimer's disease and aluminum occupation. They reported that manual work, such as welding, expected to be in direct contact with aluminum dust and fumes does not appear to be significantly associated with the risk of Alzheimer's disease. The authors concluded that no significant association was shown between developing Alzheimer's disease later in life and previous occupational history for all of the occupations in the study. This included both manual workers, who would be expected to have had a higher exposure opportunity to aluminum dust and fumes, and other workers at an aluminum factory. The authors concluded that neither Alzheimer's disease nor dementia in general were shown to be associated with previous aluminum occupation.

Salib and Hillier (Ref. 47), in 1996, repeated Doll's (Ref. 48) conclusions from 1993 that it is generally accepted that the delayed effects of chronic aluminum exposure have not been adequately assessed in man. Factors that govern the bioavailability, neurotoxicity, and the effect of chronic low dose exposure to aluminum compounds remain unclear. Flaten et al. (Ref. 49) stated that the lack of a readily available radioactive isotope of aluminum has been a major obstacle toward elucidating the mechanisms of absorption, distribution, and excretion of the metal.

Both Doll (Ref. 48) and Salib and Hillier (Ref. 47) stated that the possibility of a causal link between aluminum and Alzheimer's disease must be kept open until uncertainty about neuropathological evidence is resolved and the prognosis of humans exposed to aluminum by inhalation is known. Flaten et al. (Ref. 49) stated that multidisciplinary collaborative research efforts, involving scientists from many different specialities, are needed, with emphasis placed on: (1) Increasing knowledge of the chemistry of aluminum in biologic systems and determining the cellular and molecular mechanisms of aluminum toxicity, and (2) variations in neuropathology from long-term, low-level exposure to aluminum.

In summary, the literature shows that at high doses and long-term industrial exposures, aluminum can be associated with recognizable, specific neurologic effects. However, to date, the agency considers the evidence insufficient to link aluminum to Alzheimer's disease, Parkinson's disease, or ALS. Although aluminum uptake and transport by a ''nasal-olfactory pathway'' has been suggested in a nonphysiologic study in an animal model (Ref. 36), the agency is not aware of any evidence in humans that supports an olfactory-neuronal transport of aluminum to the brain.

One petition suggested that the agency require that 90 percent of the particles of an aerosol aluminum antiperspirant be greater than 50 µ (currently the requirement is between 10 and 50 µ) to reduce exposure to the upper respiratory tract. The agency notes that both Priest (Ref. 39) and Forbes and Agwani (Ref. 46) discussed a particle size of 1 µ for deposition in the deep lung. Based on current knowledge (no proof in humans of an olfactory neuronal transport of aluminum to the brain) and the lack of information on a minimum particle size to affect the respiratory tract, the agency finds no basis to impose a greater than 50µ requirement at this time. Flaten et al. (Ref. 49) stated that the possible human toxicity of aluminum has been a matter of controversy for well over 100 years. Despite many investigators looking at this issue, the agency does not find data from topical and inhalation chronic exposure animal and human studies submitted to date sufficient to change the monograph status of aluminum containing antiperspirants. The agency will continue to monitor the scientific literature on aluminum and, if new information appears, will reassess the status of aluminum-containing antiperspirants at such time.

The agency acknowledges that small amounts of aluminum can be absorbed from the gastrointestinal tract and through the skin. Assuming a person has normal renal function, accumulation of aluminum resulting from usual exposures to antiperspirant drug products (application to the underarms once or twice daily) and subsequent absorption is considered minimal. However, people with renal dysfunction have an impairment in normal renal excretion of aluminum.

Flaten et al. (Ref. 49) noted that the first human conditions generally accepted to be causally related to aluminum exposure did not occur until the 1970's, shortly after the introduction of routine dialysis therapy in persons with chronic renal failure. Dialysis encephalopathy was perhaps the first disease recognized in this population (1972, 1976). Later, fracturing osteomalacia (1977, 1978) and a microcytic hypochromic anemia (1980) were related to aluminum exposure in dialysis patients. Flaten et al. indicated that aluminum can cause encephalopathy, bone disease, and anemia in dialysis patients resulting

from the introduction of aluminum directly into the blood stream via high-aluminum dialysate or the consumption of large oral doses of aluminum-containing phosphate binders. Reduced urine production (the major route for aluminum excretion) contributes to this problem. The authors noted that, in the early 1980's, reports began to appear describing aluminum neurotoxicity and osteotoxicity in children with renal failure who were not on dialysis treatment.

The agency is concerned that people with renal dysfunction may not be aware that the daily use of antiperspirant drug products containing aluminum may put them at a higher risk because of exposure to aluminum in the product. The agency considers it prudent to alert these people to consult a doctor before using or continuing to use these products on a regular basis and is including a warning in the final monograph: ''Ask a doctor before use if you have kidney disease.''

Flaten et al. (Ref. 49) mentioned several reports of aluminum accumulation and toxicity in individuals without chronic renal failure, especially preterm infants (primarily fed intravenously), and stated that preterm infants are at risk for aluminum loading because of their immature kidney function. Term infants with normal renal function may also be at risk because of their rapidly growing and immature brain and skeleton, and an immature blood-brain barrier. Until they are 1 to 2 years old, infants have lower glomerular filtration rates than adults, which affects their kidney function. The agency is concerned that young children and children with immature renal function are at a higher risk resulting from any exposure to aluminum. Accordingly, the agency is requiring both general warnings in § 330.1(g) on all aluminum-containing antiperspirant drug products to inform parents and others to keep these products away from children, and to seek professional assistance if accidental ingestion occurs. (See also section II.B, comment 7 of this document.)

(Comment 24) One comment submitted a research paper (Ref. 50) containing the author's theories concerning how antiperspirants and aluminum in these products may be associated with breast cancer: The secretions of the apocrine sweat glands contain androgens, which are blocked by the antiperspirant and thus caused to spread internally. These androgens may be converted in the surrounding adipose tissues to estrogens, and excess estrogens have been associated with an increase in breast cancer. Alternatively, these excess androgens may interfere with the normal functioning of the hypothalamic-pituitary axis, thereby causing an imbalance of estrogen in the body. About 50 percent of breast cancers occur in the upper outer quadrant of the breast, and axillary sweat glands are anatomically very close to this site. A protein marker called GCDFP–15 (Gross Cystic Disease Fluid Protein), which is normally found only in the sweat glands, was found in the fluids of many breast cysts. The author postulated that the blocked axillary sweat glands would cause GCDFP–15 and other markers to migrate to the breast due to its proximity and gravity, and because the fetal precursors for apocrine sweat glands and mammary glands are the same, these migrated protein markers may stimulate the breast and play a role in the carcinogenic process.

The author also postulated that aluminum may play a role in the development of breast cancer because calcification of breast tissues (commonly seen in breast cancer) may be caused by a local electrolyte imbalance induced by the absorbed aluminum. The author noted that breast cancer in Japan was more than five times lower than in the United States and postulated this has occurred because Japanese women, especially the older population, do not use antiperspirants. The author noted that the breast cancer rate is currently on the rise in Japan, especially among young premenopausal women, and postulated that this is occurring because the young Japanese generation has adopted the western habit of using antiperspirants.

The agency finds these theories lack sufficient evidence. The agency notes that the amount of androgens produced by the sweat glands is relatively insignificant compared to normal physiologic amounts produced by the adrenals and the gonads. The agency is not aware of any studies that have shown an ''internal spread'' of androgens or that establish that GCDFP–15 or other protein markers are carcinogenic in humans.

The agency considers the author's views about a local electrolyte imbalance by absorbed aluminum causing breast tissue calcification inconsistent with knowledge about the calcification process. In addition, there are many benign calcifications. Finally, many proposals (e.g., diet, lifestyle changes) have been made as to why there is an increased incidence of breast cancer among Japanese women. However, there is no evidence to associate this increase with an increased use of antiperspirants. Thus, the agency concludes that there is insufficient evidence to support these theories.

(Comment 25) The agency previously assessed the carcinogenic potential of aerosolized aluminum chlorhydrate antiperspirants in comment 22 of the TFM (47 FR 36492 at 36498 and 36499). Primary lung tumors, granulomatous lesions, and macrophagic activity were evaluated in animal studies. No increase in lung tumors was seen in the low- and mid-dose rats given doses at least 100 times greater than the expected human exposure via aerosolized antiperspirants. Normal macrophage response and pulmonary fibrosis were observed at higher doses with chronic exposure. No increase in tumors was noted in guinea pigs or hamsters at any dose levels in the studies. While the agency removed aerosol antiperspirant products containing zirconium from the market because of granuloma formation (August 16, 1977, 42 FR 41374), the agency is not aware of data that indicate aluminum antiperspirants cause foreign body granulomas or pulmonary tumors.

III. Agency Changes

1. It has been agency policy since April 3, 1989 (54 FR 13480 at 13486), that before any ingredient is included in a final OTC drug monograph, it must have a compendial (USP–NF) monograph. Compendial monographs include an ingredient's official name, chemical formula, and analytical chemical tests to confirm the quality and purity of the ingredient. These monographs establish public standards for the strength, quality, purity, and packaging of ingredients and drug products available in the United States. Eighteen of the 19 antiperspirant active ingredients that the agency proposed in § 350.10 of the antiperspirant TFM (47 FR 36492 at 36504) currently have compendial monographs. Nine of the official compendial names are the same as those proposed in § 350.10, while 10 of the names have changed slightly. (See Table 1 of this document for the previous and current ingredient names.)

TABLE 1.—ANTIPERSPIRANT ACTIVE INGREDIENTS

Name in Tentative Final Monograph	Current Name
Aluminum chloride	Same
Aluminum chlorohydrate	Same
Aluminum chlorohydrex polyethylene glycol complex	Aluminum chlorohydrex polyethylene glycol
Aluminum chlorohydrex propylene glycol complex.	Aluminum chlorohydrex propylene glycol
Aluminum dichlorohydrate	Same
Aluminum dichlorohydrex polyethylene glycol complex	Aluminum dichlorohydrex polyethylene glycol
Aluminum dichlorohydrex propylene glycol complex.	Aluminum dichlorohydrex propylene glycol
Aluminum sesquichlorohydrate	Same
Aluminum sesquichlorohydrex polyethylene glycol complex	Aluminum sesquichloro-hydrex polyethylene glycol
Aluminum sesquichlorohydrex propylene glycol complex	Aluminum sesquichloro-hydrex propylene glycol
Aluminum sulfate buffered[1]	Same
Aluminum zirconium octachlorohydrate	Same
Aluminum zirconium octachlorohydrex glycine complex	Aluminum zirconium octachlorohydrex gly
Aluminum zirconium pentachlorohydrate	Same
Aluminum zirconium pentachlorohydrex glycine complex	Aluminum zirconium pentachlorohydrex gly
Aluminum zirconium tetrachlorohydrate	Same
Aluminum zirconium tetrachlorohydrex glycine complex	Aluminum zirconium tetrachlorohydrex gly
Aluminum zirconium trichlorohydrate	Same
Aluminum zirconium trichlorohydrex glycine complex	Aluminum zirconium trichlorohydrex gly

[1] Aluminum sulfate buffered with sodium aluminum lactate.

The agency is including in § 350.10 of this final monograph those antiperspirant active ingredients that currently have a compendial monograph. Only one active ingredient, aluminum sulfate buffered, does not have a current or proposed compendial monograph. While aluminum sulfate does have a compendial monograph, the buffer component, sodium aluminum lactate, does not. This buffer ingredient must also have a compendial monograph or there must be a compendial monograph for aluminum sulfate buffered in order for aluminum sulfate buffered to be included in the antiperspirant final monograph. At the present time, this ingredient is being included in § 310.545(a)(4)(ii) as a nonmonograph ingredient because the agency is not aware of any pending compendial monograph being developed. Should a compendial monograph eventually be developed, the agency will move this ingredient from § 310.545(a)(4)(ii) to § 350.10.

2. The agency is revising the format for active ingredients in § 350.10 for consistency with recent monographs: The proposed chart format is now a paragraph format listing ingredients in alphabetical order. The amount of active ingredient is stated as ''up to _____ percent'' instead of as _____ percent or less concentration.'' The information about calculating the concentration on an anhydrous basis is moved to the preamble of § 350.10. The preamble statement about aluminum to chloride and/or aluminum to zirconium ratios is revised to state: ''Where applicable, the ingredient must meet the aluminum to chloride, aluminum to zirconium, and aluminum plus zirconium to chloride atomic ratios described in the United States Pharmacopeia-National Formulary.'' The proposed ratio range table is not included in the final monograph because this information is now included in the USP–NF monographs for each active ingredient in § 350.10, where applicable.

3. The agency is expanding the indications proposed in § 350.50(b) of the TFM to provide additional uses based on new effectiveness data. The agency is also revising the uses format to make it more concise.

Because the indications proposed in § 350.50(b)(1), (b)(2), and (b)(3) of the TFM are very similar, the agency is combining them as a single indication with choices under § 350.50(b)(1): [Select one of the following: ''decreases,'' ''lessens,'' or ''reduces''] ''underarm'' [select one of the following: ''dampness,'' ''perspiration,'' ''sweat,'' ''sweating,'' or ''wetness'']. (See section II.B, comment 6 of this document.) The agency is adding a new additional indication in § 350.50(b)(2): ''also [select one of the following: 'decreases,' 'lessens,' or 'reduces'] underarm [select one of the following: 'dampness,' 'perspiration,' 'sweat,' 'sweating,' or 'wetness'] due to stress''. (See section II.B, comment 6 and section II.C, comment 13 of this document.) The agency is adding a new additional indication in § 350.50(b)(3): Select one of the following: [''all day protection,'' ''lasts all day,'' ''lasts 24 hours,'' or ''24 hour protection'']. (See section II.C, comment 12 of this document.) The agency is adding a new additional

indication in § 350.50(b)(4) that states ''extra effective''. This claim applies to products that demonstrate 30 percent or more sweat reduction using the guidelines for effectiveness testing of antiperspirant drug products referred to in § 350.60. (See section II.C, comment 11 of this document.) The agency is adding a new additional indication in § 350.50(b)(5) for products that demonstrate extra effectiveness sustained over a 24-hour period: These products may state the claims in §§ 350.50(b)(3) and (b)(4) either individually or combined, e.g., ''24 hour extra effective protection,'' ''all day extra effective protection,'' ''extra effective protection lasts 24 hours,'' or ''extra effective protection lasts all day''. (See section II.C, comment 12 of this document.)

4. The agency is revising the ''Do not apply * * *'' warning in proposed § 350.50(c)(1) to the new labeling format. The warning now reads: ''Do not use on broken skin'' and ''Stop use if rash or irritation occurs''.

5. The agency is including a warning to alert people with renal dysfunction to consult a doctor before using antiperspirants containing aluminum. The warning appears in the new labeling format and states: ''Ask a doctor before use if you have kidney disease''. (See section II.F, comment 23 of this document.)

6. The agency has revised the August 1982 Guidelines for Effectiveness Testing. The revised guidelines (dated as of the date of publication of this document) state that ''FDA recognizes that alternate methods may be appropriate to qualify an antiperspirant drug product as effective. These guidelines do not preclude the use of alternate methods that provide scientifically valid results, subject to FDA approval.'' (See section II.D, comment 15 of this document.)

The agency has revised parts of the test procedures section of the guidelines to delete the requirement that the control formulation be devoid of ''any'' antiperspirant activity. Therefore, the control formulation no longer needs to be compared to no treatment. (See section II.D, comment 17 of this document.) The agency has changed the permitted relative humidity of the hotroom conditions from 35 to 40 percent to a range of 30 to 40 percent. (See section II.D, comment 16 of this document.) The agency has added a requirement for ''baseline perspiration rate'' to assure that test subjects sweat adequately during a hotroom test: ''Test subjects must produce at least 100 milligrams of sweat from the placebo control axilla in a 20-minute collection in the controlled environment.'' (See comment 16 also.)

Because the final monograph contains 24-hour duration effectiveness claims, the agency has revised section 4(a)(4) of the guidelines to state: ''For claims of enhanced duration of effect, the test should be conducted at least two times during the period of the claim, such as 1 hour and 24 hours after the last daily treatment for 24 hour claims.'' (See section II.C, comment 12 of this document.) Because the final monograph contains ''extra-effective'' claims shown by standard gravimetric testing to have a 30-percent or more reduction in sweat, the agency has revised the guidelines to include a section on data treatment to demonstrate, with high probability, at least 50 percent of the target population will obtain a sweat reduction of at least 30 percent. (See section II.C, comment 11 of this document.)

The revised ''Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products'' are now dated as of the date of publication of this final rule and are on file in the Dockets Management Branch (address above) and on FDA's Web site at http://www.fda.gov/cder/otc/index.htm. Persons wishing to obtain a copy of the guidelines should submit a Freedom of Information (FOI) request in writing to FDA's FOI Staff (HFI–35), 5600 Fishers Lane, Rockville, MD 20857. The agency has revised § 350.60 to include this information about the guidelines.

IV. Summary of Changes from the Proposed Rule

1. The agency is modifying the definition of an antiperspirant that was proposed in § 350.3 of the TFM to delete the phrase ''to the underarm.'' (See section II.B, comment 2 of this document.)

2. The agency is revising the format for listing active ingredients in § 350.10. (See section III.2. of this document.)

3. The agency is expanding the indications for OTC antiperspirant drug products based on new data that support these additional uses (see section III.3. of this document) and is expanding the ''Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products'' to address some of these additional uses (see section III.6. of this document).

V. The Agency's Final Conclusions

The agency is issuing a final monograph establishing conditions under which OTC antiperspirant drug products are generally recognized as safe and effective and not misbranded; 18 ingredients listed in § 350.10 are a monograph condition. In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule included the antiperspirant ingredients aluminum bromohydrate, aluminum chloride (alcoholic solutions), aluminum chloride (aqueous solution) (aerosol only), aluminum sulfate, aluminum sulfate buffered (aerosol only), potassium alum, and sodium aluminum chlorohydroxy lactate in § 310.545(a)(4), and was effective on May 7, 1991. In this final rule, the agency is redesignating the text of paragraph (a)(4) as paragraph (a)(4)(i), adding new paragraph (a)(4)(i) heading, and adding new paragraph (a)(4)(ii) to contain aluminum sulfate buffered with sodium aluminum lactate. Any drug product labeled, represented, or promoted for use as an OTC antiperspirant drug that contains any of the ingredients listed in § 310.545(a)(4)(i) or (a)(4)(ii) or that is not in conformance with the monograph (21 CFR part 350) may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352). Such a drug product can not be marketed for OTC antiperspirant use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314. An appropriate citizen petition to amend the monograph may also be submitted in accord with 21 CFR 10.30 and § 330.10(a)(12)(i). Any OTC antiperspirant drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule for § 310.545(a)(4)(i) or after the compliance dates of this final rule that is not in compliance with the regulations is subject to regulatory action.

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue

to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the act. This judgment balances the benefits of these drug products against their potential risks (see § 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, see ''Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use, Final Rule'' (67 FR 72555, December 6, 2002).

VI. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the TFM for OTC antiperspirant drug products (47 FR 36492 at 36503). The one comment received is addressed in section II.A, comment 4 of this final rule and further addressed later in this section.

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The proposed rule that has led to the development of this final rule was published on August 20, 1982, before the Unfunded Mandates Reform Act of 1995 was enacted. This final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. Additionally, the final rule is not a significant regulatory action as defined by the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule will not result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. While the exact number of affected small entities is difficult to determine at any given time, the agency received only one comment from a small entity, which is discussed later in this section. This discussion explains the agency's determination that this final rule will not have a significant economic impact on a substantial number of small entities.

The purpose of this final rule is to establish conditions under which OTC antiperspirant drug products are generally recognized as safe and effective and not misbranded. This includes establishing the allowable monograph ingredients and labeling. Eighteen of the 19 active ingredients under review are included in the final monograph. The remaining ingredient could have been included had a USP–NF monograph been developed for this ingredient. If a USP–NF monograph is developed before the effective date of this final monograph, products containing this ingredient could continue to be marketed without reformulation. Without a USP–NF monograph for the ingredient, product reformulations to include a monograph antiperspirant active ingredient or discontinuation of the products will need to occur. The agency believes that this one antiperspirant active ingredient is currently in only a few products. Based on the large number of antiperspirant drug products in the OTC marketplace and the vast array of products that one known affected company currently markets, the agency considers the required reformulation or discontinuation of a few products not to be overly burdensome or substantial. The one known affected company markets at least 30 products not affected by this final rule. Only one of its products includes the active ingredient excluded under the final rule. Any company using this active ingredient has the option to: (1) Reformulate using any of the 18 active ingredients included in this final rule, (2) reformulate without this active ingredient and market the product as a deodorant, or (3) discontinue the product.

This final rule establishes the monograph labeling for OTC antiperspirant drug products and will require relabeling of all products covered by the monograph. The agency's Drug Listing System identifies approximately 200 manufacturers and 700 marketers of 1,300 OTC antiperspirant drug products containing the 19 ingredients covered by this final rule. It is likely that there are additional products that are not currently included in the agency's system. While it is difficult to determine an exact number, the agency estimates that about 1,500 OTC antiperspirant drug products will need to be relabeled based on this final rule.

The agency has been informed that relabeling costs of the type required by a final monograph generally average about $3,000 to $5,000 per stock keeping unit (SKU) (individual products, packages, and sizes). However, some of the relabeling that occurs as a result of this specific final monograph will be due to additional indications that the agency has included in the final monograph and that manufacturers will wish to add to their labeling. Assuming that there are about 1,300 to 1,500 affected OTC SKUs in the marketplace, total one-time costs of relabeling would be $3.9 million ($3,000 per SKU x 1,300 SKUs) to $7.5 million ($5,000 per SKU x 1,500 SKUs). The agency believes that actual costs will be lower for several reasons. First, many of the label changes will be made by private label manufacturers that tend to use relatively simple and less expensive labeling. Second, the agency has finalized a revised labeling format for OTC drug products in § 201.66. The agency is allowing manufacturers to incorporate the labeling changes required by this final rule along with the new general OTC drug labeling format. Thus, the relabeling costs resulting from two different but related final rules will be individually reduced by implementing both required changes at the same time.

Some relabeling costs will be further reduced because the agency is allowing up to 18 months (24 months for products with annual sales less than $25,000) for these revisions so they may be done in the normal course of business. Thus, manufacturers who

wish to add additional indications included in this final monograph can do so at their next regular printing of product labeling. Among the steps the agency is taking to minimize the impact on small entities are: (1) To provide enough time to enable entities to use up existing labeling stock, and (2) to allow the labeling changes required by this final monograph to be done concurrently with the changes required by the new OTC drug labeling format. The agency believes that these actions provide small entities substantial flexibility and reductions in cost.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, a longer time period would unnecessarily delay the benefit of new labeling and a few revised formulations. Conversely, a shorter time period was also considered but rejected because it would be inflexible and more costly for the affected companies. The agency rejected an exemption for small entities because the new labeling and revised formulations, where applicable, are also needed by consumers who purchase products marketed by those entities. However, a longer (24-month) compliance date is being provided for products with annual sales less than $25,000.

One small manufacturer has indicated that it will suffer economic consequences because it will no longer be able to make claims for use of its antiperspirant products on the hands, and for prosthesis and orthotic use. However, the manufacturer did not provide sufficient data to show that its products were safe and effective for these uses and did not provide documentation to show the economic impact of this final rule on its sales. The agency notes that the company could: (1) Relabel its products to contain only the monograph indications and then remain in the marketplace, or (2) discontinue its products. While revising the product labeling may have an economic impact on a company, it will be able to continue to market its products and can use the expanded indications provided by the final monograph to try to enhance product sales.

The final rule would not require any new reporting and recordkeeping activities, and no additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with the final rule.

For the reasons in this section and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VIII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. Section 369.20 Revision

Section 369.20 (21 CFR 369.20) contains a recommended warning and caution statement for OTC antiperspirant drug products under the heading ''ANTIPERSPIRANTS:'' ''Do not apply to broken skin. If a rash develops, discontinue use.'' This statement is very similar to, but not quite as extensive as, the warnings required by the final monograph: ''Do not use on broken skin'' and ''Stop use if rash or irritation occurs''. The agency is removing the entry for ''ANTIPERSPIRANTS'' under § 369.20 because it is superseded by §§ 350.50(c)(1) and (c)(2).

XI. References

The following references are on display in the Dockets Management Branch (see section I of this document) under Docket No. 78N–0064 unless otherwise stated and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of telephone conversation between R. Bolger, C. Holland, and K. Holland, Perspi-Cura Co., and V. Miguele, FDA, in OTC vol. 1400FR, dated November 20, 1995.

2. Memorandum of fax from V. Miguele, FDA, to R. Bolger and C. Holland, Perspi-Cura Co., in OTC Vol. 1400FR, dated February 8, 1996.

3. Memorandum of telephone message from R. Bolger, Perspi-Cura Co., to V. Miguele, FDA, in OTC Vol. 1400FR, dated March 25, 1996.

4. Studies 83–0768–70 and 83–0769–70 in Comment RPT.

5. Studies S–1367, S–1617, and ST–2280/2376) in Comment No. C00039.

6. ''Antiperspirant Efficacy Study of AP10016 (Currently Marketed Roll-on Antiperspirant With Aluminum Zirconium Tetrachlorohydrate) Against AP10021 (Currently Marketed Roll-on Antiperspirant With Aluminum Chlorohydrate),'' Exhibit 24 in Comment No. C00040.

7. Comment No. LET006.

8. Majors, P. A., and F. B. Carabello, ''Presentation to the OTC Panel for Antiperspirants of the Hill Top Research Method of Antiperspirant Evaluations and General Discussion of Results Obtained,'' in OTC Vol. 140065, August 1975.

9. FDA, ''Guidelines for Effectiveness Testing of OTC Antiperspirant Drug Products,'' in OTC Vol. 140065, August 1982.

10. Exhibits 1 through 7 in Comment No. C00040.

11. ''Claim for 'Twenty Four Hour Protection' etc., Antiperspirant Tests,'' studies S–825, S–1434, S–1473, S–1518, S–1546, and S–1604, in Comment No. C00039.

12. Exhibits 9 through 20 and 22, in Comment No. C00040.

13. Majors, P. A., and J. E. Wild, ''The Evaluation of Antiperspirant Efficacy—Influence of Certain Variables,'' *Journal of the Society of Cosmetic Chemists*, 25:139–152, 1974.

14. ''New Data on Pedal Antiperspirant Activity,'' studies in Comment C00041.

15. *Pedal Antiperspirant Efficacy Evaluation*, protocol in Comments PR1 and PR2.

16. Letter from W. E. Gilbertson, FDA, to K. R. Johannes, Scholl, Inc., coded LET11.

17. Letters from W. E. Gilbertson, FDA, to R. C. Stites, Numark Laboratories, Inc., coded LET12 and LET13.

18. ''Protocol for the Clinical Evaluation of Antiperspirant Efficacy Against Thermally Induced Sweating,'' exhibit 21, in Comment No. C00040.

19. Study 83–0769–70 in Comment No. RPT.

20. ''Claim for 'Twenty Four Hour Protection' etc., Antiperspirant Tests,''

studies No. S–825, S–1367, S–1434, S–1473, S–1518, and S–1546, in Comment No. C00039.

21. Studies ST–2280/2376 in Comment No. C00039.

22. ''Twenty-Four Hour Enhanced Duration AP Efficacy Evaluation Under Thermal Stress of: A = AP10001 (Currently Marketed Aerosol Antiperspirant With aluminum chlorohydrate) Against B = AP10008, Placebo Aerosol Antiperspirant,'' Exhibit 6, in Comment No. C00040.

23. ''AP Efficacy 24 Hour Absolute Sweat Reduction Study of: AP10001 (Marketed Aerosol Antiperspirant With Aluminum Chlorohydrate),'' Exhibit 5, in Comment No. C00040.

24. Summary Minutes of the 18th Meeting of the Advisory Review Panel on OTC Antiperspirant Drug Products, in OTC Vol. 1400FR, February 26 and 27, 1976.

25. OTC Vol. 140059.

26. Comment No. C00039.

27. Transcript of the 27th Meeting of the Advisory Review Panel on OTC Antiperspirant Drug Products, pp. 75–85, included in OTC Vol. 1400FM, January 26, 1978.

28. Lansdown, A. B. G., ''Production of Epidermal Damage in Mammalian Skins by Some Simple Aluminum Compounds,'' *British Journal of Dermatology*, 89:67–76, 1973.

29. Govett, T., and M. G. DeNavarre, ''Aluminum Chlorohydrate, New Antiperspirant Ingredient,'' *The American Perfumer and Essential Oil Review*, 49:365–368, 1947.

30. ''Zirconyl Hy+droxy Chloride Antiperspirant Combinations,'' Patent No. 2,854,382, U.S. Patent Office, included in Appendix B in OTC Vol. 140037, September 30, 1958.

31. ''Characterization of Category I Aluminum Chlorhydrates and Comparison to an Aluminum Chlorhydrate Prepared With an Alternate Neutralization Agent,'' report in Comment No. C00038.

32. Fifth Supplement, USP 23–NF 18, U.S. Pharmacopeial Convention, Inc., Rockville, MD, p. 3363, 1996.

33. Perl, D. P., and P. F. Good, ''Uptake of Aluminum into Central Nervous System Along Nasal-Olfactory Pathways,'' *Lancet*, 1:1028, May 2, 1987.

34. Inhalation Toxicology Research Institute, Lovelace Biomedical and Environmental Research Institute, ''Inhalation Toxicology Studies of Aerosolized Products, Final Report,'' in Comment SUP.

35. Becton, Dickinson Research Center, ''Final Report on Aluminum Chlorhydrate Study,'' in Comment SUP.

36. Rollin, H. B., P. Theodorou, and T. A. Kilroe-Smith, ''Deposition of Aluminum in Tissues of Rabbits Exposed to Inhalation of Low Concentrations of A1203 Dust,'' *British Journal of Industrial Medicine*, 48:389–391, 1991.

37. Graves, A. B. et al., ''The Association Between Aluminum-Containing Products and Alzheimer's Disease,'' *Journal of Clinical Epidemiology*, 43:35–44, 1990.

38. Garruto, R. M., ''Pacific Paradigms of Environmentally Induce Neurological Disorders: Clinical, Epidemiological and Molecular Perspectives,'' *Neurotoxicology*, 12:347–377, 1991.

39. Priest, N. D., Satellite Symposium on 'Alzheimer's Disease and Dietary Aluminum', ''The Bioavailability and Metabolism of Aluminum Compounds in Man,'' *Proceedings of the Nutrition Society*, 52:231–240, 1993.

40. Rowan, M. J., ''Recent Research on the Causes of Alzheimer's Disease,'' *Proceedings of the Nutrition Society*, 52:255–262, 1993.

41. Savory, J. et al., ''Can the Controversy of the Role of Aluminum in Alzheimer's Disease be Resolved? What are the Suggested Approaches to This Controversy and Methodological Issues to be Considered?,'' *Journal of Toxicology and Environmental Health*, 48:615–635, 1996.

42. Scott, C. W. et al., ''Aggregation of Tau Protein by Aluminum,'' *Brain Research*, 628:77–84, 1993.

43. Kasa, P., P. Szerdahelyi, and H. M. Wisniewski, ''Lack of Topographical Relationship Between Sites of Aluminum Deposition and Senile Plaques in the Alzheimer's Disease Brain,'' *Acta Neuropathologica*, 90:526–531, 1995.

44. Candy, J. M. et al., ''Aluminum Accumulation in Relation to Senile Plaque and Neurofibrillary Tangle Formation in the Brains of Patients With Renal Failure,'' *Journal of the Neurological Sciences*, 107:210–218, 1992.

45. Anane, R. et al., ''Bioaccumulation of Water Soluble Aluminum Chloride in the Hippocampus After Transdermal Uptake in Mice,'' *Archives of Toxicology*, 69:568–571, 1995.

46. Forbes, W. F., and N. Agwani, ''A Suggested Mechanism for Aluminum Biotoxicity,'' *Journal of Theoretical Biology*, 171:207–214, 1994.

47. Salib, E., and V. Hillier, ''A Case-Control Study of Alzheimer's Disease and Aluminum Occupation,'' *British Journal of Psychiatry*, 168:244–249, 1996.

48. Doll, R., ''Review: Alzheimer's Disease and Environmental Aluminum,'' *Age and Ageing*, 22:138–153, 1993.

49. Flaten, T. P. et al., ''Status and Future Concerns of Clinical and Environmental Aluminum Toxicology,'' *Journal of Toxicology and Environmental Health*, 48:527–541, 1996.

50. Comments No. C46, RPT2, and RPT3.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 350

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by redesignating the text of paragraph (a)(4) as paragraph (a)(4)(i), by adding new paragraph (a)(4)(i) heading and paragraphs (a)(4)(ii) and (d)(34), and by revising paragraph (d)(1) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(4) * * *

(i) *Ingredients—Approved as of May 7, 1991.* * * *

(ii) *Approved as of December 9, 2004; June 9, 2005, for products with annual sales less than $25,000.*

Aluminum sulfate buffered with sodium aluminum lactate

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4)(i), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), (a)(16) through (a)(18)(i)(A), (a)(18)(ii) (except as covered by paragraph (d)(22) of this section), (a)(18)(iii), (a)(18)(iv), (a)(18)(v)(A), and (a)(18)(vi)(A) of this section.

* * * * *

(34) December 9, 2004, for products subject to paragraph (a)(4)(ii) of this section. June 9, 2005, for products with annual sales less than $25,000.

* * * * *

■ 3. Part 350 is added to read as follows:

PART 350—ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.

350.1 Scope.

350.3 Definition.

Subpart B—Active Ingredients

350.10 Antiperspirant active ingredients.

Subpart C—Labeling

350.50 Labeling of antiperspirant drug products.

Subpart D—Guidelines for Effectiveness Testing

350.60 Guidelines for effectiveness testing of antiperspirant drug products.

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 350—ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

§ 350.1 Scope.

(a) An over-the-counter antiperspirant drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 350.3 Definition.

As used in this part:

Antiperspirant. A drug product applied topically that reduces the production of perspiration (sweat) at that site.

Subpart B—Active Ingredients

§ 350.10 Antiperspirant active ingredients.

The active ingredient of the product consists of any of the following within the established concentration and dosage formulation. Where applicable, the ingredient must meet the aluminum to chloride, aluminum to zirconium, and aluminum plus zirconium to chloride atomic ratios described in the U.S. Pharmacopeia-National Formulary. The concentration of ingredients in paragraphs (b) through (j) of this section is calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound, in an aerosol or nonaerosol dosage form. The concentration of ingredients in paragraphs (k) through (r) of this section is calculated on an anhydrous basis, omitting from the calculation any buffer component present in the compound, in a nonaerosol dosage form. The labeled declaration of the percentage of the active ingredient should exclude any water, buffer components, or propellant.

(a) Aluminum chloride up to 15 percent, calculated on the hexahydrate form, in an aqueous solution nonaerosol dosage form.

(b) Aluminum chlorohydrate up to 25 percent.

(c) Aluminum chlorohydrex polyethylene glycol up to 25 percent.

(d) Aluminum chlorohydrex propylene glycol up to 25 percent.

(e) Aluminum dichlorohydrate up to 25 percent.

(f) Aluminum dichlorohydrex polyethylene glycol up to 25 percent.

(g) Aluminum dichlorohydrex propylene glycol up to 25 percent.

(h) Aluminum sesquichlorohydrate up to 25 percent.

(i) Aluminum sesquichlorohydrex polyethylene glycol up to 25 percent.

(j) Aluminum sesquichlorohydrex propylene glycol up to 25 percent.

(k) Aluminum zirconium octachlorohydrate up to 20 percent.

(l) Aluminum zirconium octachlorohydrex gly up to 20 percent.

(m) Aluminum zirconium pentachlorohydrate up to 20 percent.

(n) Aluminum zirconium pentachlorohydrex gly up to 20 percent.

(o) Aluminum zirconium tetrachlorohydrate up to 20 percent.

(p) Aluminum zirconium tetrachlorohydrex gly up to 20 percent.

(q) Aluminum zirconium trichlorohydrate up to 20 percent.

(r) Aluminum zirconium trichlorohydrex gly up to 20 percent.

Subpart C—Labeling

§ 350.50 Labeling of antiperspirant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an ''antiperspirant.''

(b) *Indications.* The labeling of the product states, under the heading ''Uses,'' the phrase listed in paragraph (b)(1) of this section and may contain any additional phrases listed in paragraphs (b)(2) through (b)(5) of this section, as appropriate. Other truthful and nonmisleading statements, describing only the uses that have been established and listed in paragraphs (b)(1) through (b)(5) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) For any product, the labeling states [select one of the following: ''decreases,'' ''lessens,'' or ''reduces''] ''underarm'' [select one of the following: ''dampness,'' ''perspiration,'' ''sweat,'' ''sweating,'' or ''wetness''].

(2) The labeling may state ''also [select one of the following: 'decreases,' 'lessens,' or 'reduces'] underarm [select one of the following: 'dampness,' 'perspiration,' 'sweat,' 'sweating,' or 'wetness'] due to stress''.

(3) For products that demonstrate standard effectiveness (20 percent sweat reduction) over a 24-hour period, the labeling may state [select one of the following: ''all day protection,'' ''lasts all day,'' ''lasts 24 hours,'' or ''24 hour protection''].

(4) For products that demonstrate extra effectiveness (30 percent sweat reduction), the labeling may state ''extra effective''.

(5) Products that demonstrate extra effectiveness (30 percent sweat reduction) sustained over a 24-hour period may state the claims in paragraphs (b)(3) and (b)(4) of this section either individually or combined, e.g., ''24 hour extra effective protection'', ''all day extra effective protection,'' ''extra effective protection lasts 24 hours,'' or ''extra effective protection lasts all day''.

(c) *Warnings.* The labeling of the product contains the following statements under the heading ''Warnings'':

(1) ''Do not use on broken skin''.

(2) ''Stop use if rash or irritation occurs''.

(3) ''Ask a doctor before use if you have kidney disease''.

(4) *For products in an aerosolized dosage form.* (i) ''When using this product [bullet][1] keep away from face and mouth to avoid breathing it''.

(ii) The warning required by § 369.21 of this chapter for drugs in dispensers pressurized by gaseous propellants.

(d) *Directions.* The labeling of the product contains the following statement under the heading ''Directions'': ''apply to underarms only''.

Subpart D—Guidelines for Effectiveness Testing

§ 350.60 Guidelines for effectiveness testing of antiperspirant drug products.

An antiperspirant in finished dosage form may vary in degree of effectiveness because of minor variations in formulation. To assure the effectiveness of an antiperspirant, the Food and Drug Administration is providing guidelines that manufacturers may use in testing for effectiveness. These guidelines are on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These guidelines are available on the FDA's Web site at http://www.fda.gov/cder/

[1] See § 201.66(b)(4) of this chapter for definition of bullet.

otc/index.htm or on request for a nominal charge by submitting a Freedom of Information (FOI) request in writing to FDA's FOI Staff (HFI–35), 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

■ 4. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.20 [Amended]

■ 5. Section 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entry for ''ANTIPERSPIRANTS.''

Dated: May 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Fort Dodge Animal Health, Division of American Cyanamid Co., to Fort Dodge Animal Health, Division of Wyeth Holdings Corp. The regulations are also being revised to correct the address for Fort Dodge Animal Health, Division of Wyeth.

DATES: This rule is effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; 301–827–6967; e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501, has informed FDA of a change of name to Fort Dodge Animal Health, Division of Wyeth Holdings Corp. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

In addition, when the name of Fort Dodge Animal Health, Division of American Home Products Corp. was changed to Fort Dodge Animal Health, Division of Wyeth (67 FR 67520, November 6, 2002), an inaccurate correction to the address was made. At this time, it is being changed to the original and correct address.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended.

a. In the table in paragraph (c)(1), in the entry for ''Fort Dodge Animal Health, Division of Wyeth'' and in the table in paragraph (c)(2), in the entry for ''000856'' by removing ''500'' and by adding in its place ''800''.

b. In the table in paragraph (c)(1), in the entry for ''Fort Dodge Animal Health, Division of American Cyanamid Co.'' and in the table in paragraph (c)(2), in the entry for ''053501'' by removing ''American Cyanamid Co.'' and by adding in its place ''Wyeth Holdings Corp.''.

Dated: May 19, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–14303 Filed 6–6–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9059]

RIN 1545–AX18

Coordination of Sections 755 and 1060; Allocation of Basis Adjustments Among Partnership Assets and Application of the Residual Method to Certain Partnership Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document finalizes regulations relating to the allocation of basis adjustments among partnership assets under section 755. The regulations are necessary to implement section 1060, which applies the residual method to certain partnership transactions.

DATES: These regulations are effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Craig Gerson, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 755 of the Internal Revenue Code (Code). On April 5, 2000, a notice of proposed rulemaking (REG–107872–99, 2000–1 C.B. 911) under section 755 was published in the **Federal Register** (65 FR 17829). Only one commentator submitted written comments in response to the notice of proposed rulemaking, and no public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Contents

1. Summary

Section 743(b) provides for an optional adjustment to the basis of partnership property following certain transfers of partnership interests. The amount of the basis adjustment is the difference between the transferee's basis in the partnership interest and the transferee's share of the partnership's basis in the partnership's assets. Once the amount of the basis adjustment is determined, it is allocated among the partnership's individual assets pursuant to section 755.

On December 14, 1999, final regulations (TD 8847; 1999–2 C.B. 701) were published in the **Federal Register** under section 755 (64 FR 69903). Under these regulations, basis adjustments under section 743(b) are allocated among a partnership's assets as follows. First, the adjustment is allocated between the two classes of property described in section 755(b). These classes of property consist of capital assets and section 1231(b) property (capital gain property), and any other property of the partnership (ordinary income property). The amount of a basis adjustment under section 743(b) that is allocated to the class of ordinary income property is equal to the total amount of income, gain, or loss that would be allocated to the transferee from the sale of all ordinary income property. The amount of the basis adjustment under section 743(b) that is allocated to capital gain property is the total amount of the basis adjustment under section 743(b) less the amount of the basis adjustment allocated to ordinary income property. The basis adjustment is then allocated to individual assets within each class.

The final regulations issued on December 14, 1999, worked in conjunction with § 1.755–2T. In the case of a basis adjustment under section 743(b) or section 732(d), the fair market values of all assets other than goodwill or going concern value were determined on the basis of all the facts and circumstances, and the fair market value of goodwill and going concern value was determined using the residual method. As described more fully in the notice of proposed rulemaking, § 1.755–2T was published prior to the enactment of section 1060(d), which (as amended in 1993) requires the residual method to be applied for purposes of determining the values of section 197 intangibles for purposes of applying section 755. These final regulations implement section 1060(d) and replace § 1.755–2T.

These final regulations differ from § 1.755–2T by using the residual method to value all section 197 intangibles (not just goodwill and going concern value). In addition, these final regulations also apply to basis adjustments under section 734(b) and contain special rules for certain substituted basis transactions. Finally, for convenience, the provisions of the regulations have been relocated to the beginning of § 1.755–1.

Under these final regulations, a partnership is required to assign values to its assets as follows. First, the partnership must determine the values of each of its assets other than section 197 intangibles under all the facts and circumstances, taking into account section 7701(g) (treating the fair market value of a property as not less than the amount of any nonrecourse indebtedness to which the property is subject). The partnership then must determine the gross value of all partnership assets (partnership gross value). Last, the partnership is required to use the residual method to assign values to the partnership's section 197 intangibles. For purposes of these regulations, the term *section 197 intangibles* includes all section 197 intangibles (as defined in section 197), as well as any goodwill or going concern value that would not qualify as a section 197 intangible under section 197.

If the aggregate value of partnership property other than section 197 intangibles is equal to or greater than partnership gross value, then all section 197 intangibles are deemed to have a value of zero. In all other cases, the aggregate value of the partnership's section 197 intangibles (the residual section 197 intangibles value) is deemed to equal the excess of partnership gross value over the aggregate value of partnership property other than section 197 intangibles. The residual section 197 intangibles value must be allocated, first, among section 197 intangibles other than goodwill and going concern value. Any remaining value is assigned to goodwill and going concern value.

The proposed regulations used the residual method to assign values to all partnership assets, rather than limiting the scope of the residual method to section 197 intangibles. Treasury and the IRS have concluded that these rules were unduly complex, especially when they applied to partnerships whose partnership agreements contained special allocations of partnership income or loss. Accordingly, the final regulations utilize the residual method only to value section 197 intangibles.

2. Transactions Subject to the Regulations

Because the proposed regulations used the residual method to value all partnership assets (and not just section 197 intangibles), it was desirable for all partnerships to value their assets using the same method. Accordingly, under the authority of sections 1060(d) and 755, the proposed regulations applied to all partnerships, whether or not their assets constituted a trade or business. In contrast, the final regulations apply the residual method only for the purpose of valuing section 197 intangibles, which are usually held by partnerships whose assets constitute a trade or business. Thus, the final regulations apply the residual method only to partnerships whose assets constitute a trade or business (as described in § 1.1060–1(b)(2)).

The proposed regulations specifically applied to basis adjustments under section 732(d). Some references to section 732(d) have been removed in the final regulations to enhance readability. Nevertheless, the final regulations continue to apply to basis adjustments under section 732(d).

3. Methods for Determining Partnership Gross Value

If a partnership interest is transferred in a taxable transaction, the transferee's basis in its partnership interest provides a frame of reference for determining partnership gross value. In these transactions, both the proposed and the final regulations generally provide that partnership gross value is the amount that, if assigned to all partnership property, would result in a liquidating distribution to the transferee partner equal to that partner's basis (reduced by the amount, if any, of such basis that is attributable to partnership liabilities) in the transferred partnership interest immediately following the relevant transfer.

In certain circumstances involving basis adjustments under section 743(b), such as where income or loss with respect to particular section 197 intangibles is allocated differently among partners, partnership gross value may vary depending on the fair market values of particular section 197 intangibles held by the partnership. In these situations, the final regulations require the partnership to use a reasonable method, consistent with the purposes of the final regulations, to determine partnership gross value.

In the preamble to the proposed regulations, the IRS and the Treasury Department requested comments regarding how the residual method applies in the context of a basis adjustment that results from an exchange of a partnership interest in which the transferee's basis in the interest is determined in whole or in part by reference to the transferor's basis in the interest (a transferred basis exchange). Determining partnership gross value in such an exchange is problematic, because the transferee's basis in the partnership interest does not necessarily have any connection to the fair market values of partnership assets. No comments were received regarding the specific method to be adopted by the final regulations.

The IRS and the Treasury Department also requested comments regarding how the residual method applies in the context of basis adjustments under section 734(b). One commentator

suggested that the final regulations should require one method for valuing partnership assets in the case of a *pro rata* distribution, and another method for valuing partnership assets in the case of a *non-pro rata* distribution. The IRS and the Treasury Department believe that this approach would be unnecessarily complex.

The final regulations adopt a single method for determining partnership gross value that applies to all section 734(b) basis adjustments and to section 743(b) basis adjustments resulting from transferred basis exchanges. In these circumstances, partnership gross value is the value of the entire partnership as a going concern, increased by the amount of partnership liabilities. In the case of a basis adjustment under section 734(b), the value of the entire partnership as a going concern is determined immediately after the distribution causing the adjustment.

A commentator has suggested that the same method for determining partnership gross value should apply to exchanged basis transactions, such as the distribution of a partnership interest by a partnership. The final regulations adopt this comment by replacing all references to transferred basis exchanges with references to substituted basis transactions. Conforming adjustments are also made to the special rules contained in § 1.755–1(b)(5) for allocating basis adjustments under section 743(b) among a partnership's assets in these exchanges.

4. Transferors of Partnership Interests

In the preamble to the proposed regulations, comments were requested as to whether the residual method should be used to determine the fair market values of partnership assets for purposes of applying section 1(h)(6)(B) (collectibles gain or loss), section 1(h)(7) (section 1250 capital gain), and section 751(a) (ordinary income) to the sale or other disposition of a partnership interest. No comments were received on this issue. Treasury and the IRS have determined that the potential benefits of a rule allowing transferors to use the residual method do not justify the increased complexity that the rule would have created.

5. Other Changes

The final regulations add two clarifying rules for allocating basis adjustments under section 743(b) among a partnership's assets in the case of a transaction that is not a substituted basis transaction. The first rule provides that assets with respect to which the transferee partner has no interest in income, gain, losses, or deductions are not taken into account in allocating basis adjustments to capital assets. The second rule provides that in no event may the amount of any decrease in basis allocated to an item of capital gain property exceed the partnership's adjusted basis in that item. If the amount of a decrease in basis otherwise allocable to a particular capital asset exceeds the partnership's adjusted basis in that asset, the transferee's negative basis adjustment in that asset is limited to the partnership's adjusted basis in that asset, and the excess must be applied to reduce the remaining basis, if any, of other capital gain assets pro rata in proportion to the partnership's adjusted bases in such assets.

Effective Date

These regulations apply to transfers of partnership interests and distributions of property from partnerships that occur on or after June 9, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Craig Gerson of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 is amended by adding an entry to read in part as follows:

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

Section 1.755–2 also issued under 26 U.S.C. 755 and 26 U.S.C. 1060. * * *

■ **Par. 2.** Section 1.755–1 is amended as follows:

■ 1. Paragraph (a) is revised.

■ 2.–3. A paragraph heading is added for paragraph (b)(1)(i).

■ 4. The first two sentences of paragraph (b)(1)(i) are revised.

■ 5. Paragraph (b)(3)(iii) is redesignated as paragraph (b)(3)(iv).

■ 6. New paragraph (b)(3)(iii) is added.

■ 7. In paragraph (b)(4)(ii), the *Example* is revised.

■ 8. The paragraph heading for paragraph (b)(5) is revised.

■ 9. Paragraph (b)(5)(i) is revised.

■ 10. In paragraph (b)(5)(iv) *Example 1,* the last sentence is amended by removing the language ''transferred basis exchange'' and adding ''substituted basis transaction'' in its place.

■ 11. In paragraph (b)(5)(iv) *Example 2,* paragraph (iii), the third sentence is amended by adding the language ''this'' before the language ''paragraph (b)(5)''.

■ 12. In paragraph (c)(5) *Example* (i) introductory text is revised.

■ 13. Paragraph (d) is revised.

■ 14. Paragraph (e) is added.

■ The revisions and additions read as follows:

§ 1.755–1 Rules for allocation of basis.

(a) *In general*—(1) *Scope.* This section provides rules for allocating basis adjustments under sections 743(b) and 734(b) among partnership property. If there is a basis adjustment to which this section applies, the basis adjustment is allocated among the partnership's assets as follows. First, the partnership must determine the value of each of its assets under paragraphs (a)(2) through (5) of this section. Second, the basis adjustment is allocated between the two classes of property described in section 755(b). These classes of property consist of capital assets and section 1231(b) property (capital gain property), and any other property of the partnership (ordinary income property). For purposes of this section, properties and potential gain treated as unrealized receivables under section 751(c) and the regulations thereunder shall be treated as separate assets that are ordinary income property. Third, the portion of the basis adjustment allocated to each class is allocated among the items within the class. Basis adjustments under section 743(b) are allocated

among partnership assets under paragraph (b) of this section. Basis adjustments under section 734(b) are allocated among partnership assets under paragraph (c) of this section.

(2) *Coordination of sections 755 and 1060.* If there is a basis adjustment to which this section applies, and the assets of the partnership constitute a trade or business (as described in § 1.1060–1(b)(2)), then the partnership is required to use the residual method to assign values to the partnership's section 197 intangibles. To do so, the partnership must, first, determine the value of partnership assets other than section 197 intangibles under paragraph (a)(3) of this section. The partnership then must determine partnership gross value under paragraph (a)(4) of this section. Last, the partnership must assign values to the partnership's section 197 intangibles under paragraph (a)(5) of this section. For purposes of this section, the term *section 197 intangibles* includes all section 197 intangibles (as defined in section 197), as well as any goodwill or going concern value that would not qualify as a section 197 intangible under section 197.

(3) *Values of properties other than section 197 intangibles.* For purposes of this section, the fair market value of each item of partnership property other than section 197 intangibles shall be determined on the basis of all the facts and circumstances, taking into account section 7701(g).

(4) *Partnership gross value*—(i) *Basis adjustments under section 743(b)*—(A) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, in the case of a basis adjustment under section 743(b), partnership gross value generally is equal to the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner equal to the transferee's basis in the transferred partnership interest immediately following the relevant transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities).

(B) *Special situations.* In certain circumstances, such as where income or loss with respect to particular section 197 intangibles are allocated differently among partners, partnership gross value may vary depending on the values of particular section 197 intangibles held by the partnership. In these special situations, the partnership must assign value, first, among section 197 intangibles (other than goodwill and going concern value) in a reasonable manner that is consistent with the ordering rule in paragraph (a)(5) of this section and would cause the appropriate liquidating distribution under paragraph (a)(4)(i)(A) of this section. If the actual fair market values, determined on the basis of all the facts and circumstances, of all section 197 intangibles (other than goodwill and going concern value) is not sufficient to cause the appropriate liquidating distribution, then the fair market value of goodwill and going concern value shall be presumed to equal an amount that if assigned to goodwill and going concern value would cause the appropriate liquidating distribution.

(C) *Income in respect of a decedent.* Solely for the purpose of determining partnership gross value under this paragraph (a)(4)(i), where a partnership interest is transferred as a result of the death of a partner, the transferee's basis in its partnership interest is determined without regard to section 1014(c), and is deemed to be adjusted for that portion of the interest, if any, that is attributable to items representing income in respect of a decedent under section 691.

(ii) *Basis adjustments under section 743(b) resulting from substituted basis transactions.* This paragraph (a)(4)(ii) applies to basis adjustments under section 743(b) that result from exchanges in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in the interest or to the basis of other property held at any time by the transferee (substituted basis transactions). In the case of a substituted basis transaction, partnership gross value equals the value of the entire partnership as a going concern, increased by the amount of partnership liabilities at the time of the exchange giving rise to the basis adjustment.

(iii) *Basis adjustments under section 734(b).* In the case of a basis adjustment under section 734(b), partnership gross value equals the value of the entire partnership as a going concern immediately following the distribution causing the adjustment, increased by the amount of partnership liabilities immediately following the distribution.

(5) *Determining the values of section 197 intangibles*—(i) *Two classes.* If the aggregate value of partnership property other than section 197 intangibles (as determined in paragraph (a)(3) of this section) is equal to or greater than partnership gross value (as determined in paragraph (a)(4) of this section), then all section 197 intangibles are deemed to have a value of zero for purposes of this section. In all other cases, the aggregate value of the partnership's section 197 intangibles (the residual section 197 intangibles value) is deemed to equal the excess of partnership gross value over the aggregate value of partnership property other than section 197 intangibles. The residual section 197 intangibles value must be allocated between two asset classes in the following order—

(A) Among section 197 intangibles other than goodwill and going concern value; and

(B) To goodwill and going concern value.

(ii) *Values assigned to section 197 intangibles other than goodwill and going concern value.* The fair market value assigned to a section 197 intangible (other than goodwill and going concern value) shall not exceed the actual fair market value (determined on the basis of all the facts and circumstances) of that asset on the date of the relevant transfer. If the residual section 197 intangibles value is less than the sum of the actual fair market values (determined on the basis of all the facts and circumstances) of all section 197 intangibles (other than goodwill and going concern value) held by the partnership, then the residual section 197 intangibles value must be allocated among the individual section 197 intangibles (other than goodwill and going concern value) as follows. The residual section 197 intangibles value is assigned first to any section 197 intangibles (other than goodwill and going concern value) having potential gain that would be treated as unrealized receivables under the flush language of section 751(c) (flush language receivables) to the extent of the basis of those section 197 intangibles and the amount of income arising from the flush language receivables that the partnership would recognize if the section 197 intangibles were sold for their actual fair market values (determined based on all the facts and circumstances) (collectively, the flush language receivables value). If the value assigned to section 197 intangibles (other than goodwill and going concern value) is less than the flush language receivables value, then the assigned value is allocated among the properties giving rise to the flush language receivables in proportion to the flush language receivables value in those properties. Any remaining residual section 197 intangibles value is allocated among the remaining portions of the section 197 intangibles (other than goodwill and going concern value) in proportion to the actual fair market values of such portions (determined based on all the facts and circumstances).

(iii) *Value assigned to goodwill and going concern value.* The fair market value of goodwill and going concern value is the amount, if any, by which

the residual section 197 intangibles value exceeds the aggregate value of the partnership's section 197 intangibles (other than goodwill and going concern value).

(6) *Examples.* The provisions of paragraphs (a)(2) through (5) are illustrated by the following examples, which assume that the partnerships have an election in effect under section 754 at the time of the transfer and that the assets of each partnership constitute a trade or business (as described in § 1.1060–1(b)(2)). Except as provided, no partnership asset (other than inventory) is property described in section 751(a), and partnership liabilities are secured by all partnership assets. The examples are as follows:

Example 1. (i) A is the sole general partner in PRS, a limited partnership having three equal partners. PRS has goodwill and going concern value, two section 197 intangibles other than goodwill and going concern value (Intangible 1 and Intangible 2), and two other assets with fair market values (determined using all the facts and circumstances) as follows: inventory worth $1,000,000 and a building (a capital asset) worth $2,000,000. The fair market value of each of Intangible 1 and Intangible 2 is $50,000. PRS has one liability of $1,000,000, for which A bears the entire risk of loss under section 752 and the regulations thereunder. D purchases A's partnership interest for $650,000, resulting in a basis adjustment under section 743(b). After the purchase, D bears the entire risk of loss for PRS's liability under section 752 and the regulations thereunder. Therefore, D's basis in its interest in PRS is $1,650,000.

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $650,000 ($1,650,000—$1,000,000). Under paragraph (a)(4)(i) of this section, partnership gross value is $2,950,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $650,000).

(iii) Under paragraph (a)(3) of this section, the inventory has a fair market value of $1,000,000, and the building has a fair market value of $2,000,000. Thus, the aggregate value of partnership property other than section 197 intangibles, $3,000,000, is equal to or greater than partnership gross value, $2,950,000. Accordingly, under paragraphs (a)(3) and (5) of this section, the value assigned to each of the partnership's assets is as follows: inventory, $1,000,000; building, $2,000,000; Intangibles 1 and 2, $0; and goodwill and going concern value, $0. D's section 743(b) adjustment must be allocated under paragraph (b) of this section using these assigned fair market values.

Example 2. (i) Assume the same facts as in *Example 1*, except that the fair market values of Intangible 1 and Intangible 2 are each $300,000, and that D purchases A's interest in PRS for $1,000,000. After the purchase, D's basis in its interest in PRS is $2,000,000.

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $1,000,000 ($2,000,000—$1,000,000). Under paragraph (a)(4)(i) of this section, partnership gross value is $4,000,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $1,000,000).

(iii) Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $1,000,000 (the excess of partnership gross value, $4,000,000, over the aggregate value of assets other than section 197 intangibles, $3,000,000 (the sum of the value of the inventory, $1,000,000, and the value of the building, $2,000,000)). The partnership must determine the values of section 197 assets by allocating the residual section 197 intangibles value among the partnership's assets. The residual section 197 intangibles value is assigned first to section 197 intangibles other than goodwill and going concern value, and then to goodwill and going concern value. Thus, $300,000 is assigned to each of Intangible 1 and Intangible 2, and $400,000 is assigned to goodwill and going concern value (the amount by which the residual section 197 intangibles value, $1,000,000, exceeds the fair market value of section 197 intangibles other than goodwill and going concern value, $600,000). D's section 743(b) adjustment must be allocated under paragraph (b) of this section using these assigned fair market values.

Example 3. (i) Assume the same facts as in *Example 1*, except that the fair market values of Intangible 1 and Intangible 2 are each $300,000, and that D purchases A's interest in PRS for $750,000. After the purchase, D's basis in its interest in PRS is $1,750,000. Also assume that Intangible 1 was originally purchased for $300,000, and that its adjusted basis has been decreased to $50,000 as a result of amortization. Assume that, if PRS were to sell Intangible 1 for $300,000, it would recognize $250,000 of gain that would be treated as an unrealized receivable under the flush language in section 751(c).

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $750,000 ($1,750,000—$1,000,000). Under paragraph (a)(4)(i) of this section, partnership gross value is $3,250,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $750,000).

(iii) Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $250,000 (the amount by which partnership gross value, $3,250,000, exceeds the aggregate value of partnership property other than section 197 intangibles, $3,000,000). Intangible 1 has potential gain that would be treated as unrealized receivables under the flush language of section 751(c). The flush language receivables value in Intangible 1 is $300,000 (the sum of PRS's basis in Intangible 1, $50,000, and the amount of ordinary income, $250,000, that the partnership would recognize if Intangible 1 were sold for its actual fair market value). Because the residual section 197 intangibles value, $250,000, is less than the flush language receivables value of Intangible 1, Intangible 1 is assigned a value of $250,000, and Intangible 2 and goodwill and going concern value are assigned a value of zero. D's section 743(b) adjustment must be allocated under paragraph (b) of this section using these assigned fair market values.

Example 4. Assume the same facts as in *Example 1*, except that the fair market values of Intangible 1 and Intangible 2 are each $300,000, and that A does not sell its interest in PRS. Instead, A contributes its interest in PRS to E, a newly formed corporation wholly-owned by A, in a transaction described in section 351. Assume that the contribution results in a basis adjustment under section 743(b) (other than zero). PRS determines that its value as a going concern immediately following the contribution is $3,000,000. Under paragraph (a)(4)(ii) of this section, partnership gross value is $4,000,000 (the value of PRS as a going concern, $3,000,000, increased by the partnership's liability, $1,000,000, immediately after the contribution). Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $1,000,000 (the amount by which partnership gross value, $4,000,000, exceeds the aggregate value of partnership property other than section 197 intangibles, $3,000,000). Of the residual section 197 intangibles value, $300,000 is assigned to each of Intangible 1 and Intangible 2, and $400,000 is assigned to goodwill and going concern value (the amount by which the residual section 197 intangibles value, $1,000,000, exceeds the fair market value of section 197 intangibles other than goodwill and going concern value, $600,000). E's section 743(b) adjustment must be allocated under paragraph (b)(5) of this section using these assigned fair market values.

Example 5. G is the sole general partner in PRS, a limited partnership having three equal partners (G, H, and I). PRS has goodwill and going concern value, two section 197 intangibles other than goodwill and going concern value (Intangible 1 and Intangible 2), and two capital assets with fair market values (determined using all the facts and circumstances) as follows: Vacant land worth $1,000,000, and a building worth $2,000,000. The fair market value of each of Intangible 1 and Intangible 2 is $300,000. PRS has one liability of $1,000,000, for which G bears the entire risk of loss under section 752 and the regulations thereunder. PRS distributes the land to H in liquidation of H's interest in PRS. Immediately prior to the distribution, PRS's basis in the land is $800,000, and H's basis in its interest in PRS is $750,000. The distribution causes the partnership to increase the basis of its remaining property by $50,000 under section 734(b)(1)(B). PRS determines that its value as a going concern immediately following the distribution is $2,000,000. Under paragraph (a)(4)(iii) of this section, partnership gross value is $3,000,000 (the value of PRS as a going concern, $2,000,000, increased by the partnership's liability, $1,000,000, immediately after the distribution). Under paragraph (a)(5) of this section, the residual section 197 intangibles value of PRS's section 197 intangibles is $1,000,000 (the amount by which partnership gross value, $3,000,000, exceeds the aggregate value of partnership property other than section 197 intangibles, $2,000,000). Of the residual section 197 intangibles value,

$300,000 is assigned to each of Intangible 1 and Intangible 2, and $400,000 is assigned to goodwill and going concern value (the amount by which the residual section 197 intangibles value, $1,000,000, exceeds the fair market value of section 197 intangibles other than goodwill and going concern value, $600,000). PRS's section 734(b) adjustment must be allocated under paragraph (c) of this section using these assigned fair market values.

(b) *Adjustments under section 743(b)*—(1) *Generally*—(i) *Application.* For basis adjustments under section 743(b) resulting from substituted basis transactions, paragraph (b)(5) of this section shall apply. For basis adjustments under section 743(b) resulting from all other transfers, paragraphs (b)(2) through (4) of this section shall apply. * * *

* * * * *

(3) * * *

(iii) *Special rules*—(A) *Assets in which partner has no interest.* An asset with respect to which the transferee partner has no interest in income, gain, losses, or deductions shall not be taken into account in applying paragraph (b)(3)(ii)(B) of this section.

(B) *Limitation in decrease of basis.* In no event may the amount of any decrease in basis allocated to an item of capital gain property under paragraph (b)(3)(ii)(B) of this section exceed the partnership's adjusted basis in that item (or in the case of property subject to the remedial allocation method, the transferee's share of any remedial loss under § 1.704–3(d) from the hypothetical transaction). In the event that a decrease in basis allocated under paragraph (b)(3)(ii)(B) of this section to an item of capital gain property would otherwise exceed the partnership's adjusted basis in that item, the excess must be applied to reduce the remaining basis, if any, of other capital gain assets pro rata in proportion to the bases of such assets (as adjusted under this paragraph (b)(3)).

* * * * *

(4) * * *

(ii) * * *

Example. (i) A and B are equal partners in personal service partnership PRS. In 2004, as a result of B's death, B's partnership interest is transferred to T when PRS's balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows (based on all the facts and circumstances):

ASSETS

	Adjusted basis	Fair market value
Section 197 Intangible	$2,000	$5,000
Unrealized Receivables	0	15,000
Total	$2,000	$20,000

Liabilities and Capital

	Adjusted per books	Fair market value
Capital:		
A	1,000	10,000
B	1,000	10,000
Total	$2,000	$20,000

(ii) None of the assets owned by PRS is section 704(c) property, and the section 197 intangible is not amortizable. The fair market value of T's partnership interest on the applicable date of valuation set forth in section 1014 is $10,000. Of this amount, $2,500 is attributable to T's 50% share of the partnership's section 197 intangible, and $7,500 is attributable to T's 50% share of the partnership's unrealized receivables. The partnership's unrealized receivables represent income in respect of a decedent. Accordingly, under section 1014(c), T's basis in its partnership interest is not adjusted for that portion of the interest which is attributable to the unrealized receivables. Therefore, T's basis in its partnership interest is $2,500.

(iii) Under paragraph (a)(4)(i)(C) of this section, solely for purposes of determining partnership gross value, T's basis in its partnership interest is deemed to be $10,000. Under paragraph (a)(4)(i) of this section, partnership gross value is $20,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to T equal to $10,000).

(iv) Under paragraph (a)(5) of this section, the residual section 197 intangibles value is $5,000 (the excess of partnership gross value, $20,000, over the aggregate value of assets other than section 197 intangibles, $15,000). The residual section 197 intangibles value is assigned first to section 197 intangibles other than goodwill and going concern value, and then to goodwill and going concern value. Thus, $5,000 is assigned to the section 197 intangible, and $0 is assigned to goodwill and going concern value. T's section 743(b) adjustment must be allocated using these assigned fair market values.

(v) At the time of the transfer, B's share of the partnership's basis in partnership assets is $1,000. Accordingly, T receives a $1,500 basis adjustment under section 743(b). Under this paragraph (b)(4), the entire basis adjustment is allocated to the partnership's section 197 intangible.

(5) *Substituted basis transactions*—(i) *In general.* This paragraph (b)(5) applies to basis adjustments under section 743(b) that result from exchanges in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in that interest. For exchanges on or after June 9, 2003, this paragraph (b)(5) also applies to basis adjustments under section 743(b) that result from exchanges in which the transferee's basis in the partnership interest is determined by reference to other property held at any time by the transferee. For example, this paragraph (b)(5) applies if a partnership interest is contributed to a corporation in a transaction to which section 351 applies, if a partnership interest is contributed to a partnership in a transaction to which section 721(a) applies, or if a partnership interest is distributed by a partnership in a transaction to which section 731(a) applies.

* * * * *

(c) * * *

(5) * * *

Example. (i) A, B, and C form equal partnership PRS. A contributes $50,000 and Asset 1, nondepreciable capital gain property with a fair market value of $50,000 and an adjusted tax basis of $25,000. B and C each contributes $100,000. PRS uses the cash to purchase Assets 2, 3, 4, 5, and 6. Assets 2 and 3 are nondepreciable capital assets, and Assets 4, 5, and 6 are inventory that has not appreciated substantially in value within the meaning of section 751(b)(3). Assets 4, 5, and 6 are the only assets held by the partnership that are subject to section 751. The partnership has an election in effect under section 754. After seven years, the adjusted basis and fair market value of PRS's assets are as follows:

* * * * *

(d) *Required statements.* See § 1.743–1(k)(2) for provisions requiring the transferee of a partnership interest to provide information to the partnership relating to the transfer of an interest in the partnership. *See* § 1.743–1(k)(1) for a provision requiring the partnership to attach a statement to the partnership return showing the computation of a basis adjustment under section 743(b) and the partnership properties to which the adjustment is allocated under section 755. *See* § 1.732–1(d)(3) for a provision requiring a transferee partner to attach a statement to its return showing the computation of a basis adjustment under section 732(d) and the partnership properties to which the adjustment is allocated under section 755. *See* § 1.732–1(d)(5) for a provision requiring the partnership to provide information to a transferee partner reporting a basis adjustment under section 732(d).

(e) *Effective Date*—(1) *Generally.* Except as provided in paragraphs (b)(5) and (e)(2) of this section, this section applies to transfers of partnership interests and distributions of property from a partnership that occur on or after December 15, 1999.

(2) *Special rules.* Paragraphs (a) and (b)(3)(iii) of this section apply to transfers of partnership interests and distributions of property from a partnership that occur on or after June 9, 2003.

§ 1.755–2T [Removed]

■ **Par. 3.** Section 1.755–2T is removed.

■ **Par. 4.** In § 1.1060–1, paragraph (e)(2) is revised to read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

* * * * *

(e) * * *

(2) *Transfers of interests in partnerships.* For reporting requirements relating to the transfer of a partnership interest, *see* § 1.755–1(d).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

■ **Par. 6.** In § 602.101, paragraph (b), the entry for ''1.755–2T'' is removed.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: May 22, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–14204 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1097–F]

RIN 1120–AA93

Release Gratuities, Transportation, and Clothing: Aliens

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Prisons (Bureau) regulations on release gratuities, transportation, and clothing to limit the release gratuity available to aliens. Only aliens released to immigration authorities for release or transfer to a community corrections center are eligible for a gratuity of up to $10. Aliens released for deportation, exclusion, or removal, or aliens detained or serving 60 days or less in a contract facility will not receive any release gratuity. We intend this rule to reduce costs by providing the gratuity only to those aliens whom the Bureau determines to be in need.

DATES: This rule is effective on July 9, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202)307–2105.

SUPPLEMENTARY INFORMATION: The Bureau published a proposed rule amending its regulations on release gratuities, transportation, and clothing (28 CFR 571, subpart C) on October 4, 1999 (64 FR 53872). The previous regulations on this subject were published in the **Federal Register** on May 21, 1991 (56 FR 23480) and were amended on September 10, 1996 (61 FR 47795).

Change to the Previous Rule

Previous provisions on release gratuities in section 571.21(e) specified that with the exception of aliens serving 60 days or less in contract facilities, each alien released to immigration authorities is to have $10 cash.

Under this final rule, aliens released for the purpose of deportation, exclusion, or removal will not receive a $10 gratuity. Because these inmates are to become the responsibility of the Bureau of Citizenship and Immigration Services (BCIS), it is not appropriate for the Bureau to provide a $10 gratuity.

We estimate that approximately 8.5% of the total inmate population of the Federal Bureau of Prisons will be affected by this rule.

Public Comment and Bureau Response

We received five comments on the proposed rule. One commenter supported the rule, indicating that it would reduce cost to the Bureau.

Two commenters expressed concern that when aliens are released to the Immigration and Naturalization Service (INS, now the Bureau of Citizenship and Immigration Services [BCIS]), they may not necessarily be released for the purposes of exclusion, deportation or removal, and therefore still need a $10 gratuity. One commenter was concerned that aliens may be ''wrongly classified'' by the Bureau as being excludable, deportable, or removable, a decision which, the commenter said, cannot be made without ''a hearing before an Immigration judge.''

The Bureau's policies regarding release of aliens to the INS (BCIS) for exclusion, deportation, or removal can be found in the Bureau's Program Statement on the Institution Hearing Program (PS 5111.01), accessible on the internet at *www.bop.gov* or through the Freedom of Information Act process. This describes the process for identifying aliens for release to the INS (BCIS) for purposes of exclusion, deportation or removal. The Bureau, INS (BCIS) and the Executive Office for Immigration Review (EOIR) jointly developed the Institution Hearing Program (IHP) to ensure that deportation proceedings begin as quickly as possible after an alien inmate's conviction and finish before the alien inmate's release date.

IHP hearing sites are specific institutions where alien inmates

participate in immigration hearings conducted by the INS (BCIS) and EOIR. After INS (BCIS) and EOIR make a decision to exclude, deport or remove an alien, the alien is transferred to an IHP release site close to deportation locations, where alien inmates remain until their sentences expire. The INS (BCIS) and EOIR, not the Bureau, make the decision regarding an alien's status. Therefore, there is no way that the Bureau can ''wrongly classify'' an alien, as the commenter feared.

One commenter cited the preamble to the original rule, published in 1979 (44 FR 38236), which stated that the purpose of the gratuity is to ensure that the alien has money to care for him-/herself in the community until he/she receives an income. The commenter suggested that eliminating this gratuity would be contrary to the purpose of providing the funds—for transportation and communicating with family or legal counsel.

Since aliens who had received the $10 gratuity were not released to the community, but instead to INS (BCIS), they would have no need of support pending their ability to earn an income. Instead, they are released into the custody of INS (BCIS), who is responsible for transporting them, and they can access INS (BCIS) provisions for communicating with family members and legal counsel.

One commenter expressed concern that this rule would not actually reduce cost to the Bureau. According to our recent statistics, in December of 1999, we released approximately 958 INS (BCIS) detainees. Therefore, extrapolating this statistic, we estimate that approximately 11,500 aliens receive this gratuity annually. Therefore, this rule would save the Bureau approximately $115,000 every year. We consider this a significant cost savings for the Bureau.

Finally, we received a letter which we construed to be a comment on the proposed rule, as it raised the subject of release gratuities. However, we found that the commenter, an inmate, did not address the issues raised by the proposed rule, but instead questioned the Bureau's application of 18 U.S.C. 4281, instead of 18 U.S.C. 3624(d), to his situation. Although this comment is not relevant to this final rule, we will briefly address it here.

18 U.S.C. 4281, which was repealed in 1984 (*see* Pub.L. 98–473, Title II, § 218(a)(7), October 12, 1984, 98 Stat. 2027), allowed only a $100 gratuity to prisoners upon release. Its replacement, 18 U.S.C. 3624(d), allows ''an amount of money, not more than $500'' in the Director's discretion. The inmate commented that, on his release, he should receive the $500 described in the latter statute instead of the $100 described in the former statute.

Section 235 of Public Law 98–473 stated that 18 U.S.C. 3624 and other provisions created by that Public Law would ''take effect on the first day of the first calendar month beginning 36 months after the date of enactment [October 12, 1984] and [would] apply only to offenses committed after the taking effect of this chapter.'' The effective date of 18 U.S.C. 3624 is, therefore, November 1, 1987. Because this commenter's offense occurred before November 1, 1987, 18 U.S.C. 3624(d) does not entitle him to a $500 gratuity upon release.

We publish the proposed rule, without change, as a final rule. You may send further comments on this rule by writing to the address noted above. Although we will not formally respond to further comments by publication in the **Federal Register**, we will consider them.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 551 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. Revise the authority citation for 28 CFR part 571 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1–1.10.

■ 2. In § 571.21, revise paragraph (e) to read as follows:

§ 571.21 Procedures.

* * * * *

(e) Staff will ensure that each alien released to immigration authorities for

the purpose of release or transfer to a community corrections center has $10 cash. This provision does not apply to aliens being released for the purpose of deportation, exclusion, or removal, or to aliens detained or serving 60 days or less in contract facilities.

[FR Doc. 03–14379 Filed 6–6–03; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1108–I]

RIN 1120–AB21

Clarifying of Release Gratuities—Release Transportation Regulations to More Closely Conform to Statutory Provisions

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: This document makes a minor clarifying change to the Bureau of Prisons (Bureau) regulations on release gratuities, transportation, and clothing. The amendment will clarify that the Bureau is authorized, upon an inmate's release, to provide transportation to an inmate's place of conviction or his/her legal residence only within the United States, under 18 U.S.C. 3624(d)(3). We intend this clarification to remove the misunderstanding that the Bureau is authorized to provide transportation outside the United States.

DATES: This rule is effective on June 9, 2003. Please send comments on this rulemaking by August 8, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202)307–2105.

SUPPLEMENTARY INFORMATION:

What Change Are We Making?

28 CFR 571.22, the current rule on release gratuities, states in paragraph (c) that ''[t]ransportation will be provided to an inmate's place of conviction, his legal residence within the United States, or to other such place as authorized and approved.''

However, 18 U.S.C. 3624(d)(3) allows only for ''transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.''

This clarification will revise the rule only to the extent that our rule appears to conflict with the Bureau's statutory authority, and to correct any misunderstanding that we may transport inmates outside the United States upon their release.

The new rule text of 28 CFR 571.22(c) correctly states that ''[t]ransportation will be provided to an inmate's place of conviction or legal residence within the United States or its territories.''

Why Are We Making This Change as an Interim Final Rule?

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for ''(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

This rulemaking is exempt from normal notice-and-comment procedures because it is a minor clarification of currently existing Bureau policy. We are modifying our rule to directly mirror the language of the statute authorizing us to transport inmates, upon their release, only to areas within the United States.

Because this change is interpretive in nature, reflects current Bureau policy, and is a minor clarification of current agency procedure and practice, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

The Bureau notes that it published a notice of proposed rulemaking to amend its regulations on release gratuities with respect to deportable aliens (28 CFR 571, subpart C) on October 4, 1999 (64 FR 53872) (BOP 1097).

Although this interim rule (BOP 1108I) amends regulations in the same part of the Code of Federal Regulations as were proposed to be amended by BOP 1097, it makes no changes to what was proposed by BOP 1097.

Where to Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 551 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

■ 2. In § 571.22, revise paragraph (c) to read as follows:

§ 571.22 Release clothing and transportation.

* * * * *

(c) Transportation will be provided to an inmate's place of conviction or to his/her legal residence within the United States or its territories.

[FR Doc. 03–14380 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–018]

RIN 1625–AA09

Drawbridge Operation Regulation; Alabama River at Coy, AL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the existing drawbridge operation regulation for the draw of the railroad swing bridge across the Alabama River at Coy, Wilcox County, Alabama. The change will reduce the advance notification requirement for opening the bridge from 48 hours to 24 hours.

DATES: This rule is effective June 9, 2003.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

The Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Public comment is not necessary since the proposed change reduces the burden to the public and is being made at the request of the drawbridge owner, the only party that could reasonably object to the change.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons stated in the preceding paragraph.

Background and Purpose

The Alabama & Gulf Coast Railway, the owners of the bridge, have requested a modification in the drawbridge operation of the swing bridge across the Alabama River, mile 105.3, at Coy. Presently, the draw of the bridge opens on signal if at least 48-hours notice is given in accordance with 33 CFR 117.101(a). The owner of the bridge has requested a change to allow for the bridge to be opened on signal if at least 24 hours notice is given to lessen the burden on the mariner while still allowing the owner to make reasonable preparations to open the bridge.

The regulation at 33 CFR 117.101(a) currently refers to the bridge as the ''Burlington Northern Santa Fe railroad bridge.'' Due to a change in ownership, the bridge is now called the ''Alabama & Gulf Coast Railway Drawbridge.'' This final rule reflects that name change.

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.

This rule improves service to waterways users and will not have a negative impact on them.

Small Entities

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

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

This rule will have no negative impact on any small entities because the modification to the regulation improves service to the waterway users.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can 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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause 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 32(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule only affects the timing of the advance notice required for operation of an existing drawbridge and will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.101(a) is revised to read as follows:

§ 117.101 Alabama River.

(a) The Alabama & Gulf Coast Railway Drawbridge, mile 105.3, at Coy, shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: May 29, 2003.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–14430 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 117 and 165

[USCG–2003–15330]

Safety Zones, Security Zones and Drawbridge Operation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between January 1, 2003 and March 31, 2003, that were not published in the **Federal Register**. This quarterly notice lists temporary drawbridge operation regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between January 1, 2003 and March 31, 2003.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–15330 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LT Sean Fahey, Office of Regulations and Administrative Law, telephone (202) 267–2830. If you have questions on viewing, or on submitting material to the docket, contact Dorothy

Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, drawbridge operation regulations, security zones, and safety zones. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, drawbridge operation regulations, and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from January 1, 2003, through March 31, 2003, unless otherwise indicated.

Dated: June 3, 2003.

S.B. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT—1ST QUARTER 2003

COTP docket	Location	Type	Effective date
CHARLESTON 03–025	COOPER RIVER, SOUTH CAROLINA	SECURITY ZONE	02/14/2003
CORPUS CHRISTIE 03–001	CORPUS CHRISTIE SHIP CHANNEL, CORPUS CHRISTIE.	SAFETY ZONE	02/14/2003
HOUSTON-GALVESTON 03–001	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	01/12/2003
HOUSTON-GALVESTON 03–002	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	01/13/2003
JACKSONVILLE 03–019	MATANZAS RIVER, ST. AUGUSTINE, FL	SAFETY ZONE	02/21/2003
JACKSONVILLE 03–027	JACKSONVILLE, FL	SECURITY ZONE	02/13/2003
JACKSONVILLE 03–029	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	02/14/2003
JACKSONVILLE 03–030	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	02/17/2003
JACKSONVILLE 03–034	COCOA VILLAGE MARDI GRAS, COCOA, FL	SAFETY ZONE	02/22/2003
JACKSONVILLE 03–040	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	02/23/2003
MIAMI 03–009	BISCAYNE BAY, MIAMI BEACH, FL	SAFETY ZONE	02/03/2003
MIAMI 03–010	BISCAYNE BAY, MIAMI BEACH, FL	SAFETY ZONE	02/05/2003
MIAMI 03–013	LAKE OKEECHOBEE, FL	SAFETY ZONE	02/08/2003
MIAMI 03–020	BUENA VISTA, FL	SAFETY ZONE	02/01/2003
MIAMI 03–023	PORT OF MIAMI, MIAMI, FL	SECURITY ZONE	01/30/2003
MIAMI 03–028	MIAMI BEACH WINTER SPRINTS, MIAMI BEACH, FL.	SAFETY ZONE	03/02/2003
MIAMI 03–033	WEST PALM BEACH, FL	SAFETY ZONE	02/22/2003
MOBILE 03–001	PORT OF MOBILE, MOBILE, AL	SECURITY ZONE	01/07/2003
MOBILE 03–003	PORT OF MOBILE, MOBILE, AL	SECURITY ZONE	01/17/2003
MOBILE 03–004	NICEVILLE, FLORIDA	SAFETY ZONE	02/04/2003
MOBILE 03–005	GULFPORT SHIP CHANNEL, GULFPORT, MS	SAFETY ZONE	02/18/2003
MOBILE 03–006	PACAUGOULA, MS	SAFETY ZONE	03/21/2003
MORGAN CITY 03–002	EUGENE ISLAND SEA BUOY TO M. 199.8	SECURITY ZONE	01/20/2003
NEW ORLEANS 03–001	LWR MISSISSIPPI RIVER, M. 94 TO 96	SAFETY ZONE	01/01/2003
NEW ORLEANS 03–002	LAKE PONTCHARTRAIN, KENNER, LA	SAFETY ZONE	01/01/2003
NEW ORLEANS 03–003	LAKE PONTCHARTRAIN, METAIRIE, LA	SAFETY ZONE	01/01/2003
NEW ORLEANS 03–004	INTRACOASTAL WATERWAY, M. 20 TO 15	SAFETY ZONE	01/31/2003
NEW ORLEANS 03–005	LWR MISSISSIPPI RIVER, M. 93 TO 96	SAFETY ZONE	03/03/2003
NEW ORLEANS 03–006	LOWER MISSISSIPPI, RIVER	SECURITY ZONE	03/20/2003
PADUCAH 03–001	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	01/08/2003
PADUCAH 03–002	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	01/28/2003
PADUCAH 03–005	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	03/19/2003
PADUCAH 03–006	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	03/28/2003
PHILADELPHIA 03–001	DELAWARE BAY AND RIVER	SECURITY ZONE	01/03/2003
PHILADELPHIA 03–002	DELAWARE RIVER, PHILADELPHIA, PA	SECURITY ZONE	01/03/2003
PHILADELPHIA 03–006	SUSQUEHANNA RIVER, YORK, COUNTY, PA	SECURITY ZONE	02/04/2003
PHILADELPHIA 03–008	TACONY PALMYRA BRIDGE, DELAWARE RIVER.	SAFETY ZONE	02/10/2003
PHILADELPHIA 03–009	ICE CONDITIONS, CHESAPEAKE & DELAWARE CANAL.	SAFETY ZONE	01/31/2003
PHILADELPHIA 03–010	CHESAPEAKE & DELAWARE CANAL	SAFETY ZONE	02/04/2003

COTP QUARTERLY REPORT—1ST QUARTER 2003—Continued

COTP docket	Location	Type	Effective date
PHILADELPHIA 03–011	DELAWARE RIVER, SALEM RIVER	SAFETY ZONE	02/10/2003
PHILADELPHIA 03–012	CAPE MAY HARBOR/INLET	SAFETY ZONE	02/10/2003
PHILADELPHIA 03–013	DELAWARE RIVER, PHILADELPHIA, PA	SECURITY ZONE	03/31/2003
PITTSBURGH 02–019	OHIO RIVER, M. 119 TO 119.8	SECURITY ZONE	03/15/2003
PITTSBURGH 03–001	ALLEGHENY RIVER, M. 0.3 TO 0.7	SAFETY ZONE	01/21/2003
PORT ARTHUR 03–001	SABINE-NECHES CANAL, PORT ARTHUR, TX	SAFETY ZONE	03/02/2003
SAN DIEGO 03–001	SAN DIEGO BAY, CA	SAFETY ZONE	01/25/2003
SAN FRANCISCO BAY 03–001	OAKLAND ESTUARY, CALIFORNIA	SAFETY ZONE	01/25/2003
SAN JUAN 03–026	PONCE, PUERTO RICO	SECURITY ZONE	02/11/2003
SAN JUAN 03–052	SAN JUAN, PUERTO RICO	SECURITY ZONE	03/26/2003
SAVANNAH 03–021	SAVANNAH RIVER, SAVANNAH, GA	SECURITY ZONE	01/24/2003
SAVANNAH 03–042	SAVANNAH RIVER, SAVANNAH, GA	SAFETY ZONE	02/27/2003
SAVANNAH 03–050	SAVANNAH RIVER, SAVANNAH, GA	SECURITY ZONE	03/25/2003
TAMPA 03–043	PORT OF TAMPA, TAMPA FLORIDA	SECURITY ZONE	03/09/2003
05–03–002	PORT OF HAMPTON ROADS, VIRGINIA	SECURITY ZONE	01/13/2003
05–03–004	BOGUE SOUND, MOREHEAD CITY, NC	SECURITY ZONE	01/19/2003
05–03–005	CAPE FEAR RIVER, WILMINGTON, NC	SECURITY ZONE	01/20/2003
05–03–006	CAPE FEAR RIVER, BRUNSWICK COUNTY, NC	SECURITY ZONE	01/21/2003
05–03–009	ELIZABETH RIVER, VA	SECURITY ZONE	01/29/2003
05–03–011	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	02/02/2003
05–03–014	HAMPTON ROADS, JAMES RIVER, VA	SAFETY ZONE	02/01/2003
05–03–015	CHESAPEAKE AND DELAWARE CANAL, MARYLAND.	SAFETY ZONE	01/31/2003
05–03–020	CHESAPEAKE AND DELAWARE CANAL, MARYLAND.	SAFETY ZONE	02/04/2003
05–03–021	ELIZABETH RIVER, PORT OF HAMPTONS ROADS, VA.	SECURITY ZONE	02/06/2003
05–03–024	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	02/15/2003
05–03–025	PORT OF HAMPTON ROADS, VIRGINIA	SECURITY ZONE	02/15/2003
05–03–026	HAMPTON ROADS, JAMES RIVER, VA	SECURITY ZONE	02/17/2003
05–03–027	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	02/21/2003
05–03–028	ELIZABETH RIVER, PORT OF HAMPTON ROADS, VA.	SECURITY ZONE	02/23/2003
05–03–033	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	03/12/2003
07–02–151	MIAMI RIVER, MIAMI–DADE COUNTY	DRAWBRIDGE OPERATION	02/02/2003
09–03–200	CHICAGO RIVER, CHICAGO, IL	SECURITY ZONE	01/07/2003
09–03–201	PORT CHICAGO ZONE, LAKE MICHIGAN	SECURITY ZONE	01/07/2003
13–03–006	PUGET SOUND, WA	SECURITY ZONE	02/23/2003

[FR Doc. 03–14429 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Huntington–03–001]

RIN 1625–AA00

Safety Zone; Ohio River Miles 171.5 to 172.5, Marietta, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 171.5 and ending at mile 172.5, extending the entire width of the river. This safety zone is needed to provide for the safety of participating vessels and mariners during the Marietta River Roar, tunnel boat races. All vessels and persons are prohibited from transiting within this safety zone, except for participating vessels and mariners, unless authorized by the Captain of the Port Huntington or a designated representative.

DATES: This rule is effective from 10 a.m. on July 4 until 7 p.m. on July 5, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Huntington-03–001) and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Ave., Huntington, WV, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for not making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date would be contrary to public interest since immediate action is needed to provide for the safety of participating vessels and mariners.

Background and Purpose

The Captain of the Port Huntington is establishing a safety zone from miles 171.5 to 172.5 on the Ohio River extending the entire width of the river. This safety zone is necessary to ensure the safety of participating vessels and mariners during the Marietta River Roar tunnel boat races. Participating vessels are vessels registered with event officials to race or work in the Marietta

River Roar, and include race boats, rescue boats, tow boats and picket boats associated with the race. With the exception of participating vessels of the Marietta River Roar, all other vessels and persons are prohibited from transiting within this safety zone between 10 a.m. and 7 p.m. each day unless authorized by the Captain of the Port Huntington or a designated representative.

Regulatory Evaluation

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

This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit portions of the Ohio River from miles 171.5 to 172.5, from 10 a.m. on July 4 until 7 p.m. on July 5, 2003, and will only be enforced from 10 a.m. to 7 p.m. each day. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will be enforced for only a short period of time, and there will be breaks provided every three hours during the races. During those breaks the waterway will be cleared and traffic will be allowed to pass through the zone. Notification of the safety zone and the break periods will be made to the marine community by broadcast notice to mariners and event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact PO William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so 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. 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 analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant

environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

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, 6.04–6 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 10 a.m. on July 4, 2003 until 7 p.m. on July 5, 2003 add a new temporary § 165.T08–050 to read as follows:

§ 165.T08–050 Safety Zone; Ohio River Miles 171.5 to 172.5 Marietta, OH.

(a) *Definition. Participating Vessels* are vessels registered with event officials to race or work in the Marietta River Roar, and include race boats, rescue boats, tow boats and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: the waters of the Ohio River from miles 171.5 to 172.5, extending the entire width of the river.

(c) *Periods of enforcement.* This section will be enforced from 10 a.m. to 7 p.m. on July 4 and July 5, 2003. The Captain of the Port Huntington or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or a designated representative.

(2) Participating vessels are authorized entry within the zone.

(3) Persons or vessels other than participating vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or a designated representative. They may be contacted via VHF–FM Channel 13 or 16 or by telephone at (304) 529–5524.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 14, 2003.

S.M. Wischmann,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Huntington.

[FR Doc. 03–14431 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Huntington–03–002]

RIN 1625–AA00

Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 355.5 and ending at mile 356.5, extending the entire width of the river. This safety zone is needed to provide for the safety of participating vessels and mariners during the Portsmouth Power Boat Races. All vessels and persons, except for participating vessels, are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Huntington or a designated representative.

DATES: This rule is effective from 10 a.m. on July 19 until 7 p.m. on July 20, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (COTP Huntington–03–002) and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Ave., Huntington, WV, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to provide for the safety of participating vessels and mariners.

Background and Purpose

The Captain of the Port Huntington is establishing a safety zone from miles 355.5 to 356.5 on the Ohio River, extending the entire width of the river. This safety zone is necessary to ensure the safety of participating vessels and mariners during the Portsmouth Power Boat Races. Participating vessels are vessels registered with event officials to race or work in the Portsmouth Power Boat Races, and include race boats, rescue boats, tow boats and picket boats associated with the race. With the exception of participating vessels of the Portsmouth Power Boat Races, all other vessels are prohibited from transiting within this safety zone between 10 a.m. and 7 p.m. each day unless authorized by the Captain of the Port Huntington or a designated representative.

Regulatory Evaluation

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

This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit portions of the Ohio River from miles 355.5 to 356.5, from 10 a.m. on July 19 until 7 p.m. on July 20, 2003, and will only be enforced from 10 a.m. to 7 p.m. each day. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This regulation will be enforced for only a short period of time, and there will be breaks provided every three hours during the races. During those breaks the waterway will be cleared and traffic will be allowed to pass through the zone. Notification of the safety zone and the break periods will be made to the marine community by broadcast notice to mariners and event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact PO William Reeves, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

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. 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 analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

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; 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 10 a.m. on July 19, 2003 through 7 p.m. on July 20, 2003 add a new temporary § 165.T08–051 to read as follows:

§ 165.T08–051 Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, OH.

(a) *Definition. Participating Vessels* are vessels registered with event officials to race or work in the Portsmouth Power Boat Races, and include race boats, rescue boats, tow boats and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: The waters of the Ohio

River from miles 355.5 to 356.5, extending the entire width of the river.

(c) *Periods of enforcement.* This section will be enforced from 10 a.m. to 7 p.m. on July 19 and July 20, 2003. The Captain of the Port Huntington or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or a designated representative.

(2) Participating vessels are authorized entry within the zone.

(3) Persons or vessels other than participating vessels and mariners requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington or a designated representative. They may be contacted via VHF–FM Channel 13 or 16 or by telephone at (304) 529–5524.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 14, 2003.

S.M. Wischmann,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Huntington.

[FR Doc. 03–14432 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

36 CFR Part 230, Subpart C

RIN 0596–AB95

Forest Land Enhancement Program

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department is adopting an interim final rule to establish a new subpart C in part 230 of Title 36 Code of the Federal Regulations that sets forth procedures for administration of the new Forest Land Enhancement Program (FLEP), which was authorized in the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). The intended effect of this interim final rule is to encourage the long-term sustainability of nonindustrial private forest (NIPF) lands in the United States by assisting landowners, through State foresters, in more actively managing their forest lands and related resources through the use of State, Federal, and private sector resource management expertise, financial assistance, and educational programs. Public comment is invited and will be considered in the development of the final rule. The Forest Service specifically invites public comment on the process for distributing FLEP funds, including the national allocation factors.

DATES: This interim final rule is effective June 9, 2003. Comments must be received by August 8, 2003.

ADDRESSES: Send written comments to Hal E. Brockman, USDA Forest Service, Cooperative Forestry, Mail Stop Code 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123; via electronic mail to *hbrockman@fs.fed.us;* or via facsimile to FLEP Rule Comments at (202) 205–1271. The agency cannot confirm receipt of comments. A toll free number is available, 1–866–585–8540, for callers to record voice mail messages (up to 3 minutes long) with their comments on the interim final rule. This toll free number will be active 24 hours a day during the comment period. Public comments submitted by voice mail will be transcribed for the public record.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim final rule during regular business hours at the office of the Cooperative Forestry Staff, 4th Floor SE., Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–1389 to facilitate entry into the building.

A copy of the Farm Security and Rural Investment Act of 2002, secs. 8001 and 8002, which established the Forest Land Enhancement Program, and other information on this program can be found at *http://www.fs.fed.us/spf/coop/flep.htm.*

FOR FURTHER INFORMATION CONTACT: Hal Brockman, Forest Service, Cooperative Forestry, (202) 205–1694.

SUPPLEMENTARY INFORMATION:

Background

Through the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), which amended the Cooperative Forestry Assistance Act (16 U.S.C. 2101, *et seq.*), Congress established the Forest Land Enhancement Program (hereafter, FLEP). In establishing this program, Congress recognized the public benefits of sustainable forest management to enhance the productivity of timber, fish and wildlife habitat, soil and water quality, wetlands, recreational resources, and aesthetic values; and the need to establish a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land. To accomplish this purpose, Congress has authorized the use of $100 million dollars of Commodity Credit Corporation funds to implement FLEP through September 30, 2007. These FLEP funds are available for use by all 50 United States, Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa.

The Stewardship Incentive Program (SIP), managed by the USDA Forest Service (Forest Service), and the Forestry Incentives Program (FIP), managed by the Natural Resource Conservation Service, were repealed in the 2002 Farm Bill. SIP was initiated in the 1990 Farm Bill and allowed for cost-sharing a wide range of multiple resource management practices. FIP was initiated in 1975 and allowed for cost-sharing timber stand improvement, site preparation for natural regeneration and tree planting practices. The regulation for SIP at 36 CFR part 230, subpart A, will be removed at a later date but is currently needed for administration of SIP until the remaining funds have been expended.

FLEP will continue with the work that has been completed by SIP and FIP and include the options of providing technical and educational assistance. FLEP encompasses all of the cost-share practices authorized under both SIP and FIP. Since 1975, through FIP there has been almost 4 million acres of trees planted, about 1.5 million acres of improving a stand of forest trees, and about 51,000 acres of site preparation for natural regeneration. Since 1990, through SIP there has been almost 4.5 million acres of a variety of practices completed by more than 45,000 participants. These practices include cost-share for the development of forest stewardship plans on more than 2 million acres for almost 11,000 participants. The primary practices undertaken with SIP funds other than plan development, in order of acres completed are: Forest improvement; reforestation and afforestation; wildlife habitat enhancement; soil and water protection and improvement; agroforestry establishment, maintenance or renovation; riparian and wetland

protection and improvement; forest recreation enhancement; and fisheries habitat enhancement.

FLEP is intended to promote sustainable forest management on nonindustrial private forest land and to complement other sustainable forestry programs in the States. FLEP establishes or supplements existing nonindustrial private forest land programs to provide technical, educational, and financial assistance to landowners. The implementation of this new program demonstrates the commitment of the Secretary of Agriculture to sustainable forest management.

FLEP will be administered by the Chief of the Forest Service through the Responsible Officials, in partnership with State forestry agencies. The State Foresters will develop and carry out FLEP in collaboration with their State Forest Stewardship Coordinating Committees, based on the authorizing legislation, this interim final rule, and the State's priority plan.

For reasons of simplicity and efficiency, the distribution of funds from the Chief is based on factors and criteria applied to three geographic areas of the United States: Northeast, South, and West. The Northeast distribution area includes the Forest Service State and Private Forestry Northeastern Area, which comprises the 20 States in Region 9. The Southern distribution area includes the 13 States in Forest Service Region 8, and the International Institute for Tropical Forestry in Puerto Rico, and the U.S. Virgin Islands. The Western distribution area includes the 17 States in Forest Service Regions 1, 2, 3, 4, 5, 6, and 10; and the Territories of Guam, CNMI, and American Samoa. In accordance with section 230.32 of this interim final rule, the Responsible Officials in the three geographic fund distribution areas will use the criteria set out in the Forest Service Directives Manual Chapter 3310 to make the final allocation to each State. The State will be responsible for reimbursing individuals and third parties. A general description of the criteria is provided in the section-by-section explanation for section 230.32.

The Forest Service has received input from several Federal and State agencies, numerous conservation organizations, institutions of higher learning, and individuals relative to the development of program policy, activities, elements, and procedures for FLEP. These include Forest Service field units, the Cooperative State Research Education and Extension Service, the Farm Service Agency, and the Natural Resources Conservation Service within the U.S. Department of Agriculture; State forestry agencies; the International Association of Fish and Wildlife agencies; Indian Tribes; and others.

Section-by-Section Explanation of the Interim Final Rule at 36 CFR Part 230, Subpart C (New)

Section 230.30—Purpose and scope. Paragraphs (a) and (b) of this section discuss the purpose and scope of FLEP which is to provide a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land. Paragraph (b) explains that the components of FLEP complement existing Federal or State programs, along with programs offered by institutions of higher learning.

Paragraph (c) explains that participation in FLEP is voluntary. However, in order to participate, each State must have nonindustrial private forest lands, a State Forester or equivalent, and a State Forest Stewardship Coordinating Committee.

Section 230.31—Definitions. This section sets out definitions for the following terms as they are used in FLEP: Capital investment or improvement, Catastrophic natural event, Chief, Committee, Concurrence, Cost-Share, Financial assistance, Fiscal year, Landowner, Management plan, Nonindustrial private forest land, Practice, Practice plan, Responsible Official, Service representative, State, State Forester, and State priority plan. The following definitions have not been used in previous programs: Capital investment or improvement, Catastrophic natural event, Concurrence, Cost-share, Financial assistance, Management plan, Practice plan, Responsible Official, Service representative and State priority plan. These definitions are a result of some of the differences between FLEP and previous program.

Section 230.32—National program administration. This section outlines how FLEP is administered at the National level and how FLEP funds will be distributed from the National level to the State level. The Chief will implement FLEP in partnership with State forestry agencies and in consultation with a wide range of Federal, State, and local natural resource agencies, and institutions of higher learning and with a broad range of private sector interests. The Chief, working with the State Foresters, will develop and oversee FLEP policy and monitor implementation over the life of the program.

The Chief will distribute the funds to each of the three geographic funding areas. This shall be based on the national allocation factors, which are set out in the Forest Service Manual Chapter 3310. A notice of issuance of an interim directive has been published elsewhere in this part of today's **Federal Register.** Forest Service Directives are available electronically at *http://www.fs.fed.us/im/directives.* The Responsible Official determines the allocation amount for each State.

Allocation factors to the three geographic areas are determined in consultation with the State Foresters who serve on the Forest Resource Management Committee. The Forest Resource Management Committee is a standing committee of the National Association of State Foresters, comprised of nine State Foresters, three from each of the three geographic funding areas. Current criteria used at the National level for determining funds distribution to the three geographic areas for FY 2003 are:

(1) Acres of NIPF lands,

(2) Number of NIPF landowners that own 1 acre or more,

(3) 10% of the acres of highly erodable lands,

(4) Number of owners of those highly erodable lands, and

(5) Acres of land with a growing capacity greater than 20 cubic feet per year.

The data for these factors are currently available for all States. The Forest Service is gathering data on factors that relate to the priorities for NIPF lands to use in the allocation of funds to the three geographic regions in FY 2004. The additional factors planned for FY 2004 are: areas at risk from forest health concerns for insect and disease; areas at risk from wildfire; loss and fragmentation of the forest land base; and miles of impaired streams, rivers and coastal shoreline along with acres of impaired lake, estuary and wetland areas.

The Responsible Officials in each of the three geographic funding areas shall coordinate with their respective State Foresters to determine the final allocation to each State based on the: National priorities, National allocation factors, regional and State-wide priorities, ability of the State to deliver FLEP as shown in past progress reporting for other Cooperative Forestry programs, and agency direction in the Forest Service Manual Chapter 3310. The national priorities will change with changes in public demand for the uses of forestlands and with the increase in scientific knowledge. As these national priorities change, the Forest Service

Manual Chapter 3310 will be changed. For substantive changes, a notice may be published in the **Federal Register.** Changes in the national priorities will also be available on the Forest Service Web site provided in the **ADDRESSES** section of this preamble.

Section 230.33—Responsible Official program administration. This section outlines how FLEP is administered at the Forest Service Responsible Official level.

Section 230.34—State program administration. This section outlines how FLEP is administered at the State level.

Section 230.35—FLEP elements. There are three major elements of FLEP: education, technical assistance, and financial assistance. States may use a portion of the funds received through FLEP for administrative costs. There are no limits on what portion of FLEP funds may be used for administration. States are not required to participate in all elements of FLEP.

Section 230.36—State priority plan—purpose and scope. State priority plans are a new requirement for FLEP. States should use all existing data and plans, such as the State Forest Stewardship plan, to help create this plan. There are no transitional issues expected from the development of the State priority plan.

Section 230.37—State priority plan—educational assistance. This section addresses the educational assistance component of FLEP in a State priority plan.

Section 230.38—State priority plan—technical assistance. This section addresses the technical assistance component of FLEP in a State priority plan. If a State determines that all or some of its funds will be used for technical assistance, the State priority plan must describe who will provide the assistance, outreach efforts directed at specific groups or categories of landowners, expected long- and short-term outcomes, and method(s) for documenting accomplishments.

Section 230.39—State priority plan—financial assistance. This section addresses the administration of FLEP cost-share financial assistance in the State priority plan.

Section 230.40—Eligible practices for cost-share assistance. Paragraphs (a)(1) through (11) of this section authorize 11 activities and practices for which cost-share funds may be made available to landowners, including: management plan development; afforestation and reforestation; forest stand improvement; agroforestry implementation; water quality improvement and watershed protection; fish and wildlife habitat improvement; forest health and protection; invasive species control; wildfire and catastrophic risk reduction; wildfire and catastrophic event rehabilitation; and special practices (establishment, maintenance, and restoration practices addressing other conservation concerns as proposed by the State Forester and the committee and must have concurrence by the Responsible Official). States may develop policy handbooks to provide further direction regarding these practices and to provide specifications for practice implementation. A practice may consist of one or more components.

Section 230.41—Eligibility requirements for cost-share assistance. All owners of nonindustrial private forest land as defined in section 230.31 of this subpart are eligible to apply directly to the State for cost-share assistance. FLEP funds may be used for the treatment of up to 1,000 acres annually per landowner, and up to 5,000 acres with a waiver by the State Forester and concurrence by the Responsible Official. Although the average size of forest holdings differs considerably among the geographic regions for the country, the majority of nonindustrial private forest landowners own less that 100 acres. The maximum acreage limitation of 1,000 acres therefore adequately allows for broad program participation. The State Forester and Responsible Official will base the approval of treatment of between 1,000 and 5,000 acres on the assessment of significant public benefit. States can use their FLEP funds for treatment of more than 1,000 acres, up to 5,000 acres. The agreement for all FLEP activities is between the State and the landowner.

To be eligible for FLEP, landowners must meet the minimum acreage requirement determined by the State and set out in the State priority plan, which may not exceed 25 acres. The 25-acre maximum limitation ensures that landowners of small properties will be eligible for participation in FLEP. Management plan requirements must be explained in the State priority plan, including minimum requirements. These minimum requirements should include elements such as a map of the property, soils information, and analysis of the current situation of the land and its resources and recommendations for future activities. States will have to determine if existing landowner management plans such as Tree Farm management plans, Forest Stewardship plans, or similar plans meet their current minimum criteria for a management plan.

Section 230.42—Cost-share assistance application and payment procedures. This section describes the cost-share assistance and payment procedures for FLEP. Some of the key points about this process are as follows. Cost-share funds must be available before landowners may make an application for payment. The approval of an application constitutes an agreement between the landowner and the State. The landowner is obligated to complete the practice(s) on a reimbursable basis. When the service representative verifies that the practice has been completed, the landowner shall be reimbursed for the agreed to cost-share amount. Every cost-share practice must have a practice plan approved by the service representative. The requirements of the practice plan may be contained in the management plan and serve as the basis for determining acceptable performance.

Landowners shall be notified in writing upon approval of a FLEP application. The landowner is responsible for obtaining all authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations.

Practices must be completed within 24 months of approval. If a longer period of time is needed, the State Forester may grant an extension, not to exceed 12 months, if this is specified in the State priority plan. The cost-share payment shall be calculated and disbursed to the landowner upon certification of the practice. Landowners must provide access for practice inspection to the service representative.

The maximum aggregate amount of cost-share payment under FLEP shall not exceed $100,000 through 2007, with the exception of Alaska Indian Tribes. The Alaska State Forester, in consultation with the State Forest Stewardship Coordinating Committee and the Responsible Official, determines their limit.

Cost-share payments may not exceed 75 percent of the total cost incurred by the participating landowner. Landowners may utilize non-federal programs or any donated assistance to supplement FLEP funds but the total of all funds shall not exceed 100 percent of the cost of implementing the practice. If the practice results in the immediate sale of forest products, the Federal share of the total cost shall be reduced by the gross revenue.

States may use the cost-share rates as a means to define priorities practices or priority areas. State priorities for cost share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310. The State Forester may develop other priorities in consultation

with the State Forest Stewardship Coordinating Committee.

When a practice fails to meet the minimum specifications due to factors beyond the landowner's control, the State Forester may approve cost-share payments under the following conditions. (1) The landowner repeats the application or establishes additional eligible practices. (2) The landowner establishes a reasonable effort to meet the minimum requirements and the practice as performed adequately meets the objectives of the practice plan. In the case of death or incompetence of any landowner, the State Forester shall approve cost-share payment to the successor in title or other persons or entities in control of the property, if they agree to maintain the practice for the duration of the required maintenance period.

Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on behalf of the State. Claims of agencies of the United States Government are the only ones allowed against any payments to any landowner.

A landowner must have a management plan prior to receiving approval to implement any FLEP practice, except for management plan development. A service representative must approve the plan.

Section 230.43—Cost-share assistance—prohibited practices. This section identifies the cost-share activities that are prohibited in FLEP. These activities include items such as costs incurred before an application is approved and repeated practices. The State Forester has the authority to pre-approve costs incurred prior to an approved application. The State priority plan can describe materials and items that may be purchased before an application is approved. Repeating practices implemented with other Federal, State, or local government programs are prohibited, except where such practices are repeated due to failure of a prior practice without fault of the landowner. Recurring practices as noted in this subpart may be repeated.

Practices that are prohibited include capital investments or capital improvements that are not related to a FLEP practice, such as purchase of land or any interest in land, or any interest in an endowment as provided in 230.32. Also prohibited is the development of or improvement to landowner nursery operations, development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance, or any practice that is not related to the long-term sustainability of nonindustrial private forest lands or agroforestry practices.

Section 230.44—Cost-share assistance—reporting requirement. There are 11 categories for reporting FLEP cost-share practices. They will be reported annually through the Forest Service automated data system. Most categories will be reported in acres treated. FLEP1 will include number of plans developed as well as acres planned. States will only report those categories for which they provide cost-share. Each State shall report these practices to the Responsible Official who will collect a report for their States and provide this information to the Forest Service Washington Office Cooperative Forestry Staff.

Section 230.45—Recapture of cost-share assistance. This section authorizes the recapture of payments to landowners under a range of circumstances including: the use of this program to procure unjust benefits; the action or failure to take action by the landowner or successor that results in the deliberate destruction or impairment of a practice; or the landowners sale, conveyance, or other loss of control of land before the required practice maintenance period has ended and the new landowner does not agree to maintain the practice for the duration of the practice maintenance period.

Section 230.46—Information collection requirements. This section provides the Office of Management and Budget control number assigned to the information collection requirements governing the preparation of a State priority plan, a management plan, practice plan, reporting requirements, and the application requirements of this subpart, as required by the Paperwork Reduction Act of 1995. Notice of this new information collection was published in the **Federal Register** with a request for comment on September 20, 2002 (67 FR 59246). No comments were received. This has been assigned Office of Management and Budget (OMB) control number 0596–0168.

Good Cause Statement

By adoption of this interim final rule, FLEP will be implemented in accordance with the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). This interim final rule ensures consistent and proper use of funds by the agency as well as the State forestry agencies and associated third parties. This rule is being published as an interim final rule to allow for prompt implementation of FLEP. Agency directives providing further guidance on administration of FLEP are issued in Forest Service Directive Manual Chapter 3310. The 2002 Farm Bill repealed the two existing programs, Stewardship Incentive Program (SIP) and Forestry Incentive Program (FIP), which provided assistance to nonindustrial forest land owners. Administration of SIP and FIP will continue on a limited basis only until remaining funds from these programs have been expended. Prompt implementation of FLEP is important to ensure there is no gap in financial assistance to qualified landowners due to the repeal of SIP and FIP. The comments received on this interim final rule during the 60-day comment period following publication in the **Federal Register**, along with experience from the first year of FLEP implementation, will be used to develop a final rule. This interim final rule has also received review by a wide variety of partners and interested parties.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. An analysis has been conducted addressing the costs and benefits associated with promulgating this interim final rule to implement the FLEP authorized by 16 U. S. C. 2101 *et seq.*, as amended (Pub. L. 107–171).

The Forestry Incentives Program (FIP) and the Stewardship Incentives Program (SIP) were both repealed in the 2002 Farm Bill. These programs assisted private forest landowners in managing forestland for multiple benefits. In FY 2002, these two programs were allocated $10 million. Between 1996 and 2002, FIP funding averaged $6.3 million. SIP was allocated $4.5 million in 1997 and 1998, and no Federal funds in 1999, 2000, and 2001. FLEP is authorized to receive up to $100 million through FY 2007.

The primary economic effects of the interim final regulations are an increase in forest health and sustainability due to better management practices on NIPF land, as well as non-monetized benefits such as improved water quality, wildlife habitat, fishing opportunities, carbon sequestration, and enhanced recreation. The costs of the interim final regulation to the Federal treasury will be $100 million over 5 years, as specified in the legislation, or, more than $87 million when discounted at 7% discount rate. The discounted increase in Federal expenditures is estimated at $43 million. The States will administer the program using a portion of these funds. Costs to individual landowners are

voluntary, and consist of at least 25% of the portion of the funds spent on cost sharing. In this analysis, we estimate these costs will increase $6.4 million above the baseline.

Benefits of the interim final regulation above the baseline include cost sharing to improve forest management on more than 382,000 acres. Technical assistance on sustainable forest practices will be provided to more than 2.9 million acres of forestland to improve landowner awareness and understanding of sustainable forestry principles and practices. Qualitative benefits include additional carbon sequestration, improved wildlife habitat, improved soil and water quality, and sustainable forest conditions.

It has been determined that FLEP will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. A maximum total of $100 million will be provided to State Forestry agencies between 2003 and 2007, as directed in the Farm Security and Rural Investment Act of 2002, (Pub. L. 107–171; 16 U.S.C. 2101 *et seq.*). These funds will be used to pay for the technical, education, and financial assistance to nonindustrial private forest landowners to improve the sustainability of these lands and the forest resources. FLEP will complement other Federal, State, and local programs that provide assistance to landowners by making greater resources available to participants.

Finally, as a new program, FLEP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. The program is completely voluntary for each State and is voluntary for any landowner. Those States that choose to implement FLEP must follow requirements in this interim final rule, as would landowners participating in the program.

The Office of Management and Budget (OMB) has designated this interim final rule as significant due to the potential that it may raise novel legal or policy issues. Therefore, this interim final rule is subject to OMB review under Executive Order 12866.

Controlling Paperwork Burdens to the Public

The Office of Management and Budget has reviewed the final information collection package for this rulemaking according to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. The information requirements in this rule have been assigned OMB control number 0596–0168 for use through May 31, 2006. The requirements governing the preparation of a State priority plan, management plan, practice plan, the reporting requirements, and the application requirements of this subpart constitute the minimum information requirements needed to administer FLEP.

Government Paper Work Elimination Act Compliance

The Forest Service is committed to compliance with the Government Paper Work Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis has been completed and reviewed by USDA. The analysis is available for viewing on the Forest Service FLEP Web site: *http://www.fs.fed.us/spf/coop/flep.htm.*

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this interim final rule. Nevertheless, in the event that such a conflict was to be identified, the interim final rule would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this interim final rule; and (2) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Energy Effects

This interim final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this interim final rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this interim final rule guides the development of practices to be applied on nonindustrial private forest lands including practices for energy conservation.

Environmental Impact

This interim final rule deals with the implementation of the FLEP, and as such, has no direct effect on Forest Service decisions for land management activities. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This interim final rule is limited to establishment of an administrative program within the Forest Service to assist nonindustrial private landowners in the management and conservation of timber and non-timber resources. This interim final rule and the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), which authorizes FLEP, do not permit any takings of private property or provide any funds for such purpose.

Consultation and Coordination With Indian Tribal Governments

This interim final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required. However, a draft of the interim final rule was shared with tribes to collect their input for the development of this interim final rule.

Federalism

The Department has considered this interim final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Department has made a preliminary assessment that the interim final rule conforms with the federalism principles set out in these Executive Orders; would not impose any compliance costs on the States; and would 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. Moreover, there is no requirement on States to match funds in order to participate in FLEP. Based on comments received on this interim final rule, the Department will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 through 1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this interim final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Proper Consideration of Small Entities

This interim final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial assessment on small entities' flexibility has been prepared as part of the cost-benefit analysis and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This interim final rule imposes no additional requirements on the affected public. The principal small businesses expected to be impacted are consultant foresters who may assist State forestry agencies in different phases of FLEP delivery, including technical, educational, and cost-share elements for which they will be fully compensated. The minimum requirements on small entities imposed by this interim final rule are necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

List of Subjects in 36 CFR Part 230

Forest and forest products, Grant programs-natural resources, Intergovernmental relations, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, part 230 of Title 36 of the Code of Federal Regulations is amended by adding a new subpart C as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

■ 1. The authority citation is revised to read as follows:

Authority: 16 U.S.C. 2101 *et seq.*

■ 2. Amend Part 230 by adding a new subpart C to read as follows:

Subpart C—Forest Land Enhancement Program

Sec.

230.30 Purpose and scope.
230.31 Definitions.
230.32 National program administration.
230.33 Responsible official program administration.
230.34 State program administration.
230.35 FLEP elements.
230.36 State priority plan—purpose and scope.
230.37 State priority plan—educational assistance component.
230.38 State priority plan—technical assistance.
230.39 State priority plan—financial assistance component.
230.40 Eligible practices for cost-share assistance.
230.41 Eligibility requirements for cost-share assistance.
230.42 Cost-share assistance—application and payment procedures.
230.43 Cost-share assistance—prohibited practices.
230.44 Cost-share assistance—reporting requirement.
230.45 Recapture of cost-share assistance.
230.46 Information collection requirements.

§ 230.30 Purpose and scope.

(a) The regulations in this subpart govern the operation of the Forest Land Enhancement Program (hereafter, FLEP) as provided in Section 4 of the Cooperative Forestry Assistance Act (16 U.S.C. 2101 *et seq.*), as amended by title VIII of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The purpose of FLEP is to provide a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land.

(b) The educational assistance, resource management expertise, and financial assistance provided under FLEP shall complement any existing Federal or State programs or programs offered through institutions of higher learning providing assistance to nonindustrial private forest landowners. FLEP promotes improved coordination and cooperation among Federal, State, and local programs regarding the establishment, maintenance, enhancement, and restoration of nonindustrial private forestlands.

(c) Participation in FLEP is voluntary on the part of both the State and the nonindustrial forest landowner. To participate, each State must have nonindustrial private forest lands, a State Forester or equivalent, and a State Forest Stewardship Coordinating Committee.

§ 230.31 Definitions.

The terms used in this subpart are defined as follows:

Capital investment or improvement. Durable equipment or assets capable of being amortized or depreciated over a period of 3 or more years, not including activities or practices carried out as part of the Forest Land Enhancement Program (FLEP) cost-share element.

Catastrophic natural event. Destructive natural event, which includes, but is not limited to, wildfires, insect infestations, disease outbreaks, droughts, floods, windstorms, freezing, ice storms, hail, sleet, mudslides, landslides, earthquakes, avalanches, tornadoes, volcanoes, hurricanes, or tsunamis.

Chief. The Chief of the Forest Service, United States Department of Agriculture.

Committee. The State Forest Stewardship Coordinating Committee.

Concurrence. Review, verification, and confirmation by the Responsible Official that the State priority plan contains all of the key elements required by law and the rules of this subpart.

Cost-share. A program payment, on a reimbursable basis, at a maximum of 75 percent of the cost incurred by a landowner for implementation of a State-approved activity or practice authorized under FLEP.

Financial assistance. Funds disbursed as an award by the Federal Government to an eligible party from the FLEP annual apportionment, in the form of money, including grants, agreements, contracts, and other arrangements.

Fiscal year. The accounting period, used by the United States Government, from October 1 through September 30.

Landowner. An individual, group, association, corporation, Indian Tribe, or other legal private entity owning nonindustrial private forest land or a person who receives concurrence from the landowner for practice implementation and who holds a lease on the land for a minimum of 10 years. Corporations whose stocks are publicly traded or owners principally engaged in the primary processing of raw wood products are excluded.

Management plan. A written plan prepared by a service representative and approved by a State Forester.

Nonindustrial private forest land. Rural lands with existing tree cover, or which are suitable for growing trees, that are owned by any landowner as defined in this section.

Practice. A prescribed, natural resource management activity that is consistent with a practice plan and implemented through FLEP to enhance the multiple resource values and benefits and that results in improved conditions on nonindustrial private forest land. A practice may consist of multiple components.

Practice plan. A plan prepared by a service representative and approved by the State Forester that documents the specific practices that are to occur as a result of a landowner application for cost-share. A practice plan may be a stand-alone document or it may be a part of a management plan.

Responsible official. USDA Forest Service Regional Forester, Area Director, or Institute Director charged with the administration of FLEP.

Service representative. Any person who is recognized by a State Forester as having the knowledge and skills to develop management plans, understanding of the economic and environmental interrelationships of forestry and/or agroforestry resources, and the ability to identify appropriate activities to manage, protect, or enhance such resources. The State Forester designates service representatives as the line officers to perform specified FLEP elements.

State. Includes each of the States in the United States, and the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Forester. The director or other head of a State forestry agency or equivalent State official.

State priority plan. The document required from a State to participate in FLEP. A State Forester jointly prepares this plan with the State Forest Stewardship Coordinating Committee to facilitate long-term sustainability of nonindustrial private forest lands within the State.

§ 230.32 National program administration.

(a) The Chief shall develop and implement FLEP in partnership with State forestry agencies and in consultation with other Federal, State, and local natural resource management agencies, institutions of higher learning, and a broad range of private sector interests.

(b) In collaboration with State Foresters, the Chief of the Forest Service and Responsible Officials shall oversee developing and implementing FLEP policy and procedure, including the monitoring of program results over the life of FLEP to ensure that environmental, economic, and social values and public benefits are derived from the program.

(c) The Chief shall annually distribute such funds as may be available for FLEP to the Responsible Official(s) for each of the three geographic funding areas based on the criteria set out in the Forest Service Manual Chapter 3310.

(d) In developing allocation factors for making FLEP distributions under this subpart,

(1) The Chief shall consult with the State Foresters through their Forest Resource Management Committee, a standing committee of the National Association of State Foresters, or its successor.

(2) Allocation factors shall be based on National data sources that address the current status of forest lands of each State or Territory participating in FLEP. Data must be measurable, inclusive of all States, objective, and reliable. The data will address those factors described in the Cooperative Forestry Assistance Act (16 U.S.C. 2103(i), Distribution of Cost-Share Funds).

(e) National priorities for FLEP shall reflect the Department and Forest Service priorities for nonindustrial private forest land as provided in the Forest Service Manual Chapter 3310.

(f) The Responsible Official(s) in each of the three geographic funding areas shall coordinate with their respective State Foresters to determine the final allocation to each State based on the following:

(1) National priorities;

(2) National allocation factors;

(3) Regional and State-wide priorities;

(4) Ability of the State to deliver FLEP; and

(5) Direction in the Forest Service Manual Chapter 3310.

(g) FLEP financial assistance may be disbursed to a third party that will assist in program delivery. The Forest Service may disburse funds directly to a third party, which may include, but is not limited to, Federal, State, or local agencies, and landowner, nonprofit, or private organizations, with written approval by the State Forester.

(h) Except as provided at § 230.34(d), no financial assistance shall be provided by the Forest Service to a State Forester or any third party, until the Responsible Official has concurred with the State's priority plan.

(i) The Chief has final authority to resolve all issues that may arise in the administration of FLEP.

(j) The Forest Service shall provide National and regional administrative and financial support and oversight through distribution of available FLEP funds to State Foresters and through monitoring, review, and evaluation of FLEP activities and accomplishments.

(k) FLEP funds may not be used by States for capital investments or capital improvements unless specifically authorized in a funding document and must be limited to $5,000. The limitation on capital improvements excludes practices and activities cost-shared with landowners through FLEP.

(l) Funds may not be authorized in the financial assistance document or used for the purchase of land, any interest in land, or any interest in an endowment.

(m) By September 30, 2006, the Chief must submit a cumulative report to the Secretary of Agriculture summarizing all the activities and practices funded under FLEP as of that date.

§ 230.33 Responsible Official program administration.

(a) The Responsible Official shall review and provide concurrence with State priority plans, including any revisions of such plans.

(b) The Responsible Official shall provide oversight for all aspects of FLEP, including program reviews and shall ensure that the Forest Service is represented on each State Forest Stewardship Coordinating Committee.

(c) The Responsible Official shall disburse funds to the State Forester or their designated third parties in a timely manner.

(d) The Responsible Official shall determine the final funds distribution to States.

(e) The funds will be distributed to individual States based on criteria in § 230.32 (f).

(f) Policy in the Forest Service Manual Chapter 3310 will provide additional direction for funding distribution.

(g) The Responsible Official must submit an annual report to the Chief summarizing all activities and practices funded through FLEP for the previous fiscal year.

(h) By September 1, 2006, the Responsible Official must submit a cumulative report to the Chief summarizing all activities and practices funded through FLEP as of June 1, 2006, along with copies of the reports submitted from the participating States.

§ 230.34 State program administration.

(a) In States electing to participate in FLEP, the State Forester and the State Forest Stewardship Coordinating Committee, established pursuant to section 19(b) of the Cooperative Forestry

Assistance Act, as amended (16 U.S.C. 2101, *et seq.*), shall jointly develop a State priority plan. The plan must be submitted to the appropriate Responsible Official for review and concurrence.

(b) The State Forester shall develop, implement and administer FLEP consistent with the State priority plan. The State Forester must ensure that all activities are carried out properly and that all cost-shared practices meet the appropriate standards and specifications.

(c) No match of funds is required from the State for participation in FLEP.

(d) In order to facilitate development of FLEP any State may request up to $50,000 of the first-year allocation in advance of Forest Service concurrence with a State priority plan.

(e) Each State participating in FLEP shall submit an annual report to the respective Responsible Official, reporting all activities and practices funded through FLEP for the previous fiscal year. The report shall contain data on accomplishments by educational assistance, technical assistance, and cost-share assistance based on State objectives and measurable outcomes included in State priority plans.

(f) By July 15, 2006, the State Forester of each State participating in FLEP must submit to the respective Responsible Official a summary report of all State activities and practices funded through FLEP as of June 1, 2006.

§ 230.35 FLEP elements.

(a) States may use FLEP funds to assist landowners in managing their nonindustrial private forest lands and related resources through the following elements:

(1) Development and implementation of educational programs;

(2) Resource management expertise and technical assistance; and

(3) Financial assistance through cost-share programs.

(b) All participating States may use a portion of allocated funds for FLEP administration costs.

(c) States do not have to participate in all FLEP elements.

§ 230.36 State priority plan—purpose and scope.

(a) The State priority plan shall be used to guide FLEP implementation in each participating State through fiscal year 2007 and can be revised as needed.

(b) The State priority plan must describe the various roles and responsibilities of the State Forester, State Forest Stewardship Coordinating Committee, and other agencies and organizations in FLEP planning, delivery, and accountability to the program objectives.

(c) The State priority plan must contain the following:

(1) Data from standard forest inventory and analysis reports on the forest resources found within the State;

(2) A description of concerns, issues, problems and threats related to resource management for all nonindustrial private forest and agroforestry resources;

(3) Identification of the desired objectives and environmental, economic, and social values and public benefits to be derived from FLEP;

(4) An explanation of how FLEP funds are to be used to complement efforts of sustainable forestry management already in place within the State;

(5) A rationale for, and a proposed distribution of, funds for the FLEP elements listed at section 230.35 that the State plans to implement; and

(6) A description of the public participation process used in the development of the plan, including outreach efforts to landowners with limited resources.

(d) If an existing State Forest Stewardship plan, as described at section 19(b)(3) of the Cooperative Forestry Assistance Act (16 U.S.C. 2101, *et seq.*), adequately addresses some or all of the required information, it may be incorporated into the State priority plan by reference.

(e) The State priority plan must also outline the State FLEP priorities, policies, and procedures that will be implemented to encourage landowners to practice sustainable management and to actively conserve and enhance their forest resources.

(f) Each FLEP element described in the State priority plan must clearly state objectives and measurable outcomes to be achieved.

(g) All activities performed using FLEP funds must be consistent with the purpose of the program.

§ 230.37 State priority plan—educational assistance.

(a) Educational assistance includes development and delivery of:

(1) Activities;

(2) Events;

(3) Programs;

(4) Curriculum;

(5) Written materials;

(6) Workshops;

(7) Training sessions;

(8) Web site construction and maintenance; or

(9) Similar activities designed to bring landowners to an informed decision point and accelerate adoption of sustainable forest practices in a State.

(b) If a State determines that all or some of its funds will be used for education, the State priority plan must describe the types of activities that will be covered, participating entities, expected outcomes, and method(s) that will be used for documenting and evaluating accomplishments.

§ 230.38 State priority plan—technical assistance.

(a) Technical assistance includes, but is not limited to:

(1) Agreements with other agencies, institutions of higher education, natural resource consultants, or private organizations to augment or complement existing services of a State Forestry agency;

(2) Grants, agreements, contracts or other arrangements to provide services to landowners not offered by a State;

(3) Support of existing technical assistance delivery by State forestry agencies or development of such technical assistance;

(4) The development or application of new tools or technology for servicing landowners; or

(5) Similar undertakings.

(b) If a State determines that all or some of its funds will be used for technical assistance, the State priority plan shall describe:

(1) Who will provide the assistance;

(2) Outreach efforts directed at specific groups or categories of landowners;

(3) Expected long- and short-term outcomes; and

(4) Method(s) for documenting accomplishments.

§ 230.39 State priority plan—financial assistance.

(a) Cost-share financial assistance includes a wide range of activities and practices developed by a State Forester, in cooperation with the State Forest Stewardship Coordinating Committee.

(b) A State does not have to adopt a separate FLEP cost-share program if a State cost-share program already exists that meets the objectives of FLEP. However, FLEP funds must be accounted for in accordance with Federal financial accounting standards. If an existing cost-share program is used, a copy of the guidelines for that program must be referenced and attached to the State priority plan.

(c) If a State determines that all or some of its funds will be placed into a cost-share program, the State priority plan must identify and describe how the cost-share funds will be made available to landowners participating in FLEP and expected outcomes and method(s) for documenting and evaluating accomplishments.

(d) The cost-share section of the State priority plan must include all of the following information:

(1) Describe any land ownership or annual acreage eligibility limitation under FLEP that is more restrictive than that established by the authorizing statute;

(2) Describe any limitations for cost-share of management plans;

(3) Define what constitutes a management plan if a State chooses to adopt more restrictive requirements than those established in this subpart; and

(4) Identify aggregate payment limitations to any one landowner receiving cost-share funds through FLEP.

(e) The State priority plan must also describe how funds identified for cost-share with landowners will be distributed and how cost-share rates are determined and established for each practice.

(f) The State priority plan must describe the application and payment process for landowners interested in participating in and receiving cost-share through FLEP (§ 230.42).

(g) The State priority plan must also address the following steps related to financial assistance:

(1) Application procedure;

(2) Approval process;

(3) Performance period;

(4) Cancellation of approvals;

(5) Certification of performance;

(6) Payment;

(7) Maintenance and compliance;

(8) Procedure for recapture of funds for non-compliance; and

(9) Appeals procedures.

§ 230.40 Eligible practices for cost-share assistance.

(a) The State priority plan must document and describe which of the following eleven categories will be made available to landowners for cost-share funding:

(1) *Management Plan Development*—Development or revision of a management plan that must meet the minimum standards of a Forest Stewardship Plan (16 U.S.C. 2103a(f)(i)). The plan applies to those portions of the landowner's property on which any practice or activity funded under FLEP shall be carried out, as well as any property of the owner that may be affected by the activity or practice. Management plans are not subject to any acreage limits, and therefore cost-sharing such a plan under FLEP is exempt from the 1,000-acre (or 5,000-acre) limit unless restricted as described in the State priority plan.

(2) *Afforestation and Reforestation*—Site preparation, planting, seeding, or other practices to encourage natural regeneration or to ensure forest establishment and carbon sequestration.

(3) *Forest Stand Improvement*—Practices to enhance growth and quality of wood fiber, special forest products, and carbon sequestration.

(4) *Agroforestry Implementation*—Establishment, maintenance, and renovation of windbreaks, riparian forest buffers, silvopasture, alley cropping, or other agroforestry practices, including purposes for energy conservation and carbon sequestration in conjunction with agriculture, forest, and other land uses.

(5) *Water Quality Improvement and Watershed Protection*—Establishment, maintenance, renovation, and restoration practices, including any necessary design and engineering to improve and protect water quality, riparian areas, and forest wetlands and watersheds.

(6) *Fish and Wildlife Habitat Improvement*—Establishment, maintenance, and restoration practices to create, protect, or improve fish and wildlife habitat, including any necessary design and engineering.

(7) *Forest Health and Protection*—Establishment of practices primarily to detect, monitor, assess, protect, improve, or restore forest health, including detection and control of insects, diseases, and animal damage to established stands.

(8) *Invasive Species Control*—Establishment, maintenance and restoration practices primarily to detect, monitor, eradicate, or control the spread of invasive species.

(9) *Wildfire and Catastrophic Risk Reduction*—Establishment of practices primarily to reduce the risk from wildfire and other catastrophic natural events.

(10) *Wildfire and Catastrophic Event Rehabilitation*—Establishment of practices primarily to restore and rehabilitate forests following wildfire and other catastrophic natural events.

(11) *Special Practices*—Establishment, maintenance, and restoration practices addressing other conservation concerns on nonindustrial private forest lands as proposed by the State Forester and the Committee, which must have concurrence by the responsible official.

(b) A practice may consist of one or more components.

§ 230.41 Eligibility requirements for cost-share assistance.

(a) All landowners of nonindustrial private forest land as defined in §230.31 of this subpart, including those who engage in primary processing of raw wood products on a part-time or intermittent basis and who otherwise meet the requirements of this section, are eligible to apply for and receive assistance under FLEP without regard to race, color, religion, national origin, age, sex, disability, political affiliation, sexual orientation, or marital or family status.

(b) A landowner is eligible to receive funds under the cost-share element of FLEP for treatment of not more than a total of 1,000 acres of land annually, except where a State Forester, with the concurrence of a responsible official, determines that significant public benefits would accrue from approval of a landowner's treating up to 5,000 acres annually. In making a determination of significant public benefits, the State Forester and the responsible official shall consider, at a minimum, whether landowners who treat more than 1,000 acres annually can achieve cost-effective resource management objectives without unduly excluding FLEP participation of other eligible landowners.

(c) In order to meet the following minimum requirements to be eligible to receive cost-share through FLEP for all practices except development of a management plan, a landowner must:

(1) Own the minimum acreage as established in the State priority plan; however, in no case shall the minimum acreage requirement be higher than 25 acres;

(2) Agree to conduct land treatment(s) according to the landowner's practice plan and to maintain FLEP practices for a minimum of 10 years, unless the State Forester specifies a shorter duration. The 10-year lifespan does not apply to recurring practices such as prescribed burning, light disking in openings, herbicide application, and other practices that are identified as needed in the management plan and practice plan; and

(3) Have a management plan submitted to the State Forester in which the lands are located that meets any requirements established by the State in its priority plan. Existing landowner management plans such as Tree Farm management plans, Forest Stewardship management plans, or similar plans may either meet, or can be amended to meet this requirement.

(d) A leaseholder who has a long-term lease on the land to be treated through FLEP must provide a copy of the lease to the State Forester in order to be eligible to receive cost-share assistance.

§ 230.42 Cost-share assistance application and payment procedures.

(a) Landowner applications for cost-share payments shall not be approved

unless cost-share funds are available. The obligation of funds upon approval of an application constitutes an agreement by the State and the landowner to cost-share a completed practice on a reimbursable basis when the service representative verifies that the practice has been implemented.

(b) Upon receiving an application for an eligible FLEP practice and making a determination that funds are available, a service representative shall prepare a practice plan that identifies the needed practices, specifications, and performance period for the implementation of the practice(s) to achieve the objectives of the landowner. The requirements of a practice plan may be contained in a management plan. The practice plan is the basis for determining acceptable performance upon completion of the practice.

(c) Upon approval of a FLEP application, the State Forester shall notify the landowner in writing. Such notice shall state that the landowner can begin implementing the approved practice(s) and that funds have been obligated for reimbursement of a specified amount of the total cost. Practice costs incurred before approval are not eligible unless authorized by the State Forester. The notice shall also state that payment shall be made upon the service representative's verification that the practice has been implemented in accordance with the specifications of the practice plan and activities described in the management plan.

(d) Any landowner who carries out practices under FLEP shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations.

(e) To be eligible for cost-share reimbursement payment, a landowner must complete each practice within the performance period specified in the State priority plan, not to exceed 24 months. However, if practice(s) are not completed within the performance period specified, due to conditions beyond the landowner's control, the State Forester may grant an extension for a time period specified in the State priority plan, not to exceed 12 months.

(f) Upon certification by the service representative that a practice has been completed in accordance with the practice plan, the cost-share payment shall be calculated and disbursed to the landowner. Landowners must provide to service representatives the right of access to the landowner's property to inspect practices for the duration of the maintenance period for the practices.

(g) The maximum aggregate amount of cost-share payment under FLEP to any one landowner shall not exceed $100,000 through 2007, with the following exception for Alaska Indian Tribes. The Alaska State Forester, in consultation with the State Forest Stewardship Coordinating Committee and the Responsible Official, shall establish the maximum aggregate payment to any one Alaska Indian Tribe, however, the 1,000- and 5,000-acre limits shall apply.

(h) The State priority plan shall set the levels of cost-share assistance to be paid to landowners, not to exceed 75 percent of the total costs incurred by a participating landowner. Non-Federal program funds and other donated assistance may be used to supplement cost-share through FLEP; however, the total of all funds and assistance shall not exceed 100 percent of the total cost of practice implementation, and the Federal share of the total cost shall be reduced by any gross revenue from any material sold as a result of the cost-share practice.

(i) States may use the cost-share rate to define priority practices and priority areas by reserving the maximum rate of 75 percent of the total costs for the practices and areas having the highest priority.

(j) State priorities for cost-share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310.

(k) Other priorities may be developed by the State Forester in consultation with the State Forest Stewardship Coordinating Committee.

(l) A landowner may receive partial payment, if allowed in the State priority plan, for completed components on the condition that the landowner agrees to complete the remaining components of the practice within the performance period specified in the practice plan.

(m) Where performance actually rendered does not meet the minimum specifications of a practice due to factors beyond the landowner's control, the State Forester may approve cost-share payments under one of the following conditions:

(1) The landowner repeats application of practices previously implemented or establishes additional eligible practices under such terms and conditions as the service representative may require, in which case the State Forester may approve cost-share payments for additional or repeated practices to the extent such measures are needed to meet the objectives of the management plan; or

(2) The landowner establishes, to the satisfaction of the service representative that:

(i) A reasonable effort was made to meet the minimum requirements; and

(ii) The practice, as performed, adequately meets the objectives of the practice plan.

(n) In case of death or incompetence of any landowner, the State Forester shall approve cost-share payments to the successor in title or other persons or entities in control of the landowner property if they agree to maintain the practices for the duration of the required maintenance period.

(o) Any landowner who may be entitled to a cost-share payment under this subpart may assign the right thereto, in whole or in part, under the following terms:

(1) Payments may be assigned only for performance of a FLEP practice;

(2) A payment that is made to a landowner may not be assigned to pay or secure any preexisting debt; and

(3) Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on their behalf, if payment is made to an assignor rather than to an assignee or if payment is made to only one of several assignees.

(p) No financial assistance or portion thereof due and owing to any landowner shall be subject to any claim arising under State or other law by any creditor, except for claims of agencies of the United States Government.

(q) Prior to receiving approval to implement any FLEP practice identified in the State priority plan, except for management plan development, eligible landowners shall have an approved practice plan providing appropriate technical standards concerning the performance of the requested practice(s). A service representative shall approve the plan. In reviewing and approving plans, to the extent deemed applicable by the service representative, existing landowner management plans such as Tree Farm management plans, Forest Stewardship management plans, or similar plans may either meet, or can be amended to meet, the practice plan requirements under FLEP.

§ 230.43 Cost-share assistance—prohibited practices.

(a) Cost-share payments for the following are prohibited:

(1) Costs incurred before an application for cost-share is approved in writing, except:

(i) As pre-approved by the State Forester, or

(ii) The materials and items that may be purchased before approval of the practice as described in the State priority plan;

(2) Repeated practices on the same site within the required maintenance period which have been implemented under any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner or recurring practices as noted in this subpart;

(3) Capital investments or capital improvements not related to FLEP practices, purchase of land or any interest in land, or any interest in an endowment as provided in section 230.32(k) and (l);

(4) Practices associated with the development of or improvement to landowner nursery operations;

(5) Practices associated with the development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance; or

(6) Any practice that is not related to the long-term sustainability of nonindustrial private forest lands or agroforestry activities.

§ 230.44 Cost-share assistance—reporting requirement.

(a) FLEP cost-share accomplishments should be reported using the following standard categories of practices:

(1) FLEP1—Management Plan Development;

(2) FLEP2—Afforestation and Reforestation;

(3) FLEP3—Forest Stand Improvement;

(4) FLEP4—Agroforestry Implementation;

(5) FLEP5—Water Quality Improvement and Watershed Protection;

(6) FLEP6—Fish and Wildlife Habitat Improvement;

(7) FLEP7—Forest Health and Protection;

(8) FLEP8—Invasive Species Control;

(9) FLEP9—Fire and Catastrophic Risk Reduction;

(10) FLEP10—Fire and Catastrophic Event Rehabilitation; and

(11) FLEP11—Special Practices.

(b) All reporting must include activities and accomplishments for each category of FLEP practices.

§ 230.45 Recapture of cost-share assistance.

(a) Payments made to landowners may be recaptured under one or more of the following circumstances:

(1) If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from FLEP. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of FLEP. Financial assistance payments shall be withheld or a refund of all or part of any FLEP payments otherwise due or paid to that person shall be secured.

(2) If any landowner or successor takes any action or fails to take action, which results in the destruction or impairment of a prescribed practice for the duration of the practice. Cost-share payments shall be withheld or a recapture of all or part of any FLEP payments otherwise due or paid shall be secured, based on the extent and effect of destruction and impairment.

(3) If a landowner sells, conveys, or otherwise loses control of the land, except when determined by a State Forester to have been beyond the landowner's control, upon which there is a continuing obligation to maintain a practice, and the new landowner does not agree to assume the responsibility for maintaining the practice. In such cases the landowner who was originally obligated to maintain the practice shall be liable to reimburse the State(s) for all cost-share on such practices.

(b) Nothing in this section requiring the withholding or refunding of financial assistance payments shall preclude any penalty or liability otherwise imposed by law.

(c) Any landowner, successor, or assignee who is dissatisfied with any determination made under FLEP may request reconsideration by the State Forester and, if the matter is not resolved, by the Responsible Official. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for the request. All decisions on reconsideration must be issued in writing.

§ 230.46 Information collection requirements.

The requirements governing the preparation of a State priority plan, management plan, and practice plan, the reporting requirements, and the application requirements of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1995 and have been assigned Office of Management and Budget (OMB) control number 0596–0168.

Dated: May 30, 2003.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 03–14259 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL17

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing rates of educational assistance payable under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance programs to reflect increases required by statutory provisions. These include increases that were effective October 1, 2001, and January 1, 2002, in both programs. For the Montgomery GI Bill—Active Duty program, these also include increases for the fiscal years beginning October 1, 2002, and October 1, 2003, under statutory provisions setting rates that for those two years are not to be adjusted by the Consumer Price Index-W.

DATES: *Effective Date:* This final rule is effective June 9, 2003.

Applicability Dates: The changes in rates are applied to conform to the respective statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn M. Cossette, Education Advisor, Education Service, Veterans Benefit Administration, (202) 273–7294.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3015 (as in effect on October 1, 2001) for Fiscal Year 2002, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty (MGIB) payable to students pursuing a program of education full time were increased effective October 1, 2001, by 3.4%, which is the percentage by which the total of the monthly Consumer Price Index-W (CPI–W) for July 1, 2000, through June 30, 2001, exceeds the total of the monthly CPI–W for July 1, 1999, through June 30, 2000.

In addition, the Veterans Education and Benefits Expansion Act of 2001 (Pub. L. 107–103) increased the monthly rate of MGIB benefits in three steps. The effective date of step one is January 1, 2002. Step two is effective October 1, 2002, for Fiscal Year 2003 and step three is effective October 1, 2003, for Fiscal Year 2004. During Fiscal Years 2003 and 2004, the MGIB rates are not

adjusted by the CPI–W, since this statute removes the authority to adjust by the CPI–W for those two years. CPI–W adjustments will resume October 1, 2004, with the beginning of Fiscal Year 2005. We are changing the regulations governing rates payable under the MGIB to reflect the increase effective October 1, 2001, attributable to the CPI–W and the step increases provided for in Pub. L. 107–103.

It should be noted that these MGIB increases do not affect all educational assistance payable under the MGIB. The increases don't apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (so-called ''kickers''). They don't apply to amounts payable for dependents. Veterans who previously had eligibility under the Veterans' Educational Assistance program (Vietnam Era GI Bill) receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased.

38 U.S.C. 3015(a) and (b) require that the Department of Veterans Affairs (VA) pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the MGIB in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter time have had their payments limited to 50% or less of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter time or less have had their payments limited to 25% or less of the full-time institutional rate. Changes are made consistent with the authority and formula described in this paragraph.

In addition, 38 U.S.C. 3032(c) requires that monthly rates payable to veterans in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, we are changing those regulations to reflect increases effective October 1, 2001, January 1, 2002, October 1, 2002, and October 1, 2003, in accordance with the increase attributable to the CPI–W and the applicable provisions of Pub. L. 107–103.

By statute, the monthly rates of basic educational assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of educational assistance payable under the DEA program for Fiscal Year 2002 (October 1, 2001, through September 30, 2002) are changed to show a 3.4% increase in these rates. The 3.4% increase is based on the percentage by which the total of the monthly CPI–W for July 1, 2000, through June 30, 2001, exceeds the total of the monthly CPI–W for July 1, 1999, through June 30, 2000.

Pub. L. 107–103 further increased the DEA program rates for the months during Fiscal Year 2002 that follow December 2001. That Act provides that beginning on January 1, 2002, the rates of basic educational assistance under the DEA program must be increased beyond the increase that went into effect on October 1, 2001. Changes are made to the regulations governing rates payable under the DEA program to reflect both rate increases.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in the rates are applied in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Executive Order 12866

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

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because the agency is not required to publish a notice of proposed rulemaking for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed Forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 7, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out above, 38 CFR part 21 (subparts C and K) is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

■ 1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

■ 2. In § 21.3045, paragraph (h) is revised to read as follows:

§ 21.3045 Entitlement charges.

* * * * *

(h) *Entitlement charge for correspondence courses.* The charge against entitlement of a spouse or surviving spouse for pursuit of a course

exclusively by correspondence will be 1 month for each of the following amounts paid as an educational assistance allowance:

(1) $588 paid after October 31, 2000, and before October 1, 2001;

(2) $608 paid after September 30, 2001, and before January 1, 2002; and

(3) $670 paid after December 31, 2001.

(Authority: 38 U.S.C. 3534(b), 3564, 3686(a)).

* * * * *

■ 3. Section 21.3131 is amended by:
■ a. Revising paragraph (a)
■ b. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively.
■ c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates for pursuit of education or training that occurs after September 30, 2001, and before January 1, 2002:

Type of course	Monthly rate
Institutional:	
Full time	$608.00
¾ time	456.00
½ time	304.00
Less than ½ but more than ¼ time [1]	304.00
¼ time or less [1]	152.00
Cooperative training (other than farm cooperative) (Full time only).	
Apprenticeship or on-the-job (full time only) [2]:	608.00
First six months	443.00
Second six months	331.00
Third six months	219.00
Fourth six months and thereafter	111.00
Farm cooperative:	
Full time	491.00
¾ time	368.00
½ time	246.00
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly [3]

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $304.00 or $152.00, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] *See* footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(b) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates for pursuit of education or training that occurs after December 31, 2001, and before October 1, 2002:

Type of course	Monthly rate
Institutional:	
Full time	$670.00
¾ time	503.00
½ time	335.00
Less than ½ but more than ¼ time [1]	335.00
¼ time or less [1]	167.50
Cooperative training (other than farm cooperative) (Full time only).	
Apprenticeship or on-the-job (full time only) [2]:	
First six months	488.00
Second six months	365.00
Third six months	242.00
Fourth six months and thereafter	122.00
Farm cooperative:	
Full time	541.00
¾ time	406.00
½ time	271.00
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly [3]

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $335.00 or $167.50, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] *See* footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

* * * * *

■ 4. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) *Duration of special restorative training.* VA may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of—

(1) $190.00 a month for the period beginning October 1, 2001, and ending December 31, 2001;

(2) $210.00 a month for months after December 31, 2001.

(Authority: 38 U.S.C. 3541(b), 3542)

* * * * *

■ 5. Section 21.3333 is amended by:

■ a. Revising paragraph (a).

■ b. In paragraph (b)(1), removing ''Effective November 1, 2000''; removing ''$19.60'' and adding, in its place, ''$20.28''; and removing ''$588'' and adding, in its place, ''$608.00 for the period October 1, 2001, through December 31, 2001, and for each $22.33 that the special training allowance exceeds the basic monthly rate of $670.00 for months beginning January 1, 2002''.

The revision reads as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rates, except as provided in paragraph (c) of this section.

(1) For special restorative training that occurs after September 30, 2001, and before January 1, 2002.

Course	Monthly rate	Accelerated charges
Special restorative training	$608.00	If costs for tuition and fees average in excess of $190.00 per month, rate may be increased by such amount in excess of $190.00.

(Authority: 38 U.S.C. 3542)

(2) For special restorative training that occurs after December 31, 2002:

Course	Monthly rate	Accelerated charges
Special restorative training	$670.00	If costs for tuition and fees average in excess of $210.00 per month, rate may be increased by such amount in excess of $210.00.

(Authority: 38 U.S.C. 3542)

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 6. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

■ 7. Section 21.7136 is amended by:

■ a. Revising paragraphs (b) and (c)(1) through (c)(5).

■ b. Adding paragraphs (c)(6) through (c)(9).

The revisions and additions read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2001, and before January 1, 2002, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$672.00
¾ time	504.00
½ time	336.00
Less than ½ time but more than ¼ time	336.00
¼ time	168.00

(Authority: 38 U.S.C. 3015)

(2) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after December 31, 2001, and before October 1, 2002, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$800.00
¾ time	600.00
½ time	400.00
Less than ½ but more than ¼ time	400.00
¼ time or less	200.00

(Authority: 38 U.S.C. 3015)

(3) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2002, and before October 1, 2003, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$900.00
¾ time	675.00
½ time	450.00
Less than ½ but more than ¼ time	450.00
¼ time or less	225.00

(Authority: 38 U.S.C. 3015)

(4) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2003, and before October 1, 2004, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$985.00
¾ time	738.75
½ time	492.50
Less than ½ but more than ¼ time	492.50
¼ time or less	246.25

(Authority: 38 U.S.C. 3015)

(5) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$504.00
Second six months of training	369.60
Remaining pursuit of training	235.20

(Authority: 38 U.S.C. 3015, 3032(c))

(6) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$600.00
Second six months of training	440.00
Remaining pursuit of training	280.00

(Authority: 38 U.S.C. 3015, 3032(c))

(7) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$675.00
Second six months of training	495.00
Remaining pursuit of training	315.00

(Authority: 38 U.S.C. 3015, 3032(c))

(8) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training period	Monthly rate
First six months of training	$738.75
Second six months of training	541.75
Remaining pursuit of training	344.75

(Authority: 38 U.S.C. 3015, 3032(c))

(9) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

(i) $672.00 for training that occurs after September 30, 2001, and before January 1, 2002;

(ii) $800.00 for training that occurs after December 31, 2001, and before October 1, 2002;

(iii) $900.00 for training that occurs after September 30, 2002, and before October 1, 2003; and

(iv) $985.00 for training that occurs after September 30, 2003, and before October 1, 2004.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training	Monthly rate
Full time	$546.00
¾ time	409.50
½ time	273.00
Less than ½ but more than ¼ time	273.00
¼ time or less	136.50

(Authority: 38 U.S.C. 3015)

(2) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training	Monthly rate
Full time	$650.00
¾ time	487.50
½ time	325.00
Less than ½ but more than ¼ time	325.00
¼ time or less	162.50

(Authority: 38 U.S.C. 3015)

(3) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate
Full time	$732.00
¾ time	549.00
½ time	366.00
Less than ½ but more than ¼ time	366.00
¼ time or less	183.00

(Authority: 38 U.S.C. 3015)

(4) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate
Full time	$800.00
¾ time	600.00
½ time	400.00
Less than ½ but more than ¼ time	400.00
¼ time or less	200.00

(Authority: 38 U.S.C. 3015)

(5) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$409.50
Second six months of training	300.30
Remaining pursuit of training	191.10

(Authority: 38 U.S.C. 3015, 3032(c))

(6) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$487.50
Second six months of training	357.50
Remaining pursuit of training	227.50

(Authority: 38 U.S.C. 3015, 3032(c))

(7) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$549.00
Second six months of training	402.00
Remaining pursuit of training	256.20

(Authority: 38 U.S.C. 3015, 3032(c))

(8) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate
First six months of training	$600.00
Second six months of training	440.00
Remaining pursuit of training	280.00

(Authority: 38 U.S.C. 3015, 3032(c))

(9) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is:

(i) $546.00 for training that occurs after September 30, 2001, and before January 1, 2002;

(ii) $650.00 for training that occurs after December 31, 2001, and before October 1, 2002;

(iii) $732.00 for training that occurs after September 30, 2002, and before October 1, 2003; and

(iv) $800.00 for training that occurs after September 30, 2003, and before October 1, 2004.

(Authority: 38 U.S.C. 3015)

* * * * *

■ 8. In § 21.7137, the section heading and paragraphs (a) and (c)(2) are revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$860.00	$896.00	$927.00	$16.00
¾ time	645.50	672.00	695.50	12.00
½ time	430.00	448.00	463.50	8.50
Less than ½ but more than ¼ time	430.00	430.00	430.00	0
¼ time or less	215.00	215.00	215.00	0

(Authority: 38 U.S.C. 3015)

(2) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$988.00	$1024.00	$1055.00	$16.00
¾ time	741.50	768.00	791.50	12.00
½ time	494.00	512.00	527.50	8.50
Less than ½ but more than ¼ time	494.00	494.00	494.00	0
¼ time or less	247.00	247.00	247.00	0

(Authority: 38 U.S.C. 3015)

(3) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$1088.00	$1124.00	$1155.00	$16.00
¾ time	816.50	843.00	866.50	12.00
½ time	544.00	562.00	577.50	8.50
Less than ½ but more than ¼ time	544.00	544.00	544.00	0
¼ time or less	272.00	272.00	272.00	0

(Authority: 38 U.S.C. 3015)

(4) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$1173.00	$1209.00	$1240.00	$16.00
¾ time	880.25	906.75	930.25	12.00
½ time	586.50	604.50	620.00	8.50
Less than ½ but more than ¼ time	586.50	586.50	586.50	0
¼ time or less	293.25	293.25	293.25	0

(Authority: 38 U.S.C. 3015)

(5) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2001, and before January 1, 2002, is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$606.75	$619.13	$630.00	$5.25
2nd six months of pursuit of program	425.98	435.33	443.03	3.85
3rd six months of pursuit of program	259.00	265.13	269.85	2.45
Remaining pursuit of program	247.10	252.88	258.13	2.45

(Authority: 38 U.S.C. 3015)

(6) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after December 31, 2001, and before October 1, 2002, is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$702.75	$715.13	$726.00	$5.25
2nd six months of pursuit of program	496.38	505.73	513.43	3.85
3rd six months of pursuit of program	303.80	309.93	314.65	2.45
Remaining pursuit of program	291.90	297.68	302.93	2.45

(Authority: 38 U.S.C. 3015)

(7) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$777.75	$790.13	$801.00	$5.25
2nd six months of pursuit of program	551.38	560.73	568.43	3.85
3rd six months of pursuit of program	338.80	344.93	349.65	2.45
Remaining pursuit of program	326.90	332.68	337.93	2.45

(Authority: 38 U.S.C. 3015)

(8) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$841.50	$853.88	$864.75	$5.25
2nd six months of pursuit of program	598.13	607.48	615.18	3.85
3rd six months of pursuit of program	368.55	374.68	379.40	2.45
Remaining pursuit of program	356.65	362.43	367.68	2.45

(Authority: 38 U.S.C. 3015)

(9) The monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Oct. 1, 2001–Dec. 31, 2001	$860.00	$896.00	$927.00	$16.00
Jan. 1, 2002–Sept. 30, 2002	988.00	1024.00	1055.00	16.00
Oct. 1, 2002–Sept. 30, 2003	1088.00	1124.00	1155.00	16.00
Oct. 1, 2003–Sept. 30, 2004	1173.00	1209.00	1240.00	16.00

(Authority: 38 U.S.C. 3015)

* * * * *

(c) * * *

(2)(i) The following monthly rates for training that occurs after September 30, 2001, and before January 1, 2002—

(A) $860.00 for full-time training;

(B) $645.50 for three-quarter-time training;

(C) $430.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $215.00 for one-quarter-time training.

(Authority: 38 U.S.C. 3015)

(ii) The following monthly rates for training that occurs after December 30, 2001, and before October 1, 2002—

(A) $988.00 for full-time training;

(B) $741.50 for three-quarter-time training;

(C) $494.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $247.00 for one-quarter-time training.

(iii) The following monthly rates for training that occurs after September 30, 2002, and before October 1, 2003—

(A) $1088.00 for full-time training;

(B) $816.50 for three-quarter-time training;

(C) $544.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $272.00 for one-quarter-time training.

(iv) The following monthly rates for training that occurs after September 30, 2003, and before October 1, 2004—

(A) $1173.00 for full-time training;

(B) $880.25 for three-quarter-time training;

(C) $586.50 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $293.25 for one-quarter-time training.

(Authority: 38 U.S.C. 3015)

* * * * *

[FR Doc. 03–14282 Filed 6–6–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK81

Veterans Education: Additional Opportunity To Participate in the Montgomery GI Bill and Other Miscellaneous Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the education programs the Department of Veterans Affairs (VA) administers in order to implement some provisions of the Veterans Benefits and Health Care Improvement Act of 2000 and the Veterans' Survivor Benefits Improvements Act of 2001. More specifically, it implements provisions that changed an eligibility criterion concerning the time for obtaining a high school diploma; repealed the requirement that eligibility for the Montgomery GI Bill—Active Duty be based on the initial obligated period of active duty; provided an additional opportunity for participants in the Post-Vietnam Era Veterans' Educational Assistance Program to participate in the Montgomery GI Bill—Active Duty instead; provided an opportunity for servicemembers to increase their monthly rate of benefits by contributing additional monies while on active duty; and revised the requirements that must be met before a veteran or eligible person can be paid during the break between terms. In addition, this document makes nonsubstantive changes in VA education regulations for purposes of clarity and to remove obsolete provisions.

DATES: *Effective Date:* This final rule is effective June 9, 2003.

Applicability Date. The substantive changes made by this final rule are applied retroactively to November 1, 2000, to conform to statutory requirements.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 273–7187.

SUPPLEMENTARY INFORMATION: This document amends the regulations in 38 CFR Part 21 governing various aspects of the education programs the Department of Veterans Affairs (VA) administers in order to implement some provisions of the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419) and the Veterans' Survivor Benefits Improvements Act of 2001 (Pub. L. 107–14) that affect those programs. This document includes changes affecting the following educational assistance programs: Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selective Reserve, Survivors' and Dependents' Educational Assistance, and the Post-Vietnam Era Veterans' Educational Assistance Program.

One of the criteria an individual has to meet in order to establish eligibility for the Montgomery GI Bill—Active Duty (MGIB) is receiving a high school diploma or its equivalent. Before the enactment of Public Law 106–419 on November 1, 2000, the time limit for earning that diploma (or its equivalent) varied according to the various ways for servicemembers to establish MGIB eligibility. Some had to earn the diploma before completion of their first obligated period of active duty. Others had to earn it before their release from active duty. Public Law 106–419 provided instead for all individuals the requirement that they must earn a high school diploma (or its equivalent) before applying to VA for educational assistance. For individuals who are enabled by that change to establish eligibility but who on October 31, 2000, would have been unable to establish eligibility due to the time limits for obtaining a high school diploma (or its equivalent), Public Law 106–419 created a new ten-year period starting November 1, 2000, for commencing use of benefits. We are amending various paragraphs to make them conform to these statutory provisions. Our amendments reflect our interpretation that under the statute a veteran who unsuccessfully applies for educational assistance before meeting this requirement would be able to meet this requirement by applying again after obtaining a high school diploma or its equivalent.

Since the inception of the MGIB, servicemembers have had to serve all or a major part of their initial obligated period of active duty in order to establish eligibility for the MGIB. Thus, an individual who failed to meet the length of service requirements for the initial period and subsequently re-enlisted could serve many years in the Armed Forces and have no education benefits. Public Law 106–419 and Public Law 107–14 contain provisions that allow an individual to meet the length of service requirements for eligibility by using any period of active duty of sufficient length. For individuals who are enabled by that change to establish eligibility but who on October 31, 2000, would have been unable to establish eligibility based on their initial obligated period of service, Public Law 106–419 created a new ten-year period starting November 1, 2000, for commencing use of benefits. We are amending various paragraphs to make them conform to these statutory provisions.

Public Law 106–419 also gave some present and former participants in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) the opportunity to establish eligibility for MGIB. Under that statute, these individuals must have elected MGIB before November 1, 2001, and must contribute $2,700 within the 18-month period beginning on the date the individual made the election. We are amending the rules for establishing MGIB eligibility to conform to these provisions of law.

MGIB, Montgomery GI Bill—Selective Reserve (MGIB—SR), Survivors' and Dependents' Educational Assistance (DEA), and VEAP benefits may be paid to individuals during some intervals between terms. The requirements for deciding whether an individual qualifies for such an interval payment are found in statute. Public Law 106–419 revised those requirements to state that payments may be made for intervals between terms when those intervals are no longer than eight weeks and the terms before and after the interval are not shorter than the interval. We are amending the provisions of 38 CFR 21.4138(f) to make them conform to the statute.

Moreover, VA has long had rules governing payment for short terms that occur during intervals. The rules were designed to insure that veterans were not discouraged by the interval pay provisions from enrolling in those terms. In our view, it was not Congress' intent that the new interval payment provisions discourage attendance during short terms. We are amending accordingly the regulations in § 21.4138(f) governing payment for these short terms and the intervals that precede and follow them.

This document's changes in provisions in § 21.4138(f) concerning payment for intervals and for short terms that occur during intervals are applicable to MGIB, DEA, VEAP, and MGIB—SR benefits under applicability provisions in current regulations for each program, respectively. (The amended provisions in § 21.4138(f) apply to MGIB benefits under § 21.7140(c), to DEA benefits under § 21.3133(a), to VEAP benefits under § 21.5130(c), and to MGIB—SR benefits under § 21.7640(b)(1).)

Public Law 106–419 (as amended by Public Law 107–14) contains provisions that allow some servicemembers who are eligible for the MGIB to increase their monthly rate of educational assistance by contributing $600 while on active duty. The statute prescribes that for every $20 contributed, the monthly rate payable to a full-time student will increase by $5. However, the statute does not state what the increase payable to a part-time student

will be. Instead, it requires VA to prescribe regulations detailing an appropriate reduced amount to be paid to these students.

Since the first student became eligible for assistance under the MGIB in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter-time have had their payments limited to 50% or less of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter-time or less have had their payments limited to 25% or less of the full-time institutional rate. In the absence of a convincing reason to do otherwise, VA has decided to follow this long-standing policy in establishing rates for individuals who increase their monthly rates by contributing additional amounts. Accordingly, changes are made consistent with the authority and formula described in this and the preceding paragraph.

In addition, 38 U.S.C. 3032(c) requires that monthly rates payable to veterans in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, we are amending the regulations to reflect the additional amounts payable for these increased contributions according to the percentages described in 38 U.S.C. 3032(c).

We are also making nonsubstantive changes for the purpose of clarity and to remove provisions that are obsolete because they concern provisions in the regulations that no longer exist.

Administrative Procedure Act

Changes made by this final rule merely reflect revised statutory requirements or VA's interpretation of statutory provisions, or are nonsubstantive. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Executive Order 12866

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

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because the agency is not required to publish a notice of proposed rulemaking for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for programs affected by this final rule are 64.117, 64.120, and 64.124. This document also affects the Montgomery GI Bill—Selective Reserve program, for which there is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 18, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out above, 38 CFR part 21 (subparts D and K) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, subpart D, continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

■ 2. Section 21.4138 is amended by:
■ a. In paragraph (f) introductory text, removing ''(4)'' and adding, in its place, ''(3)''.
■ b. In paragraph (f)(2) introductory text, removing ''subdivision'' and adding, in its place, ''paragraph and paragraph (f)(3) of this section''.
■ c. Revising paragraphs (f)(2)(iii) and (f)(2)(iv).
■ d. Removing paragraph (f)(3).
■ e. Redesignating paragraph (f)(4) as new paragraph (f)(3).

The revisions read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(f) * * *

(2) * * *

(iii) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters as defined in § 21.4200(b);

(B) A semester or quarter and a term that is at least as long as the interval;

(C) A semester or quarter and a summer term that is at least as long as the interval;

(D) Consecutive terms (other than semesters or quarters as defined in § 21.4200(b)) provided that both terms are at least as long as the interval; or

(E) A term and a summer term provided that both the term and the summer term are at least as long as the interval.

(iv) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 30 days and which occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3680)

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 3. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

■ 4. Section 21.7020 is amended by:
■ a. In paragraphs (b)(6)(iii) introductory text and (b)(6)(iv) introductory text, removing ''his or her initial'' and adding, in its place, ''an''.

■ b. In paragraph (b)(6)(iv) introductory text, removing ''the initial'' and adding, in its place, ''the earlier''.
■ c. In paragraph (b)(6)(vi), removing ''initial'' both places that it appears and adding, in its place, ''earlier''.
■ 5. Section 21.7042 is amended by:
■ a. Revising the introductory text.
■ b. Revising paragraph (a)(2), paragraph (a)(3) introductory text, and the authority citation following paragraph (a)(3).
■ c. In paragraph (a)(5)(ii), removing ''(July 1, 1985)''.
■ d. In paragraphs (a)(5)(iv)(A) and (a)(5)(iv)(B), removing ''if his or her initial'' and adding, in its place, ''of an''; and by removing ''is'' and adding, in its place, ''that is''.
■ e. Revising the authority citation following paragraph (a)(5).
■ f. Removing paragraph (a)(6).
■ g. Redesignating paragraph (a)(7) as new paragraph (a)(6).
■ h. Revising paragraph (b)(2) introductory text.
■ i. In paragraphs (b)(6)(ii) and (b)(7)(i)(B), removing ''(July 1, 1985)''.
■ j. In paragraph (b)(7)(ii)(B), removing ''(Oct. 1, 1987)''.
■ k. Removing paragraph (b)(11).
■ l. In paragraph (c)(4), removing ''completing the service he or she was obligated to serve on December 1, 1988'' and adding, in its place, ''applying for educational assistance''.
■ m. In paragraph (d)(1), removing ''initial''.

The revisions read as follows:

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044, or § 21.7045 in order to be eligible for basic educational assistance. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

(Authority: 38 U.S.C. 3011, 3012, 3018(b), 3018A)

(a) * * *

(2) Except as provided in paragraph (a)(5) of this section, the individual must—

(i) If his or her obligated period of active duty is three years or more, serve at least three years of continuous active duty in the Armed Forces; or

(ii) If his or her obligated period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;

(3) The individual, before applying for educational assistance, must either—

* * * * *

(Authority: 38 U.S.C. 3011, 3016)

* * * * *

(5) * * *

(Authority: 38 U.S.C. 3011)

* * * * *

(b) * * *

■ (2) The individual, before applying for educational assistance, must either—

* * * * *

■ 6. Section 21.7044 is amended by:
■ a. Revising the introductory text, and paragraphs (a)(3) and (b)(3).
■ b. Removing paragraph (b)(13).

The revisions read as follows:

§ 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

Certain individuals with 38 U.S.C. chapter 34 eligibility may establish eligibility for educational assistance under 38 U.S.C. chapter 30. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for periods of time specified in § 3.15.

(a) * * *

(3) The individual, before applying for educational assistance, must:

(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

* * * * *

(b) * * *

(3) The individual, before applying for educational assistance, must:

(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

* * * * *

■ 7. Section 21.7045 is amended by:
■ a. In the introductory text, removing ''(d)'' and adding, in its place, ''(d) or (e)''.
■ b. Adding paragraph (e).

The addition reads as follows:

§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

* * * * *

(e) *Alternate eligibility requirements for former participants in the Post-Vietnam Era Veterans' Educational Assistance Program.* (1) *Definition.* For the purpose of this paragraph a *participant* is a veteran or servicemember who:

(i) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, contributed to the fund described in § 21.5021(f), and either—

(A) Is making contributions by monthly payroll deduction to that fund;

(B) Has some or all of the contributions remaining in that fund;

(C) Has disenrolled, and received a refund of contributions; or

(D) Has used all of his or her entitlement to benefits under the Post-Vietnam Era Veterans' Educational Assistance Program; or

(ii) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, and has had the Secretary of Defense make contributions to the fund described in § 21.5021(f) for him or her.

(2) *Making an election.* To receive educational assistance under authority of this paragraph, a veteran or servicemember must:

(i) Have elected before November 1, 2001, to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program;

(ii) Have been a participant in the Post-Vietnam Era Veterans' Educational Assistance Program on or before October 9, 1996;

(iii) Have served continuously on active duty since October 9, 1996, through at least April 1, 2000;

(iv) Receive an honorable discharge when discharged or released from the period of active duty during which the servicemember made the election described in paragraph (e)(3) of this section.

(3) *Election.* The election to receive educational assistance payable under 38

U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before November 1, 2001, pursuant to procedures provided by the Secretary of the military department concerned.

(4) *$2,700 collection.* (i) An individual who has made the election described in paragraph (e)(3) of this section must have his or her basic pay reduced by $2,700 in a manner prescribed by the Secretary of the military department concerned. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, the Secretary of the military department concerned will collect from the individual an amount equal to the difference between $2,700 and the amount that the individual's basic pay has been reduced. The individual may choose how the $2,700 is to be collected. The Secretary of the military department concerned, according to the choice the individual makes, will collect this amount—

(A) From the individual; or

(B) By reducing the individual's retired or retainer pay.

(ii) The individual must pay $2,700 to the Secretary of the military department concerned, as provided for by that Secretary, during an 18-month period beginning on the date the individual made the election described in paragraph (e)(3) of this section.

(iii) Educational assistance under authority of paragraph (e) of this section to an individual who was discharged or released from active duty before the Secretary of the military department concerned had collected the full $2,700 described in paragraph (e)(4) of this section is not payable until that Secretary either—

(A) Collects in full the $2,700; or

(B) Has made the first reduction in retired or retainer pay for the purpose of the $2,700 payment described in paragraph (e)(4) of this section. Thus, a veteran who is making the $2,700 payment through having retired or retainer pay reduced may be eligible before the Secretary of the military department concerned collects the full $2,700.

(5) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C(e))

■ 8. Section 21.7050 is amended by:

■ a. In paragraph (a)(1), removing ''(c) or (d)'' and adding, in its place, ''(c), (d), and (e)''.

■ b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively.

■ c. Adding new paragraph (e).

The addition reads as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(e) *Some veterans have a later ending date.* (1) The ending date of the eligibility period of a veteran described in paragraph (e)(2) of this section is the later of:

(i) November 1, 2010; or

(ii) 10 years after the date of the veteran's last discharge from a period of active duty of 90 days or more.

(2) The ending date of a veteran's eligibility period will be the date described in paragraph (e)(1) of this section if the veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (e)(2)(i) through (e)(2)(iv) of this section and the veteran is enabled to establish eligibility by the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(i) *A period of active duty other than the initial period was used to establish eligibility.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance;

(ii) *High school education eligibility criterion met after the qualifying period of active duty.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(iii) *High school education eligibility criterion met after October 29, 1994.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance;

(iv) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility for educational assistance, the veteran must before January 1, 1990, meet the requirements for a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3031 note; secs. 102(e), 103(e), Pub. L. 106–419, 114 Stat. 1825; 1826–27)

* * * * *

■ 9. Section 21.7072 is amended by:

■ a. In paragraph (a), removing ''(c) and (d)'' and adding, in its place, ''(c), and (d) of this section''.

■ b. In paragraph (b)(1) introductory text, removing ''initial'' and adding, in its place, ''qualifying''.

■ c. Revising paragraphs (b)(1)(ii) and (c)(1).

The revisions read as follows:

§ 21.7072 Entitlement to basic educational assistance.

* * * * *

(b) * * *

(1) * * *

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985 (or less than 24 continuous months of a qualifying obligated period of active duty service after June 30, 1985, if his or her qualifying obligated period of active duty is less than 3 years), and

* * * * *

(c) *Entitlement based on service in the Selected Reserve.* (1) Except as provided in § 21.7073, when the provisions of paragraph (c) of this section are met, an individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C.

chapter 34, is part of the individual's qualifying obligated period of active duty. An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve after June 30, 1985 (other than a month in which the individual serves on active duty). Except as provided in § 21.7073, VA will apply the provisions of paragraph (c) of this section when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Bases his or her eligibility upon a combination of service on active duty and service in the Selected Reserve as described in § 21.7042(b) and § 21.7044(b).

(Authority: 38 U.S.C. 3013(b))

* * * * *

■ 10. Section 21.7131 is amended by:
■ a. Revising paragraph (a)(1)(iii).
■ b. Adding paragraphs (a)(1)(iv) and (a)(1)(v).
■ c. Revising the authority citation for paragraph (a).
■ d. In paragraph (b)(2), removing ''Except as provided in paragraphs (b)(3), (b)(4) and (b)(5) of this section when'' and adding, in its place, ''When'' and removing ''enrolled'' and adding, in its place, ''enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section''.
■ e. Adding paragraphs (j), (o), and (p).

The revisions and additions read as follows:

§ 21.7131 Commencing dates.

* * * * *

(a) * * *

(1) * * *

(iii) The effective date of the approval of the course;

(iv) One year before the date VA receives approval notice for the course; or

(v) November 1, 2000, if paragraph (p) of this section applies to the individual.

* * * * *

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672)

* * * * *

(j) *Increase due a servicemember due to monetary contributions.* (1) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the term, quarter, or semester following the term, quarter, or semester in which the servicemember made the contribution(s).

(2) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution not operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the enrollment period following the enrollment period in which the servicemember made the contribution.

(Authority: 38 U.S.C. 3011(e), 3012(f))

* * * * *

(o) *Eligibility established under § 21.7045(e).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(e). The commencing date of an award of educational assistance for such a veteran or servicemember is the later of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (k) of this section; or

(2) The date on which—

(i) The servicemember's basic pay is reduced by $2,700;

(ii) The Secretary of the military department concerned collected the difference between $2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the veteran's election under § 21.7045(e), provided that this collection was accomplished through a method other than reducing the veteran's retired or retainer pay; or

(iii) The Secretary of the military department concerned first reduced the veteran's retired or retainer pay in order to collect the difference between $2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the election under § 21.7045(e).

(Authority: 38 U.S.C. 3018C(e))

(p) *Eligibility established due to changes to §§ 21.7042 and 21.7044.* The commencing date of educational assistance will be no earlier than November 1, 2000, if a veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (p)(1) through (p)(4) of this section and the veteran is enabled to establish eligibility due to the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(1) *A period of active duty other than the initial period was used to establish eligibility.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance.

(Authority: Sec. 102(e), Pub. L. 106–419, 114 Stat. 1825)

(2) *High school education eligibility criterion met after the qualifying period of active duty.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

(3) *High school education eligibility criterion met after October 29, 1994.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance.

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

(4) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility, the veteran must before January 1, 1990, meet the requirements for a secondary school diploma (or equivalency certificate).

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

■ 11. Section 21.7136 is amended by:

■ a. In paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii) introductory text, and (a)(2)(iii)(B) introductory text, and in the heading for paragraph (c), removing ''initial'' and adding, in its place, ''qualifying''.

■ b. In paragraph (e), removing ''(g)'' and adding, in its place, ''(g) or (h)''.

■ c. In paragraph (f) introductory text, removing ''§ 21.7045(b)(1)(ii) or (c)(1)(ii)'' and adding, in its place, ''§ 21.7045(b)(1)(ii), (c)(1)(ii), or (e)(2)''.

■ d. Adding paragraph (h).

The addition reads as follows.

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(h) *Increase in monthly rates due to contributions.* Effective May 1, 2001, a servicemember who establishes eligibility under § 21.7042(a), (b), or (c) may contribute up to $600 to the Secretary of the military department concerned in multiples of $20.

(1) VA will increase the monthly rate provided in paragraph (b)(2) or (c)(2) of this section by:

(i) $5 for every $20 an individual pursuing a program of education full time has contributed;

(ii) $3.75 for every $20 an individual pursuing a program of education three-quarter time has contributed;

(iii) $2.50 for every $20 an individual pursuing a program of education half time or less than one-half time but more than one-quarter time has contributed; and

(iv) $1.25 for every $20 an individual pursuing a program of education one-quarter time has contributed.

(2) If a veteran is pursuing an apprenticeship or other on-job training—

(i) During the first six months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraph (b)(4) or (c)(4) of this section by $3.75 for every $20 the individual has contributed;

(ii) During the second six months of the veteran's pursuit of training, VA will increase the monthly rate provided in paragraph (b)(4) or (c)(4) of this section by $2.75 for every $20 the veteran has contributed; and

(iii) During the remaining months of the veteran's pursuit of training, VA will increase the monthly rate proved in paragraph (b)(4) or (c)(4) of this section by $1.75 for every $20 the veteran has contributed.

(3) VA will increase the monthly rate provided in paragraph (b)(5)(iii) or (c)(5)(iii) of this section by $5 for every $20 the veteran has contributed.

(Authority: 38 U.S.C. 3015(g))

[FR Doc. 03–14281 Filed 6–6–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900–AL30

VA Homeless Providers Grant and Per Diem Program; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule; correction.

SUMMARY: In a document published in the **Federal Register** on March 19, 2003 (68 FR 13590), we amended the regulations concerning the VA Homeless Providers Grant and Per Diem Program primarily to implement the provisions of the Homeless Veterans Comprehensive Assistance Act of 2001. The document contains typographical errors in § 61.33 ''Payment of per diem.'' This document corrects those typographical errors.

DATES: *Effective Date:* This correction is effective March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: In rule FR Doc. 03–6329, published on March 19, 2003 (68 FR 13590), make the following corrections:

§ 61.33 [Corrected]

■ On page 13600, in the first column, in paragraph (d)(2), ''(f)(1)(i)'' is corrected to read ''(d)(1)(i)'' and ''(f)(1)(ii)'' is corrected to read ''(d)(1)(ii)''.

Approved: June 3, 2003.

Robert C. McFetridge,

Director, Regulations Management.

[FR Doc. 03–14416 Filed 6–6–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[CA216–0400; FRL–7510–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Large Municipal Waste Combustors; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of the California State Plan for implementing the emissions guidelines applicable to existing large municipal waste combustor units. This approval was proposed in the **Federal Register** on March 11, 2003. The plan was submitted by the California Air Resources Board for the State of California to satisfy requirements of sections 111(d) and 129 of the Clean Air Act. The submitted plan applies to large municipal waste combustor units located in the San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District.

EFFECTIVE DATE: This rule is effective on July 9, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted State Plan at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124.

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

I. Proposed Action

On March 11, 2003 (68 FR 11484), EPA proposed to approve the California State Plan for implementing the emissions guidelines applicable to existing large municipal waste combustor (MWC) units. We proposed to approve this State Plan because we determined that it complied with the relevant Clean Air Act (CAA) requirements. Our proposed action

contains more information on the State Plan and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were received that change our assessment that the submitted State Plan complies with the relevant requirements regarding approval of CAA section 111(d)/129 State plans. Therefore, EPA is fully approving the State of California section 111(d)/129 plan for the control of emissions from existing large MWC units. Upon approval, the requirements of the State Plan become federally enforceable.

As discussed in the proposed action and the technical support document, the underlying conditions in the Emission Guidelines (40 CFR part 60, subpart Cb) and the Federal Plan (40 CFR part 62, subpart FFF) will continue to apply in the case of waivers. EPA cannot delegate to districts the ability to approve waivers of load and temperature limits that are not in accordance with the purposes specified in 60.53b (b) and (c). Waivers of operator training course requirements must be approved by EPA. Additionally, approval of the State Plan will not extend the compliance dates contained in the Federal Plan for the Stanislaus facility. Annual performance tests should be conducted at the Stanislaus facility in accordance with 60.58b. As provided by 40 CFR 60.28 (c), any revisions to the California State Plan will not be considered part of the applicable plan until submitted by CARB in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

IV. Statutory and Executive Order Reviews

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 State plan 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 State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 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 may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: May 20, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

■ 2. Section 62.1100 is amended by adding paragraphs (b)(6) and (c)(6) to read as follows:

§ 62.1100 Identification of plan.

* * * * *

(b) * * *

(6) State of California's Section 129/111(d) Plan for Existing Large Municipal Waste Combustors, submitted by the

California Air Resources Board on September 23, 1998, with supplemental materials submitted on May 2, 2002.

(c) * * *

(6) Existing large municipal waste combustors.

* * * * *

■ 3. Subpart F is amended by adding an undesignated center heading and § 62.1130 to read as follows:

Emissions From Large Existing Municipal Waste Combustion Units

§ 62.1130 Identification of sources.

The plan applies to existing large municipal waste combustors that were constructed on or before September 20, 1994, as described in 40 CFR part 60, subpart Cb.

* * * * *

[FR Doc. 03–14460 Filed 6–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7509–9]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of immediate final rule.

SUMMARY: EPA is withdrawing the immediate final rule for Nebraska: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, which authorized changes to Nebraska's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA stated in the immediate final rule that if EPA received written comments that oppose this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA did receive comments that oppose this authorization, EPA is withdrawing the immediate final rule. EPA will address these comments in a subsequent final action based on the proposed rule also published on April 10, 2003, at 68 FR 17576.

DATES: As of June 9, 2003, EPA withdraws the immediate final rule published on April 10, 2003, at 68 FR 17553.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, KS 66101, phone number: (913) 551–7877 or *haugen.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION: Because EPA received written comments that oppose this authorization, EPA is withdrawing the immediate final rule for Nebraska: Final Authorization of State Hazardous Waste Management Program Revision published on April 10, 2003, at 68 FR 17553, which authorized changes to Nebraska's hazardous waste rules. EPA stated in the immediate final rule that if EPA received written comments that oppose this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA received comments that oppose this action, today EPA is withdrawing the immediate final rule. EPA will address the comments received during the comment period in a subsequent final action based on the proposed rule also published on April 10, 2003. EPA will not provide for additional public comment during the final action.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14458 Filed 6–6–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7510–1]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and response to comments.

SUMMARY: Nebraska applied to EPA for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reached a final determination that these changes satisfy all requirements needed to qualify for Final authorization. Thus, with respect to these revisions, EPA is granting Final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments (HSWA) of 1984.

DATES: Final authorization for the revisions to Nebraska's hazardous waste management program will become effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, phone number: (913) 551–7877 or *haugen.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Nebraska initially received Final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345), to implement the RCRA hazardous waste management program. We granted authorization for changes to its program on October 4, 1985, effective December 3, 1988 (53 FR 38950), June 25, 1996, effective August 26, 1996 (61 FR 32699), and June 4, 2002, effective April 22, 2002 (67 FR 38418).

On July 23, 2002, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. On April 10, 2003, EPA published both an Immediate Final Rule (68 FR 17553) granting Nebraska Final authorization for these revisions to its Federally-authorized hazardous waste program, along with a companion Proposed Rule announcing EPA's proposal to grant such a Final authorization (68 FR 17576). EPA announced in both documents that the Immediate Final Rule and the Proposed Rule were subject to a thirty-day public comment period. The public comment period ended on May 12, 2003. EPA received written comments from one commenter during the public comment period. Today's action responds to the comments EPA received and publishes EPA's Final determination granting Nebraska Final authorization of its program revisions. Further background on EPA's Immediate Final Rule and its tentative determination to grant authorization to Nebraska for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the

commenter are summarized and responded to as follows.

B. What Were the Comments and Responses to EPA's Proposal?

The commenter argued that Region VII's process for authorizing revisions to Nebraska's program should require a public hearing, which, the commenter believed, is required by 40 CFR 271.20. EPA disagrees. 40 CFR 271.21 applies only to initial program authorization, and not, as in the instant matter, to program revisions. For this program revision, EPA has proceeded in accordance with 40 CFR 271.21, pursuant to which public hearings are not required. On March 4, 1986, at 51 FR 07540, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 **Federal Register**, EPA stated: ''As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing.'' (51 FR 07541).

Consequently, EPA Region VII believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. EPA Region VII also believes that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

The commenter expressed a concern about Nebraska's adoption of the provisions of 40 CFR part 266, subpart C. EPA understands this comment to state concerns about the provisions of the Nebraska regulations (which incorporate the Federal rules by reference) that allow, under certain conditions, ''hazardous wastes,'' like lime-based slag, to be used as a ''fertilizer.'' This comment addresses an issue which is not part of the referenced revision application. Specifically, with regard to the provisions of 40 CFR part 266, subpart C, in the context of fertilizer applications, these provisions in Nebraska's program were authorized by EPA as part of Nebraska's first program revision, which took effect on December 3, 1989—over thirteen years ago. Nebraska's current revision application, for which EPA recently published its tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266, subpart C. Since the comment EPA has received on ''use constituting disposal'' is not part of Nebraska's most recent program revision application, EPA believes the public comments on ''use constituting disposal'' are not within the scope of this Agency action. The commenter expressed further concern regarding ''EPA's failure to require the Nebraska Attorney General to review Nebraska's statutes based on rule-by-rule authority as required under 40 CFR 271.7.'' The commenter asserts that ''checklists do not provide for as comprehensive a review.'' EPA uses checklists to review State rules in detail. 40 CFR 271.7 requires the State Attorney General to submit a statement that the laws of the State provide adequate authority to carry out the program described under 40 CFR 271.6. This statement should include citations to the specific statutes, administrative regulations and, where appropriate, judicial decisions which demonstrate adequate authority. The State of Nebraska has done this. 40 CFR 271.7 further requires that the State statutes and regulations cited by the State Attorney General shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. Nebraska's Attorney General has submitted a statement which satisfies this requirement.

C. What Decisions Have We Made in This Rule?

Based on EPA's response to public comments, the Agency has determined that approval of Nebraska's RCRA program revisions should proceed. EPA has made a final determination that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Nebraska has responsibility for carrying out the aspects of the RCRA program described in its approved program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Nebraska, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Nebraska's RCRA program revisions, please refer to the preambles of EPA's April 10, 2003, Proposed and Immediate Final Rules at 68 FR 17576 and 68 FR 17553, respectively.

D. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective August 8, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation-by-Reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–14459 Filed 6–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 74 and 78

[ET Docket No. 98–206; FCC 03–25]

Fixed Satellite and Terrestrial Systems in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses the Petitions for Reconsideration from Skybridge L.L.C. (''Skybridge''); and Hughes Communications, Inc., Hughes Communications Galaxy, Inc. and Hughes Network Systems, a division of Hughes Electronics Corporation (''Hughes'') filed in response to the *First Report and Order and Further Notice of Proposed Rule Making* (''First R&O''). The proceeding addresses a request by Skybridge to allow non-geostationary orbit (''NGSO'') fixed satellite services (''FSS'') to share various frequencies in the Ku-Band with existing geostationary orbit (''GSO'') satellite services and terrestrial services. Our action herein addresses aspects of the Skybridge Reconsideration Petition relating to NGSO FSS sharing with terrestrial services and Federal Government operations, as well as the Hughes Reconsideration Petition relating to our radio frequency (''RF'') safety rules requiring warning labels and recommending professional installation for NGSO FSS subscriber antennas.

DATES: Effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT: James Miller, Office of Engineering and Technology, (202) 418–7351, or Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order*, ET Docket No. 98–206, FCC 03–25, adopted February 3, 2003, and released February 11, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov*. It 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 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Second Memorandum Opinion and Order

1. In the *Second Memorandum Opinion and Order*, the Commission granted Skybridge's request and amended our rules to allow, under certain conditions, NGSO FSS Earth-to-space (''uplink'') operations in the 13.15–13.2125 GHz portion of the 12.75–13.25 GHz band. In making the change the Commission concludes that NGSO FSS can implement measures to protect incumbent broadcast auxiliary service (''BAS'') and cable television relay service (''CARS'') mobile pickup operations from harmful interference.

2. The Commission grants Skybridge's request and states that power flux density (''PFD'') limits for NGSO FSS in the 10.7–11.7 GHz band are sufficient to protect services in the band without the need for individual coordination. This ensures incumbent services are protected against harmful interference without creating an unnecessary burden on NGSO FSS licensees.

3. The Commission granted Skybridge's request and amended the rules to clarify the definition of NGSO FSS earth station gateways to limit use only for NGSO FSS backbone support.

4. The Commission granted Skybridge's request and adopted the Telecommunications Union's (''ITU'') effective isotropically radiated power (''EIRP'') limit on federal radiolocation operations in the 13.75–14.0 GHz band, and permits NGSO FSS operations to claim protection from these radiolocation operations.

5. The Commission denied Skybridge's request, maintains the EIRP density limit to protect against interference to the National Aeronautics and Space Administration (''NASA'') tracking data and relay satellite system (''TDRSS'') operations across the 10 megahertz of the 13.77–13.78 GHz band, and denies the request to restrict this protection to only 6 megahertz.

6. The Commission denied Skybridge's request to require NGSO FSS licensees and radio astronomy service (''RAS'') entities to use the

protection levels and calculation methods in the ITU's Article 29. The Commission maintained the requirement in footnote US355 that NGSO FSS licensees in the 10.7–11.7 GHz band coordinate with RAS entities to reach ''mutually acceptable agreements.'' This flexible approach will allow the use of Article 29 procedures or any other procedure deemed appropriate by the interested parties.

7. The Commission denied Hughes's Petition to revisit language in the *First Report and Order*, 16 FCC Rcd 4096, December 8, 2000, 66 FR 7607, January 24, 2001, recommending professional installation of two-way NGSO FSS antennas. The Commission continues to find that the language is neither overly broad nor unnecessary, and is harmonious with the language of other NGSO FSS decisions.

Final Regulatory Flexibility Analysis

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

9. The Commission has adopted technical rules to facilitate spectrum sharing between new NGSO FSS systems in the Ku band and existing services in this spectrum. Wherein we grant in part Skybridge's requests for reconsideration, we modify these rules to further these goals. We acknowledge that as the radio spectrum is increasingly used, it becomes more difficult to accommodate all requests for access to the radio spectrum, however, this action applies existing frequency coordination procedures to NGSO FSS systems sharing spectrum with fixed services. However, frequency coordination should ensure that new operations of either service will protect existing operations and have access to spectrum if it is technically possible.

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

10. In considering the Skybridge's request for NGSO FSS access to the 13.15–13.2125 GHz band, the Commission considered the impact on terrestrial operations granting such a request might have. Further, the Commission adopted rules that carefully weigh the complexity of sharing with mobile BAS/CARS operations could impose against the need for minimal measures to accommodate sharing in bands increasingly congested by co-primary satellite and terrestrial use.

11. Regarding sharing between NGSO FSS systems and broadcast auxiliary (''BAS'') operations, the *Report and Order* stated that the Commission will adopt some form of geographic protection areas for terrestrial operations in those bands used by NGSO FSS gateway earth stations. These protection areas will be further defined in a future proceeding, but are intended to facilitate the growth of terrestrial operations, while not unnecessarily hindering the deployment of NGSO FSS systems. Further, to ensure BAS operations in all areas can continue to operate unencumbered by new NGSO FSS systems, this *Second Memorandum Opinion and Order* reinforces efforts to minimize impacts on BAS/CARS entities by retaining the four channels at 13.15–13.2125 GHz for exclusive co-primary BAS/CARS use in 50 km areas around major TV markets and by requiring NGSO FSS operations observe power limits to ensure continued operations outside those select areas.

List of Subjects

47 CFR Part 2

Radio, Television.

47 CFR Part 25

Satellites.

47 CFR Part 74

Television.

47 CFR Part 78

Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, 74, and 78 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.106, the Table of Frequency Allocations as follows:

■ a. In the list of Non-Government (NG) footnotes, footnote NG53 is revised.

■ b. In the list of United States (US) footnotes, footnote US356 is revised.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

United States (US) Footnotes

* * * * *

US356 In the band 13.75–14 GHz, an earth station in the fixed-satellite service shall have a minimum antenna diameter of 4.5 m and the e.i.r.p. of any emission should be at least 68 dBW and should not exceed 85 dBW. In addition the e.i.r.p., averaged over one second, radiated by a station in the radiolocation service shall not exceed 59 dBW. Receiving space stations in the fixed-satellite service shall not claim protection from radiolocation transmitting stations operating in accordance with the United States Table of Frequency Allocations. ITU Radio Regulation No. 5.43A does not apply.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG53 The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as

amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Section 25.201 is amended by revising the introductory text and paragraph 2 of the definition for *NGSO FSS gateway earth station* to read as follows:

§ 25.201 Definitions.

* * * * *

NGSO FSS gateway earth station. A gateway earth station is an earth station complex consisting of multiple interconnecting earth station antennas supporting the communication routing and switching functions of a non-geostationary satellite orbit fixed-satellite service (NGSO FSS) system as a whole. A gateway earth station in the NGSO FSS:

* * * * *

(2) Shall not be for the exclusive use of any customer.

* * * * *

■ 5. Section 25.202 is amended by revising the table and footnotes in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) * * *

Space-to-earth (GHz)	Earth-to-space (GHz)
3.7–4.2 [1]	5.925–6.425 [1]
10.7–10.95 [1, 12]	12.75–13.25 [1, 12, 14]
10.95–11.2 [1, 2, 12] ..	13.75–14 [4, 12]
11.2–11.45 [1, 12]	14–14.2 [5]
11.45–11.7 [1, 2, 12] ..	14.2–14.5
11.7–12.2 [3]	17.3–17.8 [9]
12.2–12.7 [13]	27.5–29.5 [1]
18.3–18.58 [1, 10]	29.5–30
18.58–18.8 [6, 10, 11]	48.2–50.2
18.8–19.3 [7, 10]	
19.3–19.7 [8, 10]	
19.7–20.2 [10]	
37.6–38.6	
40–41	

[1] This band is shared coequally with terrestrial radiocommunication services.

[2] Use of this band by geostationary satellite orbit satellite systems in the fixed-satellite service is limited to international systems; *i.e.*, other than domestic systems.

[3] Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

[6] The band 18.58–18.8 GHz is shared co-equally with existing terrestrial radiocommunication systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared co-equally with terrestrial radiocommunication services, until June 8, 2010. After this date, the sub-band 19.26–19.3 GHz is shared co-equally with existing terrestrial radiocommunication systems.

[8] The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

[9] The use of the band 17.3–17.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for broadcasting-satellite service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government fixed-satellite service.

[11] The band 18.6–18.8 GHz is shared co-equally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

[12] Use of this band by non-geostationary satellite orbit systems in the fixed-satellite service is limited to gateway earth station operations.

[13] Use of this band by the fixed-satellite service is limited to non-geostationary satellite orbit systems.

[14] Use of this band by NGSO FSS gateway earth station uplink operations is subject to the provisions of § 2.106 NG53.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

■ 6. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 7. Section 74.602 is amended by revising footnote 2 following the table in paragraph (a) introductory text to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

[2] The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

■ 8. The authority for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 9. Sections 78.18 is amended by revising paragraphs (l) and (m) to read as follows:

§ 78.18 Frequency assignments.

* * * * *

(l) The band 13.15–13.20 GHz is reserved for television pickup and CARS pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter, television pickup stations, CARS stations and NGSO FSS gateway earth stations shall operate on a primary co-equal basis. The band 13.20–13.2125 GHz is reserved for television pickup stations on a primary basis and CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter. Outside a 50 km radius of the 100 markets delineated in § 76.51 of this chapter, television pickup stations and NGSO FSS gateway earth stations shall operate on a co-primary basis, CARS stations shall operate on a secondary basis. Fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13.15–13.25 GHz band, subject to periodic license renewals. NGSO FSS gateway uplink transmissions in the 13.15–13.2125 GHz segment shall be limited to a maximum EIRP of 3.2 dBW towards 0 degrees on the radio horizon. These provisions shall not apply to GSO FSS operations in the 12.75–13.25 GHz band.

(m) CARS stations may be authorized for use of the band from 13.20 to 13.25 GHz on a secondary basis to Television Broadcast Auxiliary Stations. CARS stations are also secondary to NGSO FSS gateway earth station uplink operations. Any CARS application seeking authorization for use of the 13.20 to 13.25 GHz band must demonstrate that the applicant has

exhausted all spectrum available to it in the 12.70 to 13.20 GHz band. Applications for use of this band must specify whether the channels are 6 MHz, 12.5 MHz, or 25 MHz wide and give the upper and lower boundaries and the polarization for each channel.

[FR Doc. 03–14396 Filed 6–6–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 110
Monday, June 9, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14848; Airspace Docket No. 03–AWP–5]

Proposed Establishment of Class E Airspace; Susanville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Susanville CA. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Susanville Municipal Airport has made this proposal necessary. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing RNAV (GPS) RWY 29 and RNAV (GPS)–A SIAPs. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Susanville Municipal Airport.

DATES: Comments must be received on or before July 24, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14848/ Airspace Docket No. 03–AWP–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation (NASSIF Building at the above address. An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14848/Airspace Docket No. 03–AWP–5.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Susanville, CA. The establishment of an RNAV (GPS) RWY 29 SIAP and an RNAV (GPS)–A SIAP at Susanville Municipal Airport has made this proposal necessary. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing these two new procedures. The intended effect of this proposal is to provide adequate controlled airspace for instrument operations at Susanville Municipal Airport. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and Effective, September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Susanville, CA [New]

Susanville Municipal Airport, CA
(Lat. 40°22′33″ N, long. 120°34′21″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Susanville Municipal Airport and within 2 miles each side of the 134° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10.3 miles southeast of the Susanville Municipal Airport and within 2 miles each side of the 339° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10 miles northwest of the Susanville Municipal Airport.

* * * * *

Issued in Los Angeles, California, on April 29, 2003.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–14427 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB50

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its regulations to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index and to increase from $200 to $530 the minimum amount of monthly earnings to count during a trial work period and then index that amount to the Social Security national average wage index.

DATES: In order for us to consider your comments on these specific proposals, the Board must receive them by August 8, 2003.

ADDRESSES: Submit comments in writing to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act provides for disability annuities for employees, widow(er)s, and children of deceased railroad employees who are unable to engage in any regular employment because of a physical or mental impairment. Regular employment is defined by reference to the definition of substantial gainful activity under the Social Security Act. Sections 220.141 and 220.142 of the Board's regulations reflect this definition and define ''substantial gainful activity'' (SGA) as work activity that involves doing significant physical or mental activities for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not profit is realized. Section 220.143 sets forth earnings levels at which the Board considers a person to be engaged in SGA regardless of the severity of his or her impairment. The amount of average monthly earnings that ordinarily demonstrates SGA was increased effective July 1, 1999, when the Board raised from $500 to $700 the average monthly earnings guidelines used to determine whether work done by a person is substantial gainful activity.

The Board proposes to issue regulations that would increase certain thresholds for disabled workers. Under the proposal, the average monthly earnings guideline, which is used to determine whether work done by disabled workers (other than those who are blind) is substantial gainful activity, would be increased to $740.00 for calendar year 2001 and would thereafter be automatically adjusted each year based on increases in the Social Security national average wage index. *See* 42 U.S.C. 409(k)(1). The amount that is used to determine if a disabled individual has performed ''services'' during a trial work period also would be subject to an automatic annual adjustment. These changes would conform to changes in the regulations of the Social Security Administration that became final effective January 29, 2001 (65 FR 82905, December 29, 2000).

In order to be eligible for disability benefits, an applicant must not be performing substantial gainful activity. A beneficiary's ongoing eligibility for disability benefits is also subject to this rule. Therefore, the Board has established both upper and lower thresholds as guidelines for determining, respectively, what is prima facie evidence of engaging in SGA and what is prima facie evidence of not engaging in SGA. Except for those who work in sheltered workshops, disabled workers with earnings between the two thresholds are subject to further examination. Currently, the upper and lower thresholds are $700 and $300, respectively. For those working in sheltered workshops, earnings below the upper threshold are prima facie evidence that the worker is not performing SGA.

Under the Board's proposal, beginning January 1, 2002, the upper threshold would be adjusted annually, based on the Social Security national wage index, to conform to the SGA level determined by the Social Security Administration (SSA) and published in the **Federal Register** each October as part of SSA's notice that includes new adjustments. Under this proposal, the SGA amount would never be lower than the previous year's amount. However, there may be years in which there is no increase.

As part of this proposal, the Board also plans to eliminate the lower SGA threshold so that earnings below the upper threshold would be prima facie evidence that a disabled worker is not engaging in SGA, regardless of whether the worker is working in competitive employment or in a sheltered workshop.

The Board also proposes to increase the monthly amount that a disabled worker may earn within a trial work period without jeopardizing the amount of time remaining in the trial work period. Currently, a disabled worker may test his or her ability to work and still be considered disabled by working during a trial work period. A disabled beneficiary will continue to be considered disabled until the beneficiary performs ''service'' in at least nine months within a rolling 60-month period. Since 1990, the Board has considered any month in which at least more than $200 is earned to be a month of service.

Under the proposed rule, the threshold amount would be increased to $530 for 2001, and then would be adjusted annually thereafter based on the Social Security national average wage index to conform to the amount

determined by the Social Security Administration and published in the **Federal Register** every October. The Board notes that while the SGA amount has increased since 1990, during the same period, the trial work period services amount has remained unchanged. As with the change proposed for the SGA threshold amount, the trial work period amount would never be lower than the previous year's amount.

Proposed Regulations—Background

The Board proposes to revise §§ 220.143(b)(2) and (b)(4) to adjust annually the earnings guidelines that we use to determine whether a non-blind employee is engaged in substantial gainful activity. Beginning January 2001, the average monthly earnings considered to be substantial gainful activity will be increased from $700 to $740. Beginning January 2002, the guideline would be the higher of the previous year's amount or an increased amount as computed and published by the Social Security Administration based on the Social Security national average wage index.

The Board also proposes to amend §§ 220.143(b)(2) and (b)(4) to clarify that this guideline applies to earnings from sheltered work. This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in § 220.144 of this part.

The Board proposes to revise §§ 220.143(b)(3) and (b)(6) to provide, beginning January 2002, that we will ordinarily find that an employee whose average monthly earnings are equal to or less than the ''primary substantial gainful activity amount'' set forth in § 220.143(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. The Board also proposes to make conforming changes to § 220.143(b)(4).

The Board proposes to revise § 220.170 to increase from $200 to $530 the minimum amount of monthly earnings that we consider shows that a person is performing or has performed ''services'' for counting trial work period months, effective January 1, 2001. We also propose to adjust the amount annually to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index, beginning January 1, 2002.

Collection of Information Requirements

The amendments to this part do 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.

Regulatory Impact Statement

Prior to publication of this proposed rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when 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 rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The amendments made by this proposed rule are not significant. The amendments to §§ 220.143 and 220.170 will index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, and increases from $200 to 530% the minimum amount of monthly earnings to count during a trial work period, and then index that amount to the Social Security national average wage index.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the definition of ''agency'' contained in 5 U.S.C. 551(l). Section 551(l)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been found not to be a significant amendment by the Office of Management and Budget.

List of Subjects in 20 CFR Part 220

Railroad Retirement.

For the reasons stated in the preamble, the Railroad Retirement Board proposes to amend part 220 of chapter II of title 20 of the Code of Federal Regulations as follows:

PART 220—DETERMINING DISABILITY

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

Subpart L—Substantial Gainful Activity

2. Section 220.143 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

§ 220.143 Evaluation guides for an employed claimant.

* * * * *

(b)* * * (1) * * *

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant show that the claimant engaged in substantial gainful activity if:

(i) *Before January 1, 2002,* the earnings averaged more than the amount(s) in Table 1 of this section for the time(s) in which the claimant worked.

(ii) *Beginning January 1, 2002,* the earnings are more than an amount determined for each calendar year to be the larger of:

(A) The amount for the previous year, or

(B) The amount established by the Social Security Administration to constitute substantial gainful activity for such year.

TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED

For months:	Monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260

TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED—Continued

For months:	Monthly earnings averaged more than:
In calendar year 1979	280
In calendar years 1980–1989 ...	300
January 1990–June 1999	500
July 1999–December 2000	700
In Calendar year 2001	740

(3) *Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity.* Beginning January 1, 2001, if the claimant's earnings are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which the claimant works, the Board will generally consider that the earnings from the claimant's work as an employee will show the claimant has not engaged in substantial gainful activity. Before January 1, 2001, if the claimant's earnings were less than the amount(s) in Table 2 of this section for the year(s) in which the claimant worked, the Board will generally consider that the earnings from the claimant's work as an employee will show that the claimant has not engaged in substantial gainful activity.

TABLE 2.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY NOT PERFORMED

For months:	Monthly earnings averaged less than:
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989 ...	190
In calendar years 1990–2000 ...	300

(4) *Before January 1, 2002, if the claimant worked in a sheltered workshop.* Before January 1, 2002, if the claimant worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the Board will ordinarily consider that the claimant's earnings from this work show that the claimant has engaged in substantial gainful activity if the claimant's earnings averaged more than the amounts in Table 1 of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in paragraph (b)(2) of this section will ordinarily show that the claimant has not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When the claimant's earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in paragraph (b)(2), the Board will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that the claimant may have engaged in substantial gainful activity.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that the claimant engaged in substantial gainful activity.*

(i) Before January 1, 2002, if the claimant's average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings (*see* paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although the Board may apply it to some people who work in sheltered workshops or comparable facilities (*see* paragraph (b)(4) of this section).

(ii) Beginning January 1, 2002, if the claimant's average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, the Board will generally not consider other information in addition to the claimant's earnings unless there is evidence indicating that the claimant may be engaging in substantial gainful activity or that the claimant is in a position to defer or suppress his or her earnings.

(iii) Examples of other information the Board may consider include, whether—

(A) The claimant's work is comparable to that of unimpaired people in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) The claimant's work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment

3. Section 220.170 is amended by revising paragraph (b) to read as follows:

§ 220.170 The trial work period.

* * * * *

(b) *What the Board means by services.* When used in this section, services means any activity, even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work to be services when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(1) *If the claimant is an employee.* The Board will consider the claimant's work as an employee to be services if:

(i) *Before January 1, 2002,* the claimant's earnings in a month were more than the amount(s) indicated in Table 1 of this section for the year(s) in which the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant's earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine whether a person has performed services for counting trial work period months.

(2) *If the claimant is self-employed.* The Board will consider the claimant's activities as a self-employed person to be services if:

(i) *Before January 1, 2002,* the claimant's net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which the claimant worked, or the hours the claimant worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant worked more than 40 hours a month in the business, or the claimant's net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine

whether a person has performed services for counting trial work period months.

TABLE 1.—FOR NON-SELF EMPLOYED

For months:	You earn more than:
In calendar years before 1979	$50
In calendar years 1979–1989	75
In calendar years 1990–2001	200
In calendar year 2001	530

TABLE 2.—FOR THE SELF-EMPLOYED

For months:	Your net earnings are more than:	Or you work in the business more than (hours):
In calendar years before 1979	$50	15
In calendar years 1979–1989	75	15
In calendar years 1990–2000	200	40
In calendar year 2001	530	40

* * * * *

Dated: May 30, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–14273 Filed 6–6–03; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–08]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of negotiated rulemaking committee meeting.

SUMMARY: This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

DATES: The committee meeting will be held on Tuesday, June 17, 2003, Wednesday, June 18, 2003, and Thursday, June 19, 2003. On June 17, 2003, the meeting will begin at approximately 9 a.m. and end at approximately 6 p.m. On June 18, 2003, the meeting will begin at approximately 8 a.m. and end at approximately 6 p.m. On June 19, 2003, the meeting will begin at approximately 8 a.m. and end at approximately 3 p.m. The committee workgroups may, at their discretion, schedule evening sessions on these days.

ADDRESSES: The meeting will take place at the Edgewater Hotel, Pier 67, 2411 Alaskan Way, Seattle, Washington 98121; telephone 1–800–624–0670 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD has established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other IHBG program regulations that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to Native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349) final rule, which created a new 24 CFR part 1000 containing the IHBG program regulations.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document. The agenda planned for the meeting includes work group sessions and the discussion of work group progress reports by the full committee. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: June 3, 2003.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 03–14401 Filed 6–6–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 14a

[REG–122917–02]

RIN 1545–BA75

Statutory Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; withdrawal of previous rulemaking; and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to statutory options. These proposed regulations affect certain taxpayers who participate in the transfer of stock pursuant to the exercise of incentive stock options and the exercise of options granted pursuant to an employee stock purchase plan (statutory options). These proposed regulations provide guidance to assist these taxpayers in complying with the law in addition to clarifying rules regarding statutory options. This document also withdraws a previous notice of proposed rulemaking.

DATES: Written and electronically submitted comments and requests to speak, with outlines of topics to be discussed at the public hearing scheduled for September 2, 2003, must be received by August 12, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–122917–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–122917–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site *www.irs.gov/regs.* The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Erinn Madden at (202) 622–6030 (not a toll-free number). To be placed on the attendance list for the hearing, please contact Guy Traynor at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by August 8, 2003. Comments are specifically requested concerning:

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

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

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

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

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

The collection of information in this proposed regulation is in 1.6039–1. Section 6039 of the Code requires all corporations that transfer stock to any person pursuant to the exercise of a statutory option to furnish that person with a written statement describing the transfer. Additionally, the corporation may be required to furnish the person a second written statement when the stock originally transferred pursuant to the exercise of the statutory option is subsequently disposed of by the person. The information on the statements required to be provided by the corporation will be used by recipients to complete their income tax returns in the year of the disposition of the statutory option stock. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 16,650 hours.

Estimated average annual burden hours per respondent: 20 minutes.

Estimated number of respondents: 50,000.

Estimated annual frequency of responses: annually.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under sections 421, 422, and, 424 of the Internal Revenue Code (Code). Changes to the applicable tax law concerning section 421 were made by sections 11801 and 11821 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–508 (104 Stat. 1388). Changes to the applicable tax law concerning section 424 were made by section 1003 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647 (102 Stat. 3581), sections 11801 and 11821 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101–508 (104 Stat. 1388), which included re-designating section 425 as section 424 of the Code, and section 1702(h) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755). Changes concerning section 422 were made by section 251 of the Economic Recovery Tax Act of 1981 (95 Stat. 172), which added section 422A to the Code. Related changes to section 422A were made by section 102(j) of the Technical Corrections Act of 1982, Public Law 97–448, section 321(a) of Tax Reform Act of 1986 (96 Stat. 2365), Public Law 99–514 (100 Stat. 2807), section 1003(d) of TAMRA, and sections 11801 and 11821 of OBRA 89, which included re-designating section 422A as section 422 of the Code.

Regulations under section 421 governing the requirements for restricted stock options and qualified stock options, as well as options granted under an employee stock purchase plan, were published in the **Federal Register** on December 9, 1957 (TD 6276), November 26, 1960 (TD 6500), January 18, 1961 (TD 6527), January 20, 1961 (TD 6540), December 12, 1963 (TD 6696), June 23, 1966 (TD 6887), July 24, 1978 (TD 7554), and November 3, 1980 (TD 7728). Temporary regulations under section 422A providing guidance and transitional rules related to incentive stock options were published in the **Federal Register** on December 17, 1981 (TD 7799) and September 18, 1992 (TD 8435). Final regulations under section 422 related to stockholder approval were published in the **Federal Register** on December 1, 1988 (TD 8235) and November 29, 1991 (TD 8374). Regulations under section 425 were published in the **Federal Register** on June 23, 1966 (TD 6887).

Proposed changes to the final regulations under sections 421, 424, and 6039 and proposed regulations under section 422A were previously published in the **Federal Register** at 49 FR 4504 on February 7, 1984 (the 1984 proposed regulations). With the exception of certain stockholder approval rules that were published in the **Federal Register** on June 23, 1966 (TD 6887) and amended by TD 7728 on October 31, 1980, the 1984 proposed regulations provided a comprehensive set of rules under section 422 of the Code. The 1984 proposed regulations are withdrawn.

In general, the income tax treatment of the grant of an option to purchase stock in connection with the performance of services and of the transfer of stock pursuant to the exercise of such option is determined under section 83 of the Code and the regulations thereunder. However, section 421 of the Code provides special rules for determining the income tax treatment of the transfer of shares of

stock pursuant to the exercise of an option if the requirements of section 422(a) or 423(a), as applicable, are met. Section 422 applies to incentive stock options, and section 423 applies to options granted under an employee stock purchase plan (collectively, statutory options).

Under section 421, if a share of stock is transferred to an individual pursuant to the exercise of a statutory option, there is no income at the time of exercise of the option with respect to such transfer, and no deduction under section 162 is allowed to the employer corporation with respect to such transfer. However, pursuant to section 56(b)(3), section 421 does not apply with respect to the exercise of an incentive stock option for purposes of the individual alternative minimum tax.

Section 422(a) of the Code provides that section 421 applies to the transfer of stock to an individual pursuant to the exercise of an incentive stock option if (i) no disposition of the share is made within 2 years from the date of grant of the option or within 1 year from the date of transfer of the share, and (ii) at all times during the period beginning on the date of grant and ending on the day 3 months before the exercise of the option, the individual is an employee of either the corporation granting the option or a parent or subsidiary of such corporation, or a corporation (or a parent or subsidiary of such corporation) issuing or assuming a stock option in a transaction to which section 424(a) applies. Section 422(b) provides several requirements that must be met for an option to qualify as an incentive stock option. Section 422(c) provides special rules applicable to incentive stock options, and section 422(d) provides a $100,000 limitation with respect to incentive stock options.

Section 424 of the Code provides special rules applicable to statutory options, including rules concerning the modification of statutory options and the substitution or assumption of an option by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation. Section 424 also contains definitions of certain terms, including *disposition, parent corporation, and subsidiary corporation.* Finally, section 424 provides special rules related to attribution of stock ownership and the effect of stockholder approval on the date of grant of a statutory option.

Explanation of Provisions

Overview

These proposed regulations would provide a set of comprehensive rules governing incentive stock options. These proposed regulations incorporate many of the rules contained in the 1984 proposed regulations, although these proposed regulations are re-numbered and re-organized. These proposed regulations would also make changes to the final regulations under sections 421 and 424 to provide additional guidance, as discussed below, in certain areas, to reflect the new organizational structure of the statutory option rules (including the re-designation of § 1.425–1 as § 1.424–1), and to remove obsolete rules and cross-references.

Section 421: General Rules

The proposed regulations under section 421 would remove obsolete provisions and update the cross-references to reflect amendments to the applicable statutes and re-organization of the regulations. These proposed regulations also incorporate many provisions of the 1984 proposed regulations. There are two sections of these proposed regulations under section 421: § 1.421–1, which would provide rules concerning the meaning and use of terms, and § 1.421–2, which would provide general rules regarding the application of section 421.

The terms defined in § 1.421–1 of these proposed regulations are the same as those previously defined in § 1.421–7, but these proposed regulations make changes to the definitions of certain terms. For example, § 1.421–1(a) of these proposed regulations expands the definition of *option* to include warrants.

These proposed regulations would provide that an option must be evidenced in paper or in an electronic form. Under either form, however, the option must be enforceable under applicable law. Similarly, these proposed regulations provide that the plan pursuant to which incentive stock options are granted must be in paper or electronic form, provided that the paper or electronic form establishes an enforceable plan.

In addition, as with any taxpayer record, the form used for the option or plan, whether paper or electronic, must be one that provides adequate substantiation of the applicability of section 421. Thus, for example, the form must be one that provides adequate substantiation of the applicable requirements, such as the date on which the option is granted, the number of shares subject to the option, and the option price. In addition, the taxpayer must retain records relating to the option that are sufficient to comply with section 6001 and the regulations thereunder. If these records are kept electronically, the records must meet the requirements of Rev. Proc. 97–22 (1997–1 C.B. 652), or subsequent guidance, and if the records are kept in an ADP system, the records must meet the requirements of Rev. Proc. 98–25 (1998–11 I.R.B. 7), or subsequent guidance.

The definition of *statutory option* in § 1.421–1(b) of these proposed regulations is revised to provide that a statutory option may include an option transferred to a trust if, under section 671 and applicable state law, the individual to whom the option was granted remains the beneficial owner. In contrast, these proposed regulations provide that a transfer of a statutory option incident to divorce will result in the option failing to qualify as a statutory option as of the date of transfer.

Section 1.421–1(i) of these proposed regulations defines *corporation* to have the same meaning prescribed by section 7701(a)(3) and § 301.7701–2(b). Thus, for example, a *corporation* includes an S Corporation, a foreign corporation, and a limited liability corporation that is treated as a corporation for all Federal tax purposes. In addition, section 1.421–1(d) of these proposed regulations provides that *stock* includes ownership interests other than capital stock. Thus, under these proposed regulations, it would be permissible for any entity that is classified as a corporation for federal tax purposes pursuant to the provisions of § 301.7701–2(b) to grant statutory stock options with respect to ownership interests in that entity.

Section 1.421–2 of these proposed regulations incorporates both the provisions of § 1.421–8 and many of the related provisions of the 1984 proposed regulations. These proposed regulations also provide further revisions, including specifying that the deduction in connection with a disqualifying disposition is allowed only if otherwise allowable under sections 83(h) and 162 and if the reporting requirements under § 1.83–6(a) are met.

Section 422: Incentive Stock Options

The proposed regulations under section 422 would provide a new set of comprehensive rules, with the exception of the rules regarding stockholder approval described in § 1.422–5 of the final regulations (re-numbered as § 1.422–3 by these proposed regulations). There are four sections under these proposed regulations: § 1.422–1, general rules; § 1.422–2, definition of incentive stock option; § 1.422–4, the $100,000 limitation; and § 1.422–5, permissible provisions.

1. Special Rules Regarding Disqualifying Dispositions

The 1984 proposed regulations provided rules concerning the consequences of disqualifying dispositions. The general disqualifying disposition rules for incentive stock options are provided in §§ 1.421–2(b)(1) and 1.422–1(b)(1) of these proposed regulations. In addition, § 1.422–1(b)(2) of these proposed regulations clarifies the operation of the special rules applicable to a disqualifying disposition of an incentive stock option under section 422(c)(2) (section 422A(c)(2), prior to amendment by OBRA 89).

The general rules concerning disqualifying dispositions are described in § 1.421–2(b) of these proposed regulations. Under these rules, if there is a disqualifying disposition of a share of stock, the special tax treatment provided by section 421 and § 1.421–2(a) does not apply to the transfer of the share. Instead, the exercise of the option is treated as the exercise of a nonstatutory option under § 1.83–7. Thus, in the taxable year in which the disqualifying disposition occurs, the individual must recognize compensation income equal to the fair market value of the stock on the date the stock is transferred less the exercise price (determined without reduction for any brokerage fees or other costs paid in connection with the disposition). A deduction attributable to the transfer of the share of stock pursuant to the exercise of the option is allowable for the taxable year in which such disqualifying disposition occurs, to the employer corporation, its parent or subsidiary corporation, or a corporation substituting or assuming an option in a transaction to which § 1.424–1(a) applies, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met.

Section 422(c)(2), however, provides a special rule that is applicable if an individual makes a disqualifying disposition of stock acquired through the exercise of an incentive stock option and if the disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized by the individual. Under this special rule, the amount includible in gross income on the disqualifying disposition, and the amount deductible, as compensation attributable to the exercise of the option, shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of the share. Under section 422(c)(2), this special rule is not applicable if the disposition is a sale or exchange with respect to which a loss (if sustained) would not be recognized by the individual. Section 1.422A–1(b)(2) of the 1984 proposed regulations described these special rules concerning the disqualifying disposition of an incentive stock option and this description is incorporated into § 1.422–1(b)(2) of these proposed regulations.

For example, if the disposition is a sale described in section 1091 (relating to a loss from wash sales of stock or securities), a gift, or a sale described in section 267(a)(1) (relating to sales between related parties), any loss sustained would not be recognized. Because a loss in any of these transactions would not be recognized, under § 1.422–1(b)(2)(ii) of these proposed regulations, the special rule provided in § 1.422–1(b)(2)(i) of these proposed regulations does not apply. Instead, the general rules for disqualifying dispositions described in § 1.421–2(b) of these proposed regulations apply.

For example, assume E, an employee of Corporation X, is granted an incentive stock option to acquire X stock. The option price on the date of grant is $100 (the fair market value of X stock on the date of grant). E exercises the option and is transferred X stock when the fair market value of the stock is $200. E later sells the stock for $150 to M before the applicable holding periods expire. Because the sale is a disqualifying disposition that meets the requirements of § 1.422–1(b)(2)(i) of these proposed regulations, in the taxable year of the disqualifying disposition, E is only required to include $50 (the excess of the amount realized on the sale, $150, over the adjusted basis of the share, $100) in gross income as compensation attributable to the exercise of the option. For its taxable year in which the disqualifying disposition occurs, X is allowed a compensation deduction of $50 attributable to E's exercise of the option, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met.

In this example, however, if 10 days after the sale to M, E purchases substantially identical stock, under section 1091, a loss would not be recognized on the sale to M. Thus, under § 1.422–1(b)(2)(ii) of these proposed regulations, the special rule in § 1.422–1(b)(2)(i) does not apply. Instead of including $50 in gross income in the taxable year of the disqualifying disposition, E must include $100 (the difference between the fair market value of X stock on the date of transfer, $200, and the exercise price, $100) in gross income as compensation attributable to the exercise of the option. In the taxable year in which the disqualifying disposition occurs, X is allowed a compensation deduction of $100 attributable to E's exercise of the option if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met.

Since the 1984 proposed regulations were issued, there have been no changes in section 422(c)(2) (other than the redesignation of section 422A(c)(2) as 422(c)(2) by OBRA 89), and these proposed regulations do not make any substantive changes to the 1984 proposed regulations.

2. Stockholder Approval of Incentive Stock Option Plan

Among other requirements, to qualify as an incentive stock option, the option must be granted pursuant to a plan which is approved by the stockholders of the granting corporation within 12 months before or after the date the plan is adopted. *See* section 422(b). These proposed regulations would provide the same basic requirements for stockholder approval as those included in the 1984 proposed regulations.

These proposed regulations, however, would provide additional guidance concerning the circumstances in which stockholder approval is required. As under the 1984 proposed regulations, stockholder approval is required if there is a change in the aggregate number of shares or in the employees (or class or classes of employees) eligible to be granted options under the plan. In addition, while the standard for determining when stockholder approval is required is the same as under the 1984 proposed regulations, these proposed regulations clarify these requirements and provide a more complete list of situations that require new stockholder approval of the plan by specifically including a change in the shares with respect to which options are issued or a change in the granting corporation. Thus, for example, assume that S, a subsidiary of P, adopts an incentive stock option plan under which incentive stock options for S stock will be granted to S employees, and the plan is approved by the stockholders of S (in this case, P) within the applicable 24-month period. If S later amends the plan to provide for the grant of incentive stock options to acquire P stock (rather than S stock), S must obtain approval from the stockholders of S within 12 months before or after the date of the amendment to the plan because the amendment of the plan to allow the grant of options for P stock is considered the adoption of a new plan.

These proposed regulations also would provide additional guidance

regarding the application of the stockholder approval requirements in the context of the substitution or assumption of an option by reason of a corporate transaction. For a discussion of these rules, see the ''Substitution, assumption, and modification of options'' portion of the preamble.

3. $100,000 Limitation

Section 422(d)(1) provides that to the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to section 422(d)) are exercisable for the first time by any individual during the calendar year (under all of plans of the employer corporation and any related corporation) exceeds $100,000, such options are not treated as incentive stock options. Under section 422(d)(2), options are taken into account in the order in which they are granted. Section 422(d)(3) provides that the fair market value of stock is determined at the time the option is granted.

The 1984 proposed regulations provided no rules concerning the operation of the $100,000 limitation because these provisions were enacted in 1986. However, Notice 87–49 (1987–2 C.B. 355) provides general guidance about the operation of the $100,000 limitation, including examples illustrating the application of this limitation.

Section 1.422–4 of these proposed regulations provides guidance on the operation of the $100,000 limitation that incorporates and expands on the guidance provided in Notice 87–49. Section 1.422–4(a)(1) of these proposed regulations provides that an option that otherwise qualifies as an incentive stock option nevertheless fails to be an incentive stock option to the extent the $100,000 limitation is exceeded.

To determine whether the $100,000 limitation has been exceeded, the rules provided in § 1.422–4(b) of these proposed regulations would apply. Under these proposed regulations, an option that does not qualify as an incentive stock option when granted (including an option which contains terms providing that it will not be treated as an incentive stock option) is disregarded. Additionally, the fair market value of stock is determined on the date of grant of the option. Except as described in the following paragraph, options are taken into account in the order in which they are granted.

An option is considered to be first exercisable during a calendar year if the option will first become exercisable at any time during the year, assuming that any condition on the optionee's ability to exercise the option related to the performance of services is satisfied. If an optionee is able to exercise the option in a year only if an acceleration provision is satisfied, then the option is exercisable in that year only if the acceleration provision is triggered prior to the end of that year. After an acceleration provision is triggered, for purposes of applying the $100,000 limitation, the options subject to such provision and all other options first exercisable during a calendar year are then taken into account in the order in which granted. However, because an acceleration provision is not taken into account prior to its triggering, an incentive stock option that becomes exercisable for the first time during a calendar year by operation of such a provision does not affect the application of the $100,000 limitation with respect to an option (or portion thereof) exercised prior to such acceleration. An acceleration provision includes, for example, a provision that accelerates the exercisability of an option on a change in ownership or control or a provision that conditions exercisability on the attainment of a performance goal. *See* § 1.422–4(d), *Example 4* of these proposed regulations.

For example, assume that in 2006, E, an employee of Y Corporation, is granted Option 1 for stock of Y with a fair market value on the date of grant of $75,000. Option 1 is first exercisable in 2008, except that the option provides that it will become immediately exercisable in the event of a change in control. In 2007, E is granted Option 2 for stock of Y with a fair market value on the date of grant of $50,000. Option 2 is immediately exercisable, and E exercises Option 2. A change in control of Y occurs in 2007, after E has exercised Option 2, and Option 1 becomes immediately exercisable. Notwithstanding the fact that Option 1 was granted prior to Option 2, because the acceleration clause is not taken into account until it is triggered and because E exercised Option 2 prior to the change in control, Option 2 is an incentive stock option in its entirety. Option 1 is bifurcated into an incentive stock option to acquire stock with a fair market value of $50,000 on the date of grant and a nonstatutory option to acquire stock with a fair market value of $25,000 on the date of grant.

If the change in control instead occurred prior to E's exercise of Option 2, then Option 1, which was granted first, is treated as an incentive stock option in its entirety, and Option 2 is bifurcated into an incentive stock option to acquire stock with a fair market value of $25,000 on the date of grant and a nonstatutory option to acquire stock with a fair market value of $25,000 on the date of grant.

These proposed regulations also would provide that an option is disregarded for purposes of the $100,000 limitation if, prior to the calendar year during which it would have otherwise become exercisable for the first time, the option is modified and thereafter ceases to be an incentive stock option, is transferred in violation of the nontransferability requirements, or is canceled. In all other situations, a modified, transferred, or canceled option (or portion thereof) is treated as outstanding until the end of the calendar year during which it would otherwise have become exercisable for the first time.

Finally, under these proposed regulations, a disqualifying disposition has no effect on the determination of whether an option exceeds the $100,000 limitation. Thus, for example, assume Corporation X grants E, an employee of X, Option 1 to acquire X stock with a fair market value on the date of grant of $75,000. Option 1 is exercisable on January 1, 2005. On January 5, 2005, E exercises the option and sells the stock in a disqualifying disposition. On January 15, 2005, X grants E Option 2 to acquire X stock with a fair market value on the date of grant of $50,000. Option 2 is immediately exercisable. Under § 1.422–4(b)(6) of the proposed regulations, the disqualifying disposition of Option 1 has no effect on the application of the $100,000 limitation. Thus, Option 2 is bifurcated into an incentive stock option to acquire stock with a fair market value of $25,000 on the date of grant and a nonstatutory option to acquire stock with a fair market value of $25,000 on the date of grant.

4. Permissible Provisions

These proposed regulations also provide guidance on additional provisions that may be included in an incentive stock option. Because these provisions are not part of the requirements for an incentive stock option, they are addressed separately in § 1.422–5 of these proposed regulations (many of these rules were previously in § 1.422A–2(i) of the 1984 proposed regulations). Section 1.422–5 of these proposed regulations addresses provisions permitting cashless exercise, providing the right to receive additional compensation, and providing alternative rights. In each case, these proposed regulations essentially retain the rules described in the 1984 proposed regulations.

Section 424: Definitions and Special Rules

These proposed regulations re-designate the regulations under section 425 as regulations under section 424 and update the regulations. For example, these proposed regulations amend the definition of *disposition* to exclude a transfer of a share of stock acquired pursuant to the exercise of a statutory option if the transfer is described in section 1041(a) (concerning transfers between spouses or former spouses incident to divorce).

Substitution, Assumption, and Modification of Options

Section 424(h)(1) provides that if the terms of an option are modified, extended, or renewed, such modification, renewal, or extension is treated as the grant of a new option. Under section 424(h)(3), the term *modification* (with certain exceptions) means any change in the terms of an option which gives the optionee additional benefits under the option. One exception to this definition is that a change in the terms of an option attributable to a substitution or an assumption that meets the requirements of section 424(a) is not a modification of an option.

These proposed regulations would provide that an *eligible corporation* (as defined in § 1.424–1(a)(2) of these proposed regulations) may by reason of a *corporate transaction* (as defined in § 1.424–1(a)(3) of these proposed regulations) substitute a new statutory option (new option) for an outstanding statutory option (old option) or assume an old option without the substitution or assumption being considered a modification of the old option under section 424(h).

An *eligible corporation* is defined as a corporation that is the employer of an optionee or a related corporation of such corporation. The determination of whether a corporation is the employer of the optionee or a related corporation of such corporation is based upon the circumstances existing immediately after the corporate transaction.

Under the proposed regulations, a *corporate transaction* is (i) a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation; (ii) a distribution (excluding ordinary dividends), or change in the terms or number of outstanding shares of such corporation, such as a stock split or stock dividend (a change in capital structure); (iii) a change in the name of a corporation whose stock is purchasable under the old option; and (iv) such other corporate events as may be prescribed by the Commissioner in published guidance.

The definitions of *eligible corporation* and *corporate transaction* would be expanded under these proposed regulations. Specifically, these proposed regulations permit corporations with outstanding options to substitute or assume an option under § 1.424–1(a) if there is a corporate transaction. Additionally, the definition of *corporate transaction* includes events, such as a stock dividend or stock split, that were previously addressed in § 1.425–1(e) of the final regulations, and is otherwise expanded so that events or transactions with similar consequences are treated the same. Because of these changes, the rules in § 1.425–1(e)(5)(ii) of the current regulations would be removed.

These proposed regulations also would eliminate the requirement contained in § 1.425–1(a)(1)(ii) of the final regulations that the corporate transaction result in a significant number of employees being transferred to a new employer or discharged or in the creation or severance of a parent-subsidiary relationship. However, § 1.424–1(a)(4) of these proposed regulations would continue to impose, and provide additional guidance concerning, the requirement that the substitution or assumption be ''by reason of'' the corporate transaction.

Under these proposed regulations, a change in an option or issuance of a new option is considered to be by reason of a corporate transaction unless the relevant facts and circumstances demonstrate that such change or issuance is made for reasons unrelated to such corporate transaction. For example, a change in an option or issuance of a new option is considered to be made for reasons unrelated to such a corporate transaction if there is an unreasonable delay between the corporate transaction and such change in the option or issuance of a new option or if the corporate transaction serves no substantial corporate business purpose independent of the change in options. A change in an option or issuance of a new option is not by reason of a distribution or change in the terms or number of outstanding shares unless the option as changed, or the new option, is issued on the stock of the same corporation, or if such class of stock is eliminated by the change in capital structure, on other stock of the same corporation. For purposes of a change in name of the corporation, the issuance of a new option is by reason of the change in name of the corporation only if the option issued is on stock of the successor corporation.

These proposed regulations do not otherwise revise the requirements that must be met for a change in an option to qualify as a substitution or an assumption. For example, no changes are proposed with respect to the requirements that no additional benefits be granted to the optionee in connection with a substitution or assumption or that certain spread and ratio tests must be met.

These proposed regulations also continue to impose the requirement contained in the final regulations that the new or assumed option must otherwise qualify as a statutory option. *See* § 1.424–1(a)(5)(vi) of these proposed regulations. Thus, except as necessary to comply with the specific requirements regarding substitution or assumption, such as the restrictions on ratio and spread, the option must comply with the requirements of § 1.422–2 of these proposed regulations or 1.423–2, as applicable. Accordingly, for example, the new option must be granted, or the old option must be assumed, under a plan approved by the stockholders of the corporation substituting or assuming the option.

The proposed regulations do not impose any additional stockholder approval requirement, however, merely because there is a corporate transaction. In Rev. Rul. 71–474 (1971–2 C.B. 215) involving qualified stock options,[1] the IRS held that qualified stock options assumed by a corporation in a merger with the granting corporation retained their status as qualified stock options without approval of the assuming corporation's stockholders. In the ruling, the IRS indicated that approval of the persons who owned stock of the granting corporation at the time the plan was approved was sufficient to satisfy the stockholder approval requirements. Similarly, the 1984 proposed regulations provided that the stockholders of the granting corporation must approve the plan within 12 months before or after its adoption without additional requirements.

Section 1.422–2(b)(2) of these proposed regulations would provide that the plan must be approved during the applicable 24-month period by the stockholders of the corporation granting the incentive stock option. There is no requirement that additional stockholder approval be obtained because of post-approval changes in the stockholders. For example, assume S, a subsidiary of

[1] Qualified stock options are no longer permitted under section 422, but the stockholder approval provisions applicable to a plan under which qualified stock options were granted were the same as those that apply to a plan uder which incentive stock options are granted.

P, adopts a plan under which incentive stock options for S stock will be granted to S employees. Under the proposed regulations, the stockholders of S must approve the plan within 12 months before or after the adoption of the plan. If P later completely disposes of its interest in S, outstanding S options and new grants of S options under the plan are treated as options granted under a plan that meets the stockholder approval requirement of § 1.422–2(b)(2) of these proposed regulations without regard to whether S seeks approval of the plan from the stockholders of S after the spin-off. Assuming all other applicable requirements are met, the outstanding S options and new options granted by S pursuant to the plan with respect to S stock will be treated as incentive stock options.

These proposed regulations also would provide additional guidance with respect to when a change to an option constitutes a modification. Under these proposed regulations, as under the 1984 proposed regulations, both a provision under an option that provides that the optionee may receive an additional benefit at the future discretion of the granting corporation and the exercise of that discretion are considered modifications of the option. However, under these proposed regulations, it is not a modification for the granting corporation to exercise discretion related to the payment of a bonus at the time of the exercise of the option, the availability of a loan at exercise, or the right to tender previously-owned stock for the stock purchasable under the option. A change to an option adding such discretion, however, would be a modification.

In addition, these proposed regulations address more clearly changes related to an option, including changes not only to the option or the option plan, but also changes to any other related agreements. In the case of a change to the stock on which the option is granted that affects the value of the stock, there would be a modification unless a new option is substituted for the old option by reason of the change in the terms of the stock in accordance with the requirements of § 1.424–1(a) of these proposed regulations.

Section 6039

These proposed regulations also would provide guidance on the statements required under section 6039 of the Code. Under these proposed regulations, § 1.6039–1 of the final regulations would be deleted, and § 1.6039–2 would be re-designated as § 1.6039–1. These proposed regulations take the same approach toward providing notice as that taken in the 1984 proposed regulations.

Section 1.6039–1(f) of these proposed regulations states that the matter of furnishing statements in electronic form is reserved. Temporary and proposed regulations have been issued under sections 6041 and 6051 (relating to voluntary electronic furnishing of payee statements on Form W–2) and section 6050S (relating to voluntary electronic furnishing of statements to individuals for whom Forms 1098–T, ''Tuition Payments Statement,'' and 1098–E, ''Student Loan Interest Statement'' are filed). See 66 FR 10191 and 10247 (Feb. 14, 2001). The preamble to those temporary and proposed regulations requested comments regarding, among other things, the extent to which the proposed method of electronic filing is appropriate for information statements required under other sections of the Code. In addition, section 401 of the Job Creation and Worker Assistance Act of 2002 authorized all statements required by sections 6041 through 6050T of the Code to be furnished electronically under certain conditions. The issue of electronic statements in general is under review, and comments are requested.

Proposed Effective Date

The regulations under sections 421, 422, and 424 are proposed to apply as of the date that is 180 days after publication of final regulations in the **Federal Register** and apply to any statutory option that is granted on or after that date. The regulations under section 6039 are proposed to apply to transfers on or after the date that is 180 days after publication of final regulations in the **Federal Register** of stock acquired pursuant to a statutory option. The 1984 proposed regulations are withdrawn. Taxpayers may rely on these proposed regulations for the treatment of any statutory option granted after June 9, 2003.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 1.6039–1 of these proposed regulations provides for the collection of information. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the provision of employee statements provided under these proposed regulations will impose a minimal paperwork burden on most small entities (see the discussion under the heading ''Paperwork Reduction Act'' earlier in this preamble). Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking is being submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 2, 2003, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must come to the Constitution Avenue entrance and present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Erinn Madden, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 1 and 14a

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 14a are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§§ 1.421–1 through 1.421–6 [Removed]

Par. 2. Sections 1.421–1 through 1.421–6 are removed.

Par. 3. Section 1.421–7 is redesignated as § 1.421–1 and is amended as follows:

1. In paragraph (a)(1), first sentence, the language ''sections 421 through 425'' is removed and ''§§ 1.421–1 through 1.424–1'' is added in its place.

2. In paragraph (a)(1), first sentence, the language ''includes'' is removed, and ''means'' is added in its place.

3. In paragraph (a)(1), removing the second sentence.

4. Removing the last sentence of paragraph (a)(1) and adding two sentences in its place.

5. Revising paragraph (a)(3).

6. Revising paragraphs (b)(1) and (b)(2).

7. In paragraph (b)(3)(i), third sentence, removing the language ''1.425–1'' and inserting ''1.424–1'' in its place.

8. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–1(b)(3)(ii), *Example 1*, first, second, third and fourth sentences	S–1	X
1.421–1(b)(3)(ii), *Example 1*, second sentence	1964	2004
1.421–1(b)(3)(ii), *Example 1*, third and fourth sentences	1965	2005
1.421–1(b)(3)(ii), *Example 2*, first and second sentences	1964	2004
1.421–1(b)(3)(ii), *Example 2*, first, third, and fourth sentences	S–1	X
1.421–1(b)(3)(ii), *Example 2*, third and fourth sentences	1965	2005

9. Revising the last sentence of paragraph (b)(3)(ii), *Example 1*.

10. Removing the last sentence of paragraph (b)(3)(ii), *Example 2* and adding two sentences in its place.

11. Removing the first sentence of paragraph (c)(1) and adding two new sentences in its place.

12. In paragraph (c)(2), second sentence, the language ''425'' is removed and ''424'' is added in its place.

13. In paragraph (c)(3), second and last sentences, the language ''1964'' is removed and ''2004'' is added in its place.

14. In paragraph (c)(3), second sentence, the language ''1965'' is removed and ''2005'' is added in its place.

15. Revising paragraphs (d) and (e).

16. In paragraph (f), in the first sentence, the language ''sections 421 through 425'' is removed and ''this section and §§ 1.421–2 through 1.424–1'' is added in its place.

17. Revising the last sentence of paragraph (f).

18. In paragraph (g), first sentence, the language ''sections 421 through 425'' is removed and ''this section and §§ 1.421–2 through 1.424–1'' is added in its place.

19. Adding a new third sentence to paragraph (g).

20. Revising the first, second, and third sentences of paragraph (h)(1).

21. Revising paragraph (h)(2).

22. In paragraph (h)(3), first sentence, the language ''425'' is removed and ''424'' is added in its place.

23. In paragraph (h)(3), last sentence, the language ''or assuming'' is removed and ''the option or substituting or assuming the option'' is added in its place.

24. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–1(h)(4), *Example 1*, first sentence.	1964	2004.
1.421–1(h)(4), *Example 1*, second and last sentences.	1965	2005.
1.421–1(h)(4), *Example 2*, first sentence.	425	424.
1.421–1(h)(4), *Example 2*, first sentence.	issuing	substituting.
1.424–1(h)(4), *Example 2*, last sentence.	1965	2005.
1.421–1(h)(4), *Example 2*, last sentence.	for A is then employed by a corporation which issued an option under section 425(a).	to the transfer of the M stock because, at all times during the period beginning with the date of grant of the X option and ending with the date of exercise of the M option, A was an employee of the corporation granting the option or substituting or assuming the option under § 1.424–1(a).
1.421–1(h)(4), *Example 3*, second sentence.	1964	2004.
1.421–1(h)(4), *Example 3*, third, fourth, and fifth sentences.	1965	2005.
1.421–1(h)(4), *Example 4*, first sentence.	425(a)	424(a).
1.421–1(h)(4), *Example 5*, first sentence.	qualified stock	statutory.
1.421–1(h)(4), *Example 6*, first sentence.	an employment contract with M which provides that upon the termination of any military duty E may be required to serve, E will be entitled to reemployment with M or a parent or subsidiary of M.	a right to reemployment with M or a related corporation on the termination of any military duty E may be required to serve.
1.421–1(h)(4), *Example 6*, third sentence.	of M	of M or a related corporation.

Newly designated section	Remove	Add
1.421–1(h)(4), *Example 6*, last sentence.	can apply	applies.
1.421–1(h)(4), *Example 7*, first and last sentences.	a qualified stock	an incentive.
1.421–1(h)(4), *Example 7*, first sentence.	parent or subsidiary	related corporation.
1.421–1(h)(4), *Example 7*, last sentence.	its parent and subsidiary corporation	related corporations.
1.421–1(h)(4), *Example 7*, last sentence.	terminated	deemed terminated.

25. Revising paragraph (i).

26. Adding paragraph (j).

The additions and revisions read as follows:

§ 1.421–1 Meaning and use of certain terms.

(a) * * * (1) * * * While no particular form of words is necessary, the option must express, among other things, an offer to sell at the option price, the maximum number of shares purchasable under the option, and the period of time during which the offer remains open. The term option includes a warrant that meets the requirements of this paragraph (a)(1).

* * * * *

(3) An option must be in writing (in paper or electronic form), provided that such writing is adequate to establish an option right or privilege that is enforceable under applicable law.

(b) *Statutory options.* (1) The term *statutory option,* for purposes of this section and §§ 1.421–2 through 1.424–1, means an *incentive stock option*, as defined in § 1.422–2(a), or an option granted under an *employee stock purchase plan,* as defined in § 1.423–2.

(2) An option qualifies as a statutory option only if the option is not transferable (other than by will or by the laws of descent and distribution) by the individual to whom the option was granted, and is exercisable, during the lifetime of such individual, only by such individual. See §§ 1.422–2(a)(2)(v) and 1.423–2(j). Accordingly, an option which is transferable or transferred by the individual to whom the option is granted during such individual's lifetime, or is exercisable during such individual's lifetime by another person, is not a statutory option. However, if the option or the plan under which the option was granted contains a provision permitting the individual to designate the person who may exercise the option after such individual's death, neither such provision, nor a designation pursuant to such provision, disqualifies the option as a statutory option. A pledge of the stock purchasable under an option as security for a loan that is used to pay the option price does not cause the option to violate the nontransferability requirements of this paragraph (b). Also, the transfer of an option to a trust does not disqualify the option as a statutory option if, under section 671 and applicable State law, the individual is considered the sole beneficial owner of the option while it is held in the trust. If an option is transferred incident to divorce (within the meaning of section 1041) or pursuant to a qualified domestic relations order (within the meaning of section 414(p)), the option does not qualify as a statutory option as of the day of such transfer. For the treatment of nonstatutory options, *see* § 1.83–7.

(3)(ii) * * * * *

Example 1. * * * Because X was a subsidiary of P on the date of the grant of the statutory option, the option does not fail to be a statutory option even though X ceases to be a subsidiary of P.

Example 2. * * * Because X was not a subsidiary of P on the date of the grant of the option, the option is not a statutory option even though S later becomes a subsidiary of P. See §§ 1.422–2(a)(2) and 1.423–2(b).

(c) *Time and date of granting option.* (1) For purposes of this section and §§ 1.421–2 through 1.424–1, the language ''the date of the granting of the option'' and ''the time such option is granted,'' and similar phrases refer to the date or time when the granting corporation completes the corporate action constituting an offer of stock for sale to an individual under the terms and conditions of a statutory option. A corporate action constituting an offer of stock for sale is not considered complete until the date on which the maximum number of shares that can be purchased under the option and the minimum option price are fixed or determinable.

* * *

* * * * *

(d) *Stock and voting stock.* (1) For purposes of this section and §§ 1.421–2 through 1.424–1, the term *stock* means capital stock of any class, including voting or nonvoting common or preferred stock. Except as otherwise provided, the term includes both treasury stock and stock of original issue. Special classes of stock authorized to be issued to and held by employees are within the scope of the term *stock* as used in such sections, provided such stock otherwise possesses the rights and characteristics of capital stock.

(2) For purposes of determining what constitutes voting stock in ascertaining whether a plan has been approved by stockholders under § 1.422–2(b) or 1.423–2(c) or whether the limitations pertaining to voting power contained in sections §§ 1.422–2(f) and 1.423–2(d) have been met, stock which does not have voting rights until the happening of an event, such as the default in the payment of dividends on preferred stock, is not voting stock until the happening of the specified event. Generally, stock which does not possess a general voting power, and may vote only on particular questions, is not voting stock. However, if such stock is entitled to vote on whether a stock option plan may be adopted, it is voting stock.

(3) In general, for purposes of this section and §§ 1.421–2 through 1.424–1, ownership interests other than capital stock are considered stock.

(e) *Option price.* (1) For purposes of this section and §§ 1.421–2 through 1.424–1, the term *option price, price paid under the option,* or *exercise price* means the consideration in cash or property which, pursuant to the terms of the option, is the price at which the stock subject to the option is purchased. The term *option price* does not include any amounts paid as interest under a deferred payment arrangement or treated as interest.

(2) Any reasonable valuation method may be used to determine whether, at the time the option is granted, the option price satisfies the pricing requirements of sections 422(b)(4), 422(c)(5), 422(c)(7), and 423(b)(6) with respect to the stock subject to the option. Such methods include, for example, the valuation method described in § 20.2031–2 of this chapter (Estate Tax Regulations).

(f) *Exercise.* * * * An agreement or undertaking by the employee to make payments under a stock purchase plan does not constitute the exercise of an option to the extent the payments made remain subject to withdrawal by or refund to the employee.

(g) *Transfer.* * * * A transfer does not fail to occur merely because, under the terms of the arrangement, the individual may not dispose of the share for a specified period of time or the share is subject to a right of first refusal at the share's fair market value at the time of sale.

(h) *Employment relationship.* (1) An option is a statutory option only if, at the time the option is granted, the optionee is an employee of the corporation granting the option, or a related corporation of such corporation. If the option has been assumed or a new option has been substituted in its place under § 1.424–1(a), the optionee must, at the time of such substitution or assumption, be an employee of the corporation so substituting or assuming the option, or a related corporation of such corporation. The determination of whether the optionee is an employee at the time the option is granted (or at the time of the substitution or assumption under § 1.424–1(a)) is made in accordance with section 3401(c) and the regulations thereunder. * * *

(2) In addition, § 1.421–2(a) is applicable to the transfer of a share pursuant to the exercise of the statutory option only if the optionee is, at all times during the period beginning with the date of the granting of such option and ending on the day 3 months before the date of such exercise, an employee of either the corporation granting such option, a related corporation of such corporation, or a corporation (or a related corporation of such corporation) substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies. For purposes of the preceding sentence, the employment relationship is treated as continuing intact while the individual is on military leave, sick leave, or other bona fide leave of absence (such as temporary employment by the Government) if the period of such leave does not exceed 90 days, or if longer, so long as the individual's right to reemployment with the corporation granting the option (or a related corporation of such corporation) or a corporation (or a related corporation of such corporation) substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies, is guaranteed either by statute or by contract. If the period of leave exceeds 90 days and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship is deemed to terminate on the 91st day of such leave. Thus, if the option is not exercised before such deemed termination of employment, § 1.421–2(a) applies to the transfer of a share pursuant to an exercise of the option only if the exercise occurs within 3 months from the date the employment relationship is deemed terminated.

* * * * *

(i) *Additional definitions.* (1) *Corporation.* For purposes of this section and §§ 1.421–2 through 1.424–1, the term *corporation* has the meaning prescribed by section 7701(a)(3) and § 301.7701–2(b) of this chapter. For example, a *corporation* for purposes of the preceding sentence includes an S corporation (as defined in section 1361), a foreign corporation (as defined in section 7701(a)(5)), and a limited liability company that is treated as a corporation for all Federal tax purposes.

(2) *Parent corporation and subsidiary corporation.* For the definition of the terms *parent corporation* (and *parent*) and *subsidiary corporation* (and *subsidiary*), for purposes of this section and §§ 1.421–2 through 1.424–1, see § 1.424–1(f)(i) and (ii), respectively. *Related corporation* as used in this section and in §§ 1.421–2 through 1.424–1 means either a parent corporation or subsidiary corporation.

(j) *Effective date.* This section applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

Par. 4. Section 1.421–8 is re-designated as 1.421–2 and is amended by:

1. Revising paragraphs (a)(1), (b), and (c)(1).

2. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–2(c)(2), second sentence.	or 424(c)(1)	.....
Add 1.421–2(c)(2), third sentence.	or 424(c)(1)	.....
1.421–2(c)(3)(i), first, second, and third sentences.	422(c)(1), 423(c), or 424(c)(1).	423(c)
1.421–2(c)(3)(ii), *Example,* first sentence.	1964	2004
1.421–2(c)(3)(ii), *Example,* third, fifth, and sixth sentences.	1966	2006

3. In paragraph (c)(2), first sentence, add the phrase ''for purposes of section 423(c)'' at the end of the first sentence.

4. Removing paragraph (c)(4)(i) and redesignating paragraphs (c)(4)(ii) through (c)(4)(iv) as paragraphs (c)(4)(i) through (c)(4)(iii), respectively.

5. In newly designated paragraph (c)(4)(i)(*a*), first sentence, removing the phrase ''In the case of an employee dying after December 31, 1956'' and adding ''In the case of the death of an optionee'' in its place.

6. Removing *Example (1)* in newly designated paragraph (c)(4)(iii) and redesignating *Examples (2)* through (5) as *Examples (1)* through (4), respectively.

7. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.421–2(c)(4)(i)(*a*), last sentence	422(c)(1), 423(c), or 424(c)(1)	423(c).
1.421–2(c)(4)(i)(*b*), first, second, and last sentences.	422(c)(1), 423(c), or 424(c)(1)	423(c).
1.421–2(c)(4)(i)(*c*), first sentence	422(c)(1), 423(c), or 424(c)(1)	423(c).
1.421–2(c)(4)(iii), *Example 1,* first sentence.	1964	2005.
1.421–2(c)(4)(iii), *Example 1,* eighth sentence.	subdivision (ii)(*b*) of this subparagraph	paragraph (c)(4)(i)(*b*) of this section.
1.421–2(c)(4)(iii), *Example 1,* third and fifth sentences.	1966	2006.
1.421–2(c)(4)(iii), *Example 1,* ninth sentence.	subdivision (ii)(*c*) of this subparagraph	paragraph (c)(4)(i)(*c*) of this section.

Newly designated section	Remove	Add
1.421–2(c)(4)(iii), *Example 2,* second and fifth sentences.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 2,* fifth sentence.	subdivision (ii)(*b*) of this subparagraph	paragraph (c)(4)(i)(*b*) of this section.
1.421–2(c)(4)(iii), *Example 2,* first sentence.	*example (2)*	*Example 1*.
1.421–2(c)(4)(iii), *Example 3,* first sentence.	*example (2)*	*Example 1*.
1.421–2(c)(4)(iii), *Example 3,* second and fourth sentences.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 3,* fourth sentence.	subdivision (ii)(*c*) of this subparagraph	paragraph (c)(4)(i)(*c*) of this section
1.421–2(c)(4)(iii), *Example 4,* first sentence.	*example (2)*	*Example 1*.
1.421–2(c)(4)(iii), *Example 4,* first sentence.	1966	2006.
1.421–2(c)(4)(iii), *Example 4,* first and second sentences.	1967	2007.
1.421–2(c)(4)(iii), *Example 4,* third and fifth sentences.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 4,* sixth sentence.	subdivision (ii)(*a*) of this subparagraph	paragraph (c)(4)(i)(*a*) of this section.
1.421–2(c)(4)(iii), *Example 4,* fifth and sixth sentences.	subdivision (ii)(*b*) of this subparagraph	paragraph (c)(4)(i)(*b*) of this section.
1.421–2(c)(4)(iii), *Example 4,* sixth sentence.	subdivision (ii)(*c*) of this subparagraph	paragraph (c)(4)(i)(*c*) of this section.

8. Revising paragraph (d).
9. Adding paragraph (f).

The revisions read as follows:

§ 1.421–2 General rules.

(a) *Effect of qualifying transfer.* (1) If a share of stock is transferred to an individual pursuant to the individual's exercise of a statutory option, and if the requirements of § 1.422–1(a) (relating to incentive stock options) or § 1.423–1(a) (relating to employee stock purchase plans) whichever is applicable, are met, then—

(i) No income results at the time of the transfer of such share to the individual upon the exercise of the option with respect to such share (in addition, no income results upon grant of the option, *see* § 1.83–7);

(ii) No deduction under section 162 or the regulations thereunder (relating to trade or business expenses) is allowable at any time with respect to the share so transferred; and

(iii) No amount other than the price paid under the option is considered as received by the employer corporation, a related corporation of such corporation, or a corporation substituting or assuming a stock option in a transaction to which § 1.424–1(a) (relating to corporate reorganizations, liquidations, etc.) applies, for the share so transferred.

* * * * *

(b) *Effect of disqualifying disposition.* (1)(i) The disposition (as defined in § 1.424–1(c)) of a share of stock acquired by the exercise of a statutory option before the expiration of the applicable holding periods as determined under § 1.422–1(a) or 1.423–1(a) is a disqualifying disposition and makes paragraph (a) of this section inapplicable to the transfer of such share. *See* § 1.83–7 for the treatment of nonstatutory options. The income attributable to such transfer (determined without reduction for any brokerage fees or other costs paid in connection with the disposition) is treated by the individual as compensation income received in the taxable year in which such disqualifying disposition occurs. Similarly, if otherwise allowable under sections 83(h) and 162, a deduction attributable to such transfer is allowable for the taxable year in which such disqualifying disposition occurs to the employer corporation, or a related corporation of such corporation, or a corporation substituting or assuming an option in a transaction to which § 1.424–1(a) applies. Additionally, an amount is allowed as a deduction only if the requirements of § 1.83–6(a) are satisfied. No amount is treated as income, and no amount is allowed as a deduction, for any taxable year other than the taxable year in which the disqualifying disposition occurs. If the amount realized on the disposition exceeds (or is less than) the sum of the amount paid for the share and the amount of compensation income recognized as a result of such disposition, the extent to which the difference is treated as gain (or loss) is determined under the rules of section 302 or 1001, as applicable.

(ii) The following examples illustrate the principles of this paragraph (b):

Example 1. On June 1, 2006, X Corporation grants an incentive stock option to A, an employee of X, entitling A to purchase 100 shares of X stock at $10 per share. On August 1, 2006, A exercises the option when the fair market value of X stock is $20 per share, and 100 shares of X stock are transferred to A on that date. On December 15, 2007, A sells the stock. Because A disposed of the stock before June 2, 2008, A did not satisfy the holding period requirements of § 1.422–1(a). Under paragraph (b)(1)(i) of this section, A made a disqualifying disposition of the stock. Thus, paragraph (a) of this section is inapplicable to the transfer of the shares, and A must include the compensation income attributable to the transfer of the shares in gross income. The amount of compensation income A must include in income under § 1.83–7 in the year of the disqualifying disposition is $1,000 (($20, the fair market value of X stock on transfer less $10, the exercise price per share) times 100 shares)). If otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X is allowed a deduction of $1,000 for its taxable year in which the disqualifying disposition occurs.

Example 2. Y Corporation grants an incentive stock option for 100 shares of its stock to E, an employee of Y. The option has an exercise price of $10 per share. E exercises the option and is transferred the shares when the fair market value of a share of Y stock is $30. Before the applicable holding periods expire, Y redeems the shares for $70 per share. Because the holding period requirements of § 1.422–1(a) are not met, the redemption of the shares is a disqualifying disposition of the shares. Under paragraph (b)(1)(i) of this section, A made a disqualifying disposition of the stock. Thus, paragraph (a) of this section is inapplicable

to the transfer of the shares, and E must include the compensation income attributable to the transfer of the shares in gross income. Under § 1.83–7, the amount of compensation income attributable to E's purchase of the share that E must include in gross income in the year of the disqualifying disposition is $2,000 ($3,000, the fair market value of Y stock on transfer, less $1,000, the exercise price paid by E). The character of the additional gain that is includible in E's income as a result of the redemption is determined under the rules of section 302. If otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, Y is allowed a deduction for the taxable year in which the disqualifying disposition occurs for the compensation income of $2,000. Y is not allowed a deduction for the additional gain includible in E's income as a result of the redemption.

(2) If an optionee transfers stock acquired through the optionee's exercise of a statutory option prior to the expiration of the applicable holding periods, paragraph (a) of this section continues to apply to the transfer of the stock pursuant to the exercise of the option if such transfer is not a disposition of the stock as defined in § 1.424–1(c) (for example, a transfer from a decedent to the decedent's estate or a transfer by bequest or inheritance). Similarly, a subsequent transfer by the executor, administrator, heir, or legatee is not a disqualifying disposition by the decedent. If a statutory option is exercised by the estate of the optionee or by a person who acquired the option by bequest or inheritance or by reason of the death of such optionee, see paragraph (c) of this section. If a statutory option is exercised by the individual to whom the option was granted and the individual dies before the expiration of the holding periods, see paragraph (d) of this section.

(3) For special rules relating to the disqualifying disposition of a share of stock acquired by exercise of an incentive stock option, *see* §§ 1.422–5(b)(2) and 1.424–1(c)(3).

(c) *Exercise by estate.* (1) If a statutory option is exercised by the estate of the individual to whom the option was granted (or by any person who acquired such option by bequest or inheritance or by reason of the death of such individual), paragraph (a) of this section applies to the transfer of stock pursuant to such exercise in the same manner as if the option had been exercised by the deceased optionee. Consequently, neither the estate nor such person is required to include any amount in gross income as a result of a transfer of stock pursuant to the exercise of the option. Paragraph (a) of this section applies even if the executor, administrator, or such person disposes of the stock so acquired before the expiration of the applicable holding periods as determined under § 1.422–1(a) or 1.423–1(a). This special rule does not affect the applicability of section 423(c), relating to the estate's or other qualifying person's recognition of compensation income, or section 1222, relating to what constitutes a short-term and long-term capital gain or loss. Paragraph (a) of this section also applies even if the executor, administrator, or such person does not exercise the option within three months after the death of the individual or is not employed as described in § 1.421–1(h), either when the option is exercised or at any time. However, paragraph (a) of this section does not apply to a transfer of shares pursuant to an exercise of the option by the estate or by such person unless the individual met the employment requirements described in § 1.421–1(h) either at the time of the individual's death or within three months before such time (or, if applicable, within the period described in § 1.422–1(a)(3)). Additionally, paragraph (a) of this section does not apply if the option is exercised by a person other than the executor or administrator, or other than a person who acquired the option by bequest or inheritance or by reason of the death of such deceased individual. For example, if the option is sold by the estate, paragraph (a) of this section does not apply to the transfer of stock pursuant to an exercise of the option by the buyer, but if the option is distributed by the administrator to an heir as part of the estate, paragraph (a) of this section applies to the transfer of stock pursuant to an exercise of the option by such heir.

* * * * *

(d) *Option exercised by the individual to whom the option was granted if the individual dies before expiration of the applicable holding periods.* If a statutory option is exercised by the individual to whom the option was granted and such individual dies before the expiration of the applicable holding periods as determined under § 1.422–1(a) or 1.423–1(a), paragraph (a) of this section does not become inapplicable if the executor or administrator of the estate of such individual, or any person who acquired such stock by bequest or inheritance or by reason of the death of such individual, disposes of such stock before the expiration of such applicable holding periods. This rule does not affect the applicability of section 423(c), relating to the individual's recognition of compensation income, or section 1222, relating to what constitutes a short-term and long-term capital gain or loss.

* * * * *

(f) *Effective date.* This section is applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

Par. 5. Section 1.422–1 is added to read as follows:

§ 1.422–1 Incentive stock options; general rules.

(a) *Applicability of section 421(a).* (1)(i) Section 1.421–2(a) applies to the transfer of a share of stock to an individual pursuant to the individual's exercise of an incentive stock option if the following conditions are satisfied—

(A) The individual makes no disposition of such share before the later of the expiration of the 2-year period from the date of grant of the option pursuant to which such share was transferred, or the expiration of the 1-year period from the date of transfer of such share to the individual; and

(B) At all times during the period beginning on the date of grant of the option and ending on the day 3 months before the date of exercise, the individual was an employee of either the corporation granting the option, a related corporation of such corporation, or a corporation (or a related corporation of such corporation) substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies.

(ii) For rules relating to the disposition of shares of stock acquired pursuant to the exercise of a statutory option, see § 1.424–1(c). For rules relating to the requisite employment relationship, *see* § 1.421–1(h).

(2)(i) The holding period requirement of section 422(a)(1), described in paragraph (a)(1)(i)(A) of this section, does not apply to the transfers of shares by an insolvent individual described in this paragraph (a)(2). If an insolvent individual holds a share of stock acquired pursuant to the individual's exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under the Bankruptcy Act or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of the individual's creditors in such proceeding is a disposition of such share for purposes of this paragraph (a). For purposes of this paragraph (a)(2), an individual is insolvent only if the individual's

liabilities exceed the individual's assets or the individual is unable to satisfy the individual's liabilities as they become due. *See* section 422(c)(3).

(ii) A transfer by the trustee or other fiduciary that is not treated as a disposition for purposes of this paragraph (a) may be a sale or exchange for purposes of recognizing capital gain or loss with respect to the share transferred. For example, if the trustee transfers the share to a creditor in an insolvency proceeding, capital gain or loss must be recognized by the insolvent individual to the extent of the difference between the amount realized from such transfer and the adjusted basis of such share.

(iii) If any transfer by the trustee or other fiduciary (other than a transfer back to the insolvent individual) is not for the exclusive benefit of the creditors in an insolvency proceeding, then whether such transfer is a disposition of the share by the individual for purposes of this paragraph (a) is determined under § 1.424–1(c). Similarly, if the trustee or other fiduciary transfers the share back to the insolvent individual, any subsequent transfer of the share by such individual which is not made in respect of the insolvency proceeding may be a disposition of the share for purposes of this paragraph (a).

(3) If the employee exercising an option ceased employment because of permanent and total disability, within the meaning of section 22(e)(3), 1 year is used instead of 3 months in the employment period requirement of paragraph (a)(1)(i)(B) of this section.

(b) *Failure to satisfy holding period requirements—(1) General rule.* For general rules concerning a disqualifying disposition of a share of stock acquired pursuant to the exercise of an incentive stock option, *see* § 1.421–2(b)(1).

(2)(i) *Special rule.* If an individual makes a disqualifying disposition of a share of stock acquired by the exercise of an incentive stock option, and if such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to the individual, then, under this paragraph (b)(2)(i), the amount includible in the gross income of such individual, and deductible from the income of the employer corporation (or a related corporation of such corporation, or of a corporation substituting or assuming the option in a transaction to which § 1.424–1(a) applies) as compensation attributable to the exercise of such option, shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share. Subject to the special rule provided by this paragraph (b)(2)(i), the amount of compensation attributable to the exercise of the option is determined under § 1.83–7; *see* § 1.421–2(b)(1)(i).

(ii) *Limitation to special rule.* The special rule described in paragraph (b)(2)(i) of this section does not apply if the disposition is a sale or exchange with respect to which a loss (if sustained) would not be recognized to the individual. Thus, for example, if a disqualifying disposition is a sale described in section 1091 (relating to loss from wash sales of stock or securities), a gift (or any other transaction which is not at arm's length), or a sale described in section 267(a)(1) (relating to sales between related persons), the special rule described in paragraph (b)(2)(i) of this section does not apply because a loss sustained in any such transaction would not be recognized.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. On June 1, 2006, X Corporation grants an incentive stock option to A, an employee of X Corporation, entitling A to purchase one share of X Corporation stock. On August 1, 2006, A exercises the option and the share of X Corporation stock is transferred to A on that date. The option price is $100 (the fair market value of a share of X Corporation stock on June 1, 2006) and the fair market value of a share of X Corporation stock on August 1, 2006 (the date of transfer) is $200. The share transferred to A is transferable and not subject to a substantial risk of forfeiture. A makes a disqualifying disposition by selling the share on June 1, 2007, for $250. Under § 1.83–7(a) (relating to options to which section 421 does not apply), the amount of compensation attributable to A's exercise is $100 (the difference between the fair market value of the share at the date of transfer, $200, and the amount paid for the share, $100). Because the amount realized ($250) is greater than the value of the share at transfer ($200), paragraph (b)(2)(i) of this section does not apply and thus does not affect the amount includible as compensation in A's gross income and deductible by X. A must include in gross income for the taxable year in which the sale occurred $100 as compensation and $50 as capital gain ($250, the amount realized from the sale, less A's basis of $200 (the $100 paid for the share plus the $100 increase in basis resulting from the inclusion of that amount in A's gross income as compensation attributable to the exercise of the option)). For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $100 for compensation attributable to A's exercise of the incentive stock option.

Example 2. Assume the same facts as in *Example 1*, except that the share of X Corporation stock transferred to A is subject to a substantial risk of forfeiture and not transferable for a period of six months after such transfer. Assume further that the fair market value of X Corporation stock is $225 on February 1, 2005, the date on which the six-month restriction lapses. Under section 83(a) and § 1.83–7(a), the amount of compensation attributable to A's exercise of the option and disqualifying disposition of the share is $125 (the difference between the fair market value of the share on the date that the restriction lapsed, $225, and the amount paid for the share, $100). A must include $125 of compensation income and $25 of capital gain in gross income for the taxable year in which the disposition occurs ($250, the amount realized from the sale, less A's basis of $225 (the $100 paid for the share plus the $125 increase in basis resulting from the inclusion of that amount of compensation in A's gross income)). For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $125 for the compensation attributable to A's exercise of the option.

Example 3. (i) Assume the same facts as in *Example 1*, except that A sells the share for $150 to M.

(ii) If the sale to M is a disposition that meets the requirements of paragraph (b)(2)(i) of this section, instead of $100 which otherwise would have been includible as compensation under § 1.83–7, under paragraph (b)(2)(i) of this section, A must include only $50 (the excess of the amount realized on such sale, $150, over the adjusted basis of the share, $100) in gross income as compensation attributable to the exercise of the incentive stock option. Because A's basis for the share is $150 (the $100 which A paid for the share, plus the $50 increase in basis resulting from the inclusion of that amount in A's gross income as compensation attributable to the exercise of the option), A realizes no capital gain or loss as a result of the sale. For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $50 for the compensation attributable to A's exercise of the option.

(iii) Assume the same facts as in paragraph (i) of this *Example 3*, except that 10 days after the sale to M, A purchases substantially identical stock. Because under section 1091(a) a loss (if it were sustained on the sale) would not be recognized on the sale, under paragraph (b)(2)(ii) of this section, the special rule described in paragraph (b)(2)(i) of this section does not apply. Under § 1.83–7, A must include $100 (the difference between the fair market value of the share on the date of transfer, $200, and the amount paid for the share, $100) in gross income as compensation attributable to the exercise of the option for the taxable year in which the disqualifying disposition occurred. A recognizes no capital gain or loss on the transaction. For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a $100 deduction for compensation attributable to A's exercise of the option.

(iv) Assume the same facts as in paragraph (ii) of this *Example 3*, except that A sells the share for $50. Under paragraph (b)(2)(i) of this section, A is not required to include any amount in gross income as compensation attributable to the exercise of the option. A is allowed a capital loss of $50 (the difference between the amount realized on the sale, $50, and the adjusted basis of the share, $100). X Corporation is not allowed any deduction attributable to A's exercise of the option and disqualifying disposition of the share.

(c) *Failure to satisfy employment requirement.* Section 1.421–2(a) does not apply to the transfer of a share of stock pursuant to the exercise of an incentive stock option if the employment requirement, as determined under paragraph (a)(1)(i)(B) of this section, is not met at the time of the exercise of such option. Consequently, the effects of such a transfer are determined under the rules of § 1.83–7. For rules relating to the employment relationship, *see* § 1.421–1(h).

Par. 6. Section 1.422–2 is added to read as follows:

§ 1.422–2 Incentive stock options defined.

(a) *Incentive stock option defined*—(1) *In general.* The term *incentive stock option* means an option that meets the requirements of paragraph (a)(2) of this section on the date of grant. An incentive stock option is also subject to the $100,000 limitation described in § 1.422–4. An incentive stock option may contain a number of permissible provisions that do not affect the status of the option as an incentive stock option. See § 1.422–5 for rules relating to permissible provisions of an incentive stock option.

(2) *Option requirements.* To qualify as an incentive stock option under this section, an option must be granted to an individual in connection with the individual's employment by the corporation granting such option (or by a related corporation), and granted only for stock of any of such corporations. In addition, the option must meet all of the following requirements—

(i) It must be granted pursuant to a plan that meets the requirements described in paragraph (b) of this section;

(ii) It must be granted within 10 years from the date of the adoption of the plan or the date such plan is approved by the stockholders, whichever is earlier (see paragraph (c) of this section);

(iii) It must not be exercisable after the expiration of 10 years from the date of grant (see paragraph (d) of this section);

(iv) It must provide that the option price per share is not less than the fair market value of the share on the date of grant (see paragraph (e) of this section);

(v) By its terms, it must not be transferrable by the individual to whom the option is granted other than by will or the laws of descent and distribution, and must be exercisable, during such individual's lifetime, only by such individual (see §§ 1.421–1(b)(2) and 1.421–2(c)); and

(vi) Except as provided in paragraph (f) of this section, it must be granted to an individual who, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the corporation employing such individual or of any related corporation of such corporation.

(3) *Amendment of option terms.* Except as otherwise provided in § 1.424–1, the amendment of the terms of an incentive stock option may cause it to cease to be an option described in this section. If the terms of an option that has lost its status as an incentive stock option are subsequently changed with the intent to re-qualify the option as an incentive stock option, such change results in the grant of a new option on the date of the change. *See* § 1.424–1(e).

(4) *Terms provide option not an incentive stock option.* If the terms of an option, when granted, provide that it will not be treated as an incentive stock option, such option is not treated as an incentive stock option.

(b) *Option plan*—(1) *In general.* An incentive stock option must be granted pursuant to a plan that meets the requirements of this paragraph (b). The authority to grant other stock options or other stock-based awards pursuant to the plan, where the exercise of such other options or awards does not affect the exercise of incentive stock options granted pursuant to the plan, does not disqualify such incentive stock options. The plan must be in writing or electronic form, provided that such writing or electronic form is adequate to establish the terms of the plan. *See* § 1.422–5 for rules relating to permissible provisions of an incentive stock option.

(2) *Stockholder approval.* (i) The plan required by this paragraph (b) must be approved by the stockholders of the corporation granting the incentive stock option within 12 months before or after the date such plan is adopted. Ordinarily, a plan is adopted when it is approved by the granting corporation's board of directors, and the date of the board's action is the reference point for determining whether stockholder approval occurs within the applicable 24-month period. However, if the board's action is subject to a condition (such as stockholder approval) or the happening of a particular event, the plan is adopted on the date the condition is met or the event occurs, unless the board's resolution fixes the date of approval as the date of the board's action.

(ii) For purposes of paragraph (b)(2)(i) of this section, the stockholder approval must comply with the rules described in § 1.422–3.

(iii) The provisions relating to the maximum aggregate number of shares to be issued under the plan (described in paragraph (b)(3) of this section) and the employees (or class or classes of employees) eligible to receive options under the plan (described in paragraph (b)(4) of this section) are the only provisions of a stock option plan that must be approved by stockholders for purposes of section 422(b)(1). Any increase in the maximum aggregate number of shares that may be issued under the plan (other than an increase merely reflecting a change in the number of outstanding shares, such as a stock dividend or stock split), or change in the designation of the employees (or class or classes of employees) eligible to receive options under the plan is considered the adoption of a new plan requiring stockholder approval within the prescribed 24-month period. In addition, a change in the granting corporation or the stock available for purchase or award under the plan is considered the adoption of a new plan requiring new stockholder approval within the prescribed 24-month period. Any other changes in the terms of an incentive stock option plan are not considered the adoption of a new plan and, thus, do not require stockholder approval.

(3) *Maximum aggregate number of shares.* (i) The plan required by this paragraph (b) must designate the maximum aggregate number of shares that may be issued under the plan through incentive stock options, nonstatutory options, and all other stock-based awards to be granted thereunder. If nonstatutory options or other stock-based awards may be granted, the plan may separately designate terms for each type of option and other stock-based award and designate the maximum number of shares that may be issued under such option or other stock-based award. Unless otherwise specified, all terms of the plan apply to all options and other stock-based awards that may be granted under the plan.

(ii) A plan that merely provides that the number of shares that may be issued under options and other stock-based

awards granted under such plan may not exceed a stated percentage of the shares outstanding at the time of each offering or grant under such plan does not satisfy the requirement that the plan state the maximum aggregate number of shares that may be issued under the plan. However, the maximum aggregate number of shares that may be issued under the plan may be stated in terms of a percentage of the authorized, issued or outstanding shares at the date of the adoption of the plan. The plan may specify that the maximum aggregate number of shares available for grants under the plan may increase annually by a specified percentage of the authorized, issued or outstanding shares at the date of the adoption of the plan. A plan which provides that the maximum aggregate number of shares that may be issued under the plan may change based on any other specified circumstances satisfies the requirements of this paragraph (b)(3) only if the stockholders approve an immediately determinable maximum aggregate number of shares that may be issued under the plan in any event.

(iii) It is permissible for the plan to provide that shares purchasable under the plan may be supplied to the plan through acquisitions of stock on the open market, that shares purchased under the plan and forfeited back to the plan are available for re-issuance under the plan, or that shares surrendered in payment of the exercise price of an option are available for re-issuance under the plan.

(iv) If there is more than one plan under which incentive stock options may be granted and stockholders of the granting corporation merely approve a maximum aggregate number of shares that are available for issuance under such plans, the stockholder approval requirements described in paragraph (b)(2) of this section are not satisfied. A separate maximum aggregate number of shares must be approved for each plan.

(4) *Designation of employees.* The plan described in this paragraph (b), as adopted and approved, must indicate the employees (or class or classes of employees) eligible to receive the options or other stock-based awards to be granted under the plan. This requirement is satisfied by a general designation of the classes of employees eligible to receive options or other stock-based awards under the plan. Designations such as ''key employees of the grantor corporation''; ''all salaried employees of the grantor corporation and its subsidiaries, including subsidiaries which become such after adoption of the plan;'' or ''all employees of the corporation'' meet this requirement. This requirement is considered satisfied even though the board of directors, another group, or an individual is given the authority to select the particular employees who are to receive options or other stock-based awards from a described class and to determine the number of shares to be optioned or granted to each such employee. If individuals other than employees may be granted options or other stock-based awards under the plan, the plan must separately designate the employees or classes of employees eligible to receive incentive stock options.

(5) *Conflicting option terms.* An option on stock available for purchase or grant under the plan is treated as having been granted pursuant to a plan even if the terms of the option conflict with the terms of the plan, unless such option is granted to an employee who is ineligible to receive options under the plan, options have been granted on stock in excess of the aggregate number of shares which may be issued under the plan, or the option provides otherwise.

(6) The following examples illustrate the principles of this paragraph (b):

Example 1. Stockholder approval. (i) S Corporation is a subsidiary of P Corporation, a publicly traded corporation. On January 1, 2006, S adopts a plan under which incentive stock options for S stock are granted to S employees.

(ii) To meet the requirements of paragraph (b)(2) of this section, the plan must be approved by the stockholders of S (in this case, P) within 12 months before or after January 1, 2004.

(iii) Assume the same facts as in paragraph (i) of this *Example 1.* Assume further that the plan was approved by the stockholders of S (in this case, P) on March 1, 2006. On January 1, 2008, S changes the plan to provide that incentive stock options for P stock will be granted to S employees under the plan. Because there is a change in the stock available for grant under the plan, the change is considered the adoption of a new plan that must be approved by the stockholders within 12 months before or after January 1, 2008.

Example 2. Stockholder approval. (i) Assume the same facts as in paragraph (i) of *Example 1,* except that on March 15, 2007, P completely disposes of its interest in S. Thereafter, S continues to grant options for S stock to S employees under the plan.

(ii) The new S options are granted under a plan that meets the stockholder approval requirements of paragraph (b)(2) of this section without regard to whether S seeks approval of the plan from the stockholders of S after P disposes of its interest in S.

(iii) Assume the same facts as in paragraph (i) of this *Example 2,* except that under the plan as adopted on January 1, 2006, only options for P stock are granted to S employees. Assume further that after P disposes of its interest in S, S changes the plan to provide for the grant of options for S stock to S employees. Because there is a change in the stock available for purchase or grant under the plan, under paragraph (b)(2)(iii) of this section, the stockholders of S must approve the plan within 12 months before or after the change to the plan to meet the stockholder approval requirements of paragraph (b) of this section.

Example 3. Maximum aggregate number of shares. X Corporation maintains a plan under which statutory options and nonstatutory options may be granted. The plan designates the number of shares that may be used for incentive stock options. Because the maximum aggregate number of shares that will be used for both statutory and nonstatutory options is not designated in the plan, the requirements of paragraph (b)(3) of this section are not satisfied.

Example 4. Maximum aggregate number of shares. Y Corporation adopts an incentive stock option plan on November 1, 2006. On that date there are two million outstanding shares of Y Corporation stock. The plan provides that the maximum aggregate number of shares that may be issued under the plan may not exceed 15% of the outstanding number of shares of Y Corporation on November 1, 2006. Because the maximum aggregate number of shares under the plan is designated in the plan, the requirements of paragraph (b)(3) of this section are met.

Example 5. Maximum aggregate number of shares. (i) B Corporation adopts an incentive stock option plan on March 15, 2005. The plan provides that the maximum aggregate number of shares available under the plan is 50,000, increased on each anniversary date of the adoption of the plan by 5 percent of the then-outstanding shares.

(ii) Because the maximum aggregate number of shares is not designated under the plan, the requirements of paragraph (b)(3) of this section are not met.

(iii) Assume the same facts as in paragraph (i) of this *Example 5,* except that the plan provides that the maximum aggregate number of shares available under the plan is the lesser of (a) 50,000 shares increased each anniversary date of the adoption of the plan by 5 percent of the then-outstanding shares or (b) 200,000 shares. Because the maximum aggregate number of shares under the plan is designated as the lesser of one of two numbers, one of which provides an immediately determinable maximum aggregate number of shares that may be issued under the plan in any event, the requirements of paragraph (b)(3) of this section are met.

(c) *Duration of option grants under the plan.* An incentive stock option must be granted within 10 years from the date that the plan under which it is granted is adopted or the date such plan is approved by the stockholders, whichever is earlier. To grant incentive stock options after the expiration of the 10-year period, a new plan must be adopted and approved.

(d) *Period for exercising options.* An incentive stock option, by its terms,

must not be exercisable after the expiration of 10 years from the date such option is granted, or 5 years from the date such option is granted to an employee described in paragraph (f) of this section. An option that does not contain such a provision when granted is not an incentive stock option.

(e) *Option price.* (1) Except as provided by paragraph (e)(2) of this section, the option price of an incentive stock option must not be less than the fair market value of the stock subject to the option at the time the option is granted. The option price may be determined in any reasonable manner, including the valuation methods permitted under § 20.2031–2 of this chapter (Estate Tax Regulations), so long as the minimum price possible under the terms of the option is not less than the fair market value of the stock on the date of grant. For general rules relating to the option price, see § 1.421–1(e). For rules relating to the determination of when an option is granted, see § 1.421–1(c).

(2)(i) If a share of stock is transferred to an individual pursuant to the exercise of an option which fails to qualify as an incentive stock option merely because there was a failure of an attempt, made in good faith, to meet the option price requirements of paragraph (e)(1) of this section, the requirements of such paragraph are considered to have been met. Whether there was a good-faith attempt to set the option price at not less than the fair market value of the stock subject to the option at the time the option was granted depends on the relevant facts and circumstances.

(ii) For publicly held stock that is actively traded on an established market at the time the option is granted, determining the fair market value of such stock by the appropriate method described in § 20.2031–2 of this chapter (Estate Tax Regulations) establishes that a good-faith attempt to meet the option price requirements of this paragraph (e) was made.

(iii) For non-publicly traded stock, if it is demonstrated, for example, that the fair market value of the stock at the date of grant was based upon an average of the fair market values as of such date set forth in the opinions of completely independent and well-qualified experts, such a demonstration generally establishes that there was a good-faith attempt to meet the option price requirements of this paragraph (e). If the stock is non-publicly traded, the optionee's status as a majority or minority stockholder may be taken into consideration.

(iv) Regardless of whether the stock offered under an option is publicly traded, a good-faith attempt to meet the option price requirements of this paragraph (e) is not demonstrated unless the fair market value of the stock on the date of grant is determined with regard to *nonlapse restrictions* (as defined in § 1.83–3(h)) and without regard to *lapse restrictions* (as defined in § 1.83–3(i)).

(v) Amounts treated as interest and amounts paid as interest under a deferred payment arrangement are not includible as part of the option price. See § 1.421–1(e)(1). An attempt to set the option price at not less than fair market value is not regarded as made in good faith where an adjustment of the option price to reflect amounts treated as interest results in the option price being lower than the fair market value on which the option price was based.

(3) Notwithstanding that the option price requirements of paragraphs (e)(1) and (2) of this section are satisfied by an option granted to an employee whose stock ownership exceeds the limitation provided by paragraph (f) of this section, such option is not an incentive stock option when granted unless it also complies with paragraph (f) of this section. If the option, when granted, does not comply with the requirements described in paragraph (f) of this section, such option can never become an incentive stock option, even if the employee's stock ownership does not exceed the limitation of paragraph (f) of this section when such option is exercised.

(f) *Options granted to certain stockholders.* (1) If, immediately before an option is granted, an individual owns (or is treated as owning) stock possessing more than 10 percent of the total combined voting power of all classes of stock of the corporation employing the optionee or of any related corporation of such corporation, then an option granted to such individual cannot qualify as an incentive stock option unless the option price is at least 110 percent of the stock's fair market value on the date of grant and such option by its terms is not exercisable after the expiration of 5 years from the date of grant. For purposes of determining the minimum option price for purposes of this paragraph (f), the rules described in paragraph (e)(2) of this section, relating to the good-faith determination of the option price, do not apply.

(2) For purposes of determining the stock ownership of the optionee, the stock attribution rules of § 1.424–1(d) apply. Stock that the optionee may purchase under outstanding options is not treated as stock owned by the individual. The determination of the percentage of the total combined voting power of all classes of stock of the employer corporation (or of its related corporations) that is owned by the optionee is made with respect to each such corporation in the related group by comparing the voting power of the shares owned (or treated as owned) by the optionee to the aggregate voting power of all shares of each such corporation actually issued and outstanding immediately before the grant of the option to the optionee. The aggregate voting power of all shares actually issued and outstanding immediately before the grant of the option does not include the voting power of treasury shares or shares authorized for issue under outstanding options held by the individual or any other person.

(3) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) E, an employee of M Corporation, owns 15,000 shares of M Corporation common stock, which is the only class of stock outstanding. M has 100,000 shares of its common stock outstanding. On January 1, 2005, when the fair market value of M stock is $100, E is granted an option with an option price of $100 and an exercise period of 10 years from the date of grant.

(ii) Because E owns stock possessing more than 10 percent of the total combined voting power of all classes of M Corporation stock, M cannot grant an incentive stock option to E unless the option is granted at an option price of at least 110 percent of the fair market value of the stock subject to the option and the option, by its terms, expires no later than 5 years from its date of grant. The option granted to E fails to meet the option-price and term requirements described in paragraph (f)(1) of this section and, thus, the option is not an incentive stock option.

(iii) Assume the same facts as in paragraph (i) of this *Example 1*, except that E's father and brother each owned 7,500 shares of M Corporation stock, and E owned no M stock in E's own name. Because under the attribution rules of § 1.424–1(d), E is treated as owning stock held by E's parents and siblings, M cannot grant an incentive stock option to E unless the option price is at least 110 percent of the fair market value of the stock subject to the option, and the option, by its terms, expires no later than 5 years from the date of grant.

Example 2. Assume the same facts as in paragraph (i) of this *Example 1*. Assume further that M is a subsidiary of P Corporation. Regardless of whether E owns any P stock and the number of P shares outstanding, if P Corporation grants an option to E which purports to be an incentive stock option, but which fails to meet the 110-percent-option-price and 5-year-term requirements, the option is not an incentive stock option because E owns more than 10 percent of the total combined voting power of all classes of stock of a related corporation of P Corporation (*i.e.*, M Corporation). An individual who owns (or is treated as owning) stock in excess of the ownership

specified in paragraph (f)(1) of this section, in any corporation in a group of corporations consisting of the employer corporation and its related corporations, cannot be granted an incentive stock option by any corporation in the group unless such option meets the 110-percent-option-price and 5-year-term requirements of paragraph (f)(1) of this section.

Example 3. (i) F is an employee of R Corporation. R has only one class of stock, of which 100,000 shares are issued and outstanding. F owns no stock in R Corporation or any related corporation of R Corporation. On January 1, 2005, R grants a 10-year incentive stock option to F to purchase 50,000 shares of R stock at $3 per share, the fair market value of R stock on the date of grant of the option. On April 1, 2005, F exercises half of the January option and receives 25,000 shares of R stock that previously were not outstanding. On July 1, 2005, R grants a second 50,000 share option to F which purports to be an incentive stock option. The terms of the July option are identical to the terms of the January option, except that the option price is $3.25 per share, which is the fair market value of R stock on the date of grant of the July option.

(ii) Because F did not own more than 10% of the total combined voting power of all classes of stock of R Corporation or any related corporation on the date of the grant of the January option and the pricing requirements of paragraph (e) of this section are satisfied on the date of grant of such option, the unexercised portion of the January option remains an incentive stock option regardless of the changes in F's percentage of stock ownership in R after the date of grant. However, the July option is not an incentive stock option because, on the date that it was granted, F owned 20 percent (25,000 shares owned by F divided by 125,000 shares of R stock issued and outstanding) of the total combined voting power of all classes of R Corporation stock and, thus the pricing requirements of paragraph (f)(1) of this section were not met.

(iii) Assume the same facts as in paragraph (i) of this *Example 3* except that the partial exercise of the January incentive stock option on April 1, 2003, is for only 10,000 shares. Under these circumstances, the July option is an incentive stock option, because, on the date of grant of the July option, F does not own more than 10 percent of the total combined voting power (10,000 shares owned by F divided by 110,000 shares of R issued and outstanding) of all classes of R Corporation stock.

§ 1.422–4 [Removed]

Par. 7. Section 1.422–4 is removed.

§ 1.422–5 [Redesignated]

Par. 8. Section 1.422–5 is re-designated as § 1.422–3.

Par. 9. New § 1.422–4 is added to read as follows:

§ 1.422–4 $100,000 limitation for incentive stock options.

(a) *$100,000 per year limitation*—(1) *General rule.* An option that otherwise qualifies as an incentive stock option nevertheless fails to be an incentive stock option to the extent that the $100,000 limitation described in paragraph (a)(2) of this section is exceeded.

(2) *$100,000 per year limitation.* To the extent that the aggregate fair market value of stock with respect to which an incentive stock option (determined without regard to this section) is exercisable for the first time by any individual during any calendar year (under all plans of the employer corporation and related corporations) exceeds $100,000, such option is treated as a nonstatutory option. See § 1.83–7 for rules applicable to nonstatutory options.

(b) *Application.* To determine whether the limitation described in paragraph (a)(2) of this section has been exceeded, the following rules apply.

(1) An option that does not meet the requirements of § 1.422–2 when granted (including an option which, when granted, contains terms providing that it will not be treated as incentive stock option) is disregarded. See § 1.422–2(a)(4).

(2) The fair market value of stock is determined as of the date of grant of the option for such stock.

(3) Except as otherwise provided in paragraph (b)(4) of this section, options are taken into account in the order in which they are granted.

(4) For purposes of this section, an option is considered to be first exercisable during a calendar year if the option will become exercisable at any time during the year assuming that any condition on the optionee's ability to exercise the option related to the performance of services is satisfied. If the optionee's ability to exercise the option in the year is subject to an acceleration provision, then the option is considered first exercisable in the calendar year in which the acceleration provision is triggered. After an acceleration provision is triggered, the options subject to such provision are then taken into account in accordance with paragraph (b)(3) of this section for purposes of applying the limitation described in paragraph (a)(2) of this section to all options first exercisable during a calendar year. However, because an acceleration provision is not taken into account prior to its triggering, an incentive stock option that becomes exercisable for the first time during a calendar year by operation of such a provision does not affect the application of the $100,000 limitation with respect to any option (or portion thereof) exercised prior to such acceleration. For purposes of this paragraph (b)(4), an acceleration provision includes, for example, a provision that accelerates the exercisability of an option on a change in ownership or control or a provision that conditions exercisability on the attainment of a performance goal. *See* paragraph (d), *Example 4* of this section.

(5)(i) An option (or portion thereof) is disregarded if, prior to the calendar year during which it would otherwise have become exercisable for the first time, the option (or portion thereof) is modified and thereafter ceases to be an incentive stock option described in § 1.422–2, is canceled, or is transferred in violation of § 1.421–1(b)(2).

(ii) If an option (or portion thereof) is modified, canceled, or transferred at any other time, such option (or portion thereof) is treated as outstanding according to its original terms until the end of the calendar year during which it would otherwise have become exercisable for the first time.

(6) A disqualifying disposition has no effect on the determination of whether an option exceeds the $100,000 limitation.

(c) *Bifurcation of options.* The application of the rules described in paragraph (b) of this section may result in an option being treated, in part, as an incentive stock option and, in part, as a nonstatutory option. In such a case, a corporation can issue a separate certificate for incentive option stock and designate such stock as incentive stock option stock in the corporation's transfer records. In the absence of such a designation, a pro rata portion of each share of stock purchased under the option is treated as incentive stock option stock and nonstatutory option stock. See § 1.83–7 for the treatment of nonstatutory options.

(d) *Examples.* The following examples illustrate the principles of this section. In each of the following examples E is an employee of X Corporation. The examples are as follows:

Example 1. General rule. Effective January 1, 2004, X Corporation adopts a plan under which incentive stock options may be granted to its employees. On January 1, 2004, and each succeeding January 1 through January 1, 2013, E is granted immediately exercisable options for X Corporation stock with a fair market value of $100,000 determined on the date of grant. The options qualify as incentive stock options (determined without regard to this section). On January 1, 2014, E exercises all of the options. Because the $100,000 limitation has not been exceeded during any calendar year, all of the options are treated as incentive stock options.

Example 2. Order of grant. X Corporation is a parent corporation of Y Corporation, which is a parent corporation of Z Corporation. Each corporation has adopted

its own separate plan, under which an employee of any member of the corporate group may be granted options for stock of any member of the group. On January 1, 2004, X Corporation grants E an incentive stock option (determined without regard to this section) for stock of Y Corporation with a fair market value of $100,000 on the date of grant. On December 31, 2004, Y Corporation grants E an incentive stock option (determined without regard to this section) for stock of Z Corporation with a fair market value of $75,000 as of the date of grant. Both of the options are immediately exercisable. For purposes of this section, options are taken into account in the order in which granted using the fair market value of stock as of the date on the option is granted. During calendar year 2004, the aggregate fair market value of stock with respect to which E's options are exercisable for the first time exceeds $100,000. Therefore, the option for Y Corporation stock is treated as an incentive stock option, and the option for Z Corporation stock is treated as a nonstatutory option.

Example 3. Acceleration provision. (i) In 2004, X Corporation grants E three incentive stock options (determined without regard to this section) to acquire stock with an aggregate fair market value of $150,000 on the date of grant. The dates of grant, the fair market value of the stock (as of the applicable date of grant) with respect to which the options are exercisable, and the years in which the options are first exercisable (without regard to acceleration provisions) are as follows:

	Date of grant	Fair market value of stock	First exercisable
Option 1	April 1, 2004	$60,000	2004
Option 2	May 1, 2004	50,000	2006
Option 3	June 1, 2004	40,000	2004

(ii) In July of 2004, a change in control of X Corporation occurs, and, under the terms of its option plan, all outstanding options become immediately exercisable. Under the rules of this section, Option 1 is treated as an incentive stock option in its entirety; Option 2 exceeds the $100,000 aggregate fair market value limitation for calendar year 2004 by $10,000 (Option 1's $60,000 + Option 2's $50,000 = $110,000) and is, therefore, bifurcated into an incentive stock option for stock with a fair market value of $40,000 as of the date of grant and a nonstatutory option for stock with a fair market value of $10,000 as of the date of grant. Option 3 is treated as a nonstatutory option in its entirety.

Example 4. Exercise of option and acceleration provision. (i) In 2004, X Corporation grants E three incentive stock options (determined without regard to this section) to acquire stock with an aggregate fair market value of $120,000 on the date of grant. The dates of grant, the fair market value of the stock (as of the applicable date of grant) with respect to which the options are exercisable, and the years in which the options are first exercisable (without regard to acceleration provisions) are as follows:

	Date of grant	Fair market value of stock	First exercisable
Option 1	April 1, 2004	$60,000	2005
Option 2	May 1, 2004	40,000	2006
Option 3	June 1, 2004	20,000	2005

(ii) On June 1, 2005, E exercises Option 3. At the time of exercise of Option 3, the fair market value of X stock (at the time of grant) with respect to which options held by E are first exercisable in 2005 does not exceed $100,000. On September 1, 2005, a change of control of X Corporation occurs, and, under the terms of its option plan, Option 2 becomes immediately exercisable. Under the rules of this section, because E's exercise of Option 3 occurs before the change of control and the effects of an acceleration provision are not taken into account until it is triggered, Option 3 is treated as an incentive stock option in its entirety. Option 1 is treated as an incentive stock option in its entirety. Option 2 is bifurcated into an incentive stock option for stock with a fair market value of $20,000 on the date of grant and a nonstatutory option for stock with a fair market value of $20,000 on the date of grant because it exceeds the $100,000 limitation for 2003 by $20,000 (Option 1 for $60,000 + Option 3 for $20,000 + Option 2 for $40,000 = $120,000).

(iii) Assume the same facts as in paragraph (ii) of this *Example 4*, except that the change of control occurs on May 1, 2005. Because options are taken into account in the order in which they are granted, Option 1 and Option 2 are treated as incentive stock options in their entirety. Because the exercise of Option 3 (on June 1, 2005) takes place after the acceleration provision is triggered, Option 3 is treated as a nonstatutory option in its entirety.

Example 5. Cancellation of option. (i) In 2004, X Corporation grants E three incentive stock options (determined without regard to this section) to acquire stock with an aggregate fair market value of $140,000 as of the date of grant. The dates of grant, the fair market value of the stock (as of the applicable date of grant) with respect to which the options are exercisable, and the years in which the options are first exercisable (without regard to acceleration provisions) are as follows:

	Date of grant	Fair market value of stock	First exercisable
Option 1	April 1, 2004	$60,000	2005
Option 2	May 1, 2004	40,000	2005
Option 3	June 1, 2004	40,000	2005

(ii) On December 31, 2004, Option 2 is canceled. Because Option 2 is canceled before the calendar year during which it would have become exercisable for the first time, it is disregarded. As a result, Option 1 and Option 3 are treated as incentive stock options in their entirety.

(iii) Assume the same facts as in paragraph (ii) of this *Example 5*, except that Option 2 is canceled on January 1, 2005. Because Option 2 is not canceled prior to the calendar year during which it would have become exercisable for the first time (2005), it is treated as an outstanding option for purposes of determining whether the $100,000 requirement for 2005 has been exceeded. Because options are taken into account in the order in which granted, Option 1 is treated as an incentive stock option in its entirety. Because Option 3 exceeds the $100,000 limitation by $40,000 (Option 1 for $60,000 + Option 2 for $40,000 + Option 3 for

$40,000 = $140,000), it is treated as a nonstatutory options in its entirety.

(iv) Assume the same facts as in paragraph (i) of this *Example 5*, except that on January 1, 2005, E exercises Option 2 and immediately sells the stock in a disqualifying disposition. A disqualifying disposition has no effect on the determination of whether the underlying option is considered outstanding during the calendar year during which it is first exercisable. Because options are taken into account in the order in which granted, Option 1 is treated as an incentive stock option in its entirety. Because Option 3 exceeds the $100,000 limitation by $40,000 (Option 1 for $60,000 + Option 2 for $40,000 + Option 3 for $40,000 = $140,000), it is treated as a nonstatutory option in its entirety.

Example 6. Designation of stock. On January 1, 2004, X grants E an immediately exercisable incentive stock option (determined without regard to this section) to acquire X stock with a fair market value of $150,000 on that date. Under the rules of this section, the option is bifurcated and treated as an incentive stock option for X stock with a fair market value of $100,000 and a nonstatutory option for X stock with a fair market value of $50,000. In these circumstances, X may designate the stock that is treated as stock acquired pursuant to the exercise of an incentive stock option by issuing a separate certificate (or certificates) for $100,000 of stock and identifying such certificates as Incentive Stock Option Stock in its transfer records. In the absence of such a designation, two-thirds ($100,000 / $150,000) of each share of stock is treated as acquired pursuant to the exercise of an incentive stock option and one-third ($50,000 / $150,000) as stock acquired pursuant to the exercise of a nonstatutory option.

Par. 10. Section 1.422–5 is added to read as follows:

§ 1.422–5 Permissible provisions.

(a) *General rule.* An option that otherwise qualifies as an incentive stock option does not fail to be an incentive stock option merely because such option contains one or more of the provisions described in paragraphs (b), (c), and (d) of this section.

(b) *Cashless exercise.* (1) An option does not fail to be an incentive stock option merely because the optionee may exercise the option with previously acquired stock of the corporation that granted the option or stock of the corporation whose stock is being offered for purchase under the option. For special rules relating to the use of statutory option stock to pay the option price of an incentive stock option, see § 1.424–1(c)(3).

(2) All shares acquired through the exercise of an incentive stock option are individually subject to the holding period requirements described in § 1.422–1(a) and the disqualifying disposition rules of § 1.422–1(b), regardless of whether the option is exercised with previously acquired stock of the corporation that granted the option or stock of the corporation whose stock is being offered for purchase under the option. If an incentive stock option is exercised with such shares, and the exercise results in the basis allocation described in paragraph (b)(3) of this section, the optionee's disqualifying disposition of any of the stock acquired through such exercise is treated as a disqualifying disposition of the shares with the lowest basis.

(3) If the exercise of an incentive stock option with previously acquired shares is comprised in part of an exchange to which section 1036 (and so much of section 1031 as relates to section 1036) applies, then:

(i) The optionee's basis in the incentive stock option shares received in the section 1036 exchange is the same as the optionee's basis in the shares surrendered in the exchange, increased, if applicable, by any amount included in gross income as compensation pursuant to sections 421 through 424 or section 83. Except for purposes of § 1.422–1(a), the holding period of the shares is determined under section 1223. For purposes of § 1.422–1 and sections 421(b) and 83 and the regulations thereunder, the amount paid for the shares purchased under the option is the fair market value of the shares surrendered on the date of the exchange.

(ii) The optionee's basis in the incentive stock option shares not received pursuant to the section 1036 exchange is zero. For all purposes, the holding period of such shares begins as of the date that such shares are transferred to the optionee. For purposes of § 1.422–1(b) and sections 421(b) and 83 and the regulations thereunder, the amount paid for the shares is considered to be zero.

(c) *Additional compensation.* An option does not fail to be an incentive stock option merely because the optionee has the right to receive additional compensation, in cash or property, when the option is exercised, provided such additional compensation is includible in income under section 61 or section 83. The amount of such additional compensation may be determined in any manner, including by reference to the fair market value of the stock at the time of exercise or to the option price.

(d) *Option subject to a condition.* (1) An option does not fail to be an incentive stock option merely because the option is subject to a condition, or grants a right, that is not inconsistent with the requirements of §§ 1.422–2 and 1.422–4.

(2) An option that includes an alternative right is not an incentive stock option if the requirements of § 1.422–2 are effectively avoided by the exercise of the alternative right. For example, an alternative right extending the option term beyond ten years, setting an option price below fair market value, or permitting transferability prevents an option from qualifying as an incentive stock option. If either of two options can be exercised, but not both, each such option is a disqualifying alternative right with respect to the other, even though one or both options would individually satisfy the requirements of §§ 1.422–2, 1.422–4, and this section.

(3) An alternative right to receive a taxable payment of cash and/or property in exchange for the cancellation or surrender of the option does not disqualify the option as an incentive stock option if the right is exercisable only when the then fair market value of the stock exceeds the exercise price of the option and the option is otherwise exercisable, the right is transferable only when the option is otherwise transferable, and the exercise of the right has the same economic and tax consequences as the exercise of the option followed by an immediate sale of the stock. For this purpose, the exercise of the alternative right does not have the same economic and tax consequences if the payment exceeds the difference between the then fair market value of the stock and the exercise price of the option.

(e) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. On June 1, 2004, X Corporation grants an incentive stock option to A, an employee of X Corporation, entitling A to purchase 100 shares of X Corporation common stock at $10 per share. The option provides that A may exercise the option with previously acquired shares of X Corporation common stock. X Corporation has only one class of common stock outstanding. Under the rules of section 83, the shares transferable to A through the exercise of the option are transferable and not subject to a substantial risk of forfeiture. On June 1, 2005, when the fair market value of an X Corporation share is $25, A uses 40 shares of X Corporation common stock, which A had purchased on the open market on June 1, 2002, for $5 per share, to pay the full option price. After exercising the option, A owns 100 shares of incentive stock option stock. Under section 1036 (and so much of section 1031 as relates to section 1036), 40 of the shares have a $200 aggregate carryover basis (the $5 purchase price x 40 shares) and a three-year holding period for purposes of determining capital gain, and 60 of the shares have a zero basis and a holding period beginning on June 1, 2005, for purposes of determining capital

gain. All 100 shares have a holding period beginning on June 1, 2005, for purposes of determining whether the holding period requirements of § 1.422–1(a) are met.

Example 2. Assume the same facts as in *Example 1.* Assume further that, on September 1, 2005, A sells 75 of the shares that A acquired through exercise of the incentive stock option for $30 per share. Because the holding period requirements were not satisfied, A made a disqualifying disposition of the 75 shares on September 1, 2005. Under the rules of paragraph (b)(3) of this section, A has sold all 60 of the non-section-1036 shares and 15 of the 40 section-1036 shares. Therefore, under paragraph (b)(3) of this section and section 83(a), the amount of compensation attributable to A's exercise of the option and subsequent disqualifying disposition of 75 shares is $1,500 (the difference between the fair market value of the stock on the date of transfer, $1,875 (75 shares at $25 per share), and the amount paid for the stock, $375 (60 shares at $0 per share plus 15 shares at $25 per share)). In addition, A must recognize a capital gain of $675. Accordingly, A must include in gross income for the taxable year in which the sale occurs $1,500 as compensation and $675 as capital gain. For its taxable year in which the disqualifying disposition occurs, if otherwise allowable under section 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $1,500 for the compensation paid to A.

Example 3. Assume the same facts as in *Example 2,* except that, instead of selling the 75 shares of incentive stock option stock on September 1, 2005, A uses those shares to exercise a second incentive stock option. The second option was granted to A by X Corporation on January 1, 2005, entitling A to purchase 100 shares of X Corporation common stock at $22.50 per share. As in *Example 2,* A has made a disqualifying disposition of the 75 shares of stock pursuant to § 1.424–1(c). Under paragraph (b)(1) of this section, A has disposed of all 60 of the non-section-1036 shares and 15 of the 40 section-1036 shares. Therefore, pursuant to paragraph (b)(3) of this section and section 83(a), the amount of compensation attributable to A's exercise of the first option and subsequent disqualifying disposition of 75 shares is $1,500 (the difference between the fair market value of the stock on the date of transfer, $1,875 (75 shares at $25 per share), and the amount paid for the stock, $375 (60 shares at $0 per share plus 15 shares at $25 per share)). Unlike *Example 2,* A does not recognize any capital gain as a result of exercising the second option because, for all purposes other than the determination of whether the exercise is a disposition pursuant to section 424(c), the exercise is considered an exchange to which section 1036 applies. Accordingly, A must include in gross income for the taxable year in which the disqualifying disposition occurs $1,500 as compensation. For its taxable year in which the disqualifying disposition occurs, if otherwise alllowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are met, X Corporation is allowed a deduction of $1,500 for the compensation paid to A. After exercising the second option, A owns a total of 125 shares of incentive stock option stock. Under section 1036 (and so much of section 1031 as relates to section 1036), the 100 ''new'' shares of incentive stock option stock have the following bases and holding periods: 15 shares have a $75 carryover basis and a three-year-and-three-month holding period for purposes of determining capital gain, 60 shares have a $1,500 basis resulting from the inclusion of that amount in income as compensation and a three-month holding period for purposes of determining capital gain, and 25 shares have a zero basis and a holding period beginning on September 1, 2005, for purposes of determining capital gain. All 100 shares have a holding period beginning on September 1, 2005, for purposes of determining whether the holding period requirements of § 1.422–1(a) are met.

Example 4. Assume the same facts as in *Example 2,* except that, instead of selling the 75 shares of incentive stock option stock on September 1, 2005, A uses those shares to exercise a nonstatutory option. The nonstatutory option was granted to A by X Corporation on January 1, 2005, entitling A to purchase 100 shares of X Corporation common stock at $22.50 per share. Unlike *Example 3,* A has not made a disqualifying disposition of the 75 shares of stock. After exercising the nonstatutory option, A owns a total of 100 shares of incentive stock option stock and 25 shares of nonstatutory stock option stock. Under section 1036 (and so much of section 1031 as relates to section 1036), the 75 new shares of incentive stock option stock have the same basis and holding period as the 75 old shares used to exercise the nonstatutory option. The additional 25 shares of stock received upon exercise of the nonstatutory option are taxed under the rules of section 83(a). Accordingly, A must include in gross income for the taxable year in which the transfer of such shares occurs $750 (25 shares at $30 per share) as compensation. A's basis in such shares is the same as the amount included in gross income. For its taxable year in which the transfer occurs, X Corporation is allowed a deduction of $750 for the compensation paid to A to the extent allowable under sections 83(h) and 162 and if the requirements of § 1.83–6(a) are satisfied.

Example 5. Assume the same facts in *Example 1,* except that the shares transferred pursuant to the exercise of the incentive stock option are subject to a substantial risk of forfeiture and not transferable (substantially nonvested) for a period of six months after such transfer. Assume further that the shares that A uses to exercise the incentive stock option are similarly restricted. Such shares were transferred to A on January 1, 2005, through A's exercise of a nonstatutory stock option which was granted to A on January 1, 2004. A paid $5 per share for the stock when its fair market value was $22.50 per share. A did not file a section 83(b) election to include the $700 spread (the difference between the option price and the fair market value of the stock on date of exercise of the nonstatutory option) in gross income as compensation. After exercising the incentive stock option with the 40 substantially-nonvested shares, A owns 100 shares of substantially-nonvested incentive stock option stock. Section 1036 (and so much of section 1031 as relates to section 1036) applies to the 40 shares exchanged in exercise of the incentive stock option. However, pursuant to section 83(g), the stock received in such exchange, because it is incentive stock option stock, is not subject to restrictions and conditions substantially similar to those to which the stock given in such exchange was subject. For purposes of section 83(a) and § 1.83–1(b)(1), therefore, A has disposed of the 40 shares of substantially-nonvested stock on June 1, 2005, and must include in gross income as compensation $800 (the difference between the amount realized upon such disposition, $1,000, and the amount paid for the stock, $200). Accordingly, 40 shares of the incentive stock option stock have a $1,000 basis (the $200 original basis plus the $800 included in income as compensation) and 60 shares of the incentive stock option stock have a zero basis. For its taxable year in which the disposition of the substantially-nonvested stock occurs, X Corporation is allowed a deduction of $800 for the compensation paid to A, provided that the requirements of § 1.83–6 are satisfied.

(f) *Effective date.* This section applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

§ 1.423–1 [Amended]

Par. 11. Section 1.423–1 is amended as follows:

1. In paragraph (a)(2), the language ''425(a)'' is removed and ''424(a)'' is added in its place.

2. In paragraph (b), first sentence, the language ''§ 1.421–7'' is removed and ''§ 1.421–1'' is added in its place.

3. In paragraph (b), second sentence, the language ''§ 1.421–8'' is removed and ''§ 1.421–2'' is added in its place.

4. In paragraph (b), last sentence, the language ''425(c)'' is removed and ''424(c)'' is added in its place.

5. In paragraph (b), last sentence, the language ''§ 1.425–1'' is removed and ''§ 1.424–1'' is added in its place.

§ 1.423–2 [Amended]

Par. 12. Section 1.423–2 is amended by:

1. In paragraph (b), last sentence, the language ''§ 1.421–7'' is removed and ''§ 1.421–1'' is added in its place.

2. In paragraph (d)(1), second sentence, the language ''425(d)'' is removed and ''424(d)'' is added in its place.

3. In paragraph (d)(3), *Example 1,* fourth sentence, the language ''425(d)'' is removed and ''424(d)'' is added in its place.

4. In paragraph (e)(2), the language ''§ 1.421–7'' is removed and ''§ 1.421–1'' is added in its place.

5. In paragraph (g)(1) concluding text, first sentence, the language ''§ 1.421–7'' is removed and ''§ 1.421–1'' is added in its place.

6. In paragraph (g)(1) concluding text, second sentence, the language ''§ 1.421–7'' is removed and ''§ 1.421–1'' is added in its place.

7. In paragraph (j), second sentence, the language ''§ 1.421–7'' is removed and ''§ 1.421–1'' is added in its place.

8. In paragraph (j), last sentence, the language ''425'' is removed and ''424'' is added in its place.

9. In paragraph (k)(2), second sentence, the language ''§ 1.421–8'' is removed and ''§ 1.421–2'' is added in its place.

§ 1.425–1 [Redesignated]

Par. 13. Section 1.425–1 is redesignated as § 1.424–1 and is amended by:

1. Revising paragraphs (a)(1) through (a)(6).

2. Redesignating paragraph (a)(7) as paragraph (a)(9).

3. Adding paragraph (a)(7).

4. Revising paragraph (a)(8).

5. Adding paragraph (a)(10).

6. In paragraph (b)(1), first, second, and last sentences, the language ''425'' is removed wherever it appears and ''424'' is added in their places.

7. In paragraph (c)(1), first sentence, the language ''425'' is removed and ''424'' is added in its place.

8. In paragraph (c)(1), first sentence, the language ''*disposition*'' is removed and ''*disposition of stock*'' is added in its place.

9. Adding paragraph (c)(1)(iv).

10. Redesignating paragraph (c)(3) as (c)(4).

11. Adding new paragraph (c)(3).

12. Adding newly designated paragraph (c)(4), *Examples 7* through *9.*

13. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.424–1(c)(4), *Example 1,* first sentence.	1964	2004.
1.424–1(c)(4), *Example 1,* first sentence.	qualified stock option	statutory option.
1.424–1(c)(4), *Example 1,* second and fourth sentences.	1965	2005.
1.424–1(c)(4), *Example 1,* third sentence.	1968	2006.
1.424–1(c)(4), *Example 2,* first sentence.	1968	2006.
1.424–1(c)(4), *Example 2,* last sentence.	long-term	
1.424–1(c)(4), *Example 3,* first sentence.	1968	2006.
1.424–1(c)(4), *Example 4,* first sentence.	1968, two years and 11 months after the transfer of shares to him.	2006.
1.424–1(c)(4), *Example 4,* last sentence.	three years from the date	two years from the date the options were granted and within one year of the date that.
1.424–1(c)(4), *Example 5,* first sentence.	1965	2005.
1.424–1(c)(4), *Example 5,* first sentence.	qualified stock option	statutory option.
1.424–1(c)(4), *Example 6,* first sentence, wherever it appears.	1965	2005.
1.424–1(c)(4), *Example 6,* third sentence.	three years	2 years.
1.424–1(c)(4), *Example 6,* third sentence.	income	compensation income.
1.424–1(c)(4), *Example 6,* third sentence.	a qualified stock option	the option.
1.424–1(c)(4), *Example 6,* last sentence.	paragraph (b)(2) of § 1.421–8	§ 1.421–2(b)(2).

14. Revising paragraph (d).

15. Revising paragraphs (e)(1) and (e)(2).

16. In paragraph (e)(3), first sentence, remove the phrase ''Except as otherwise provided in subparagraph (4)'' and add ''If section 423(c) applies to an option then,''.

17. In paragraph (e)(3), first sentence, remove the language '', and 424(b)(1).''

18. Removing paragraph (e)(4).

19. Redesignating paragraph (e)(5) as paragraph (e)(4).

20. Revising newly designated paragraph (e)(4).

21. Redesignating paragraph (e)(6) as paragraph (e)(5) and removing the second and third sentences.

22. Adding and reserving a new paragraph (e)(6).

23. In list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Newly designated section	Remove	Add
1.424–1(e)(7) *Example 1,* first sentence.	1964	2004.
1.424–1(e)(7) *Example 1,* first sentence.	1966	2006.

Newly designated section	Remove	Add
1.424–1(e)(7) *Example 1,* third, fourth, fifth, sixth and last sentences.	1965	2005.
1.424–1(e)(7) *Example 1,* fifth sentence.	425(h)	424(h).
1.424–1(e)(7) *Example 1,* last sentence.	The exercise of such	Because the requirements of § 1.424–1(e)(3) and § 1.423–2(g) have not been met, the exercise of such.
1.424–1(e)(7) *Example 2,* first, second, and fifth sentences.	1964	2004.
1.424–1(e)(7) *Example 2,* first, third, fourth, and fifth sentences, wherever it appears.	1965	2005.
1.424–1(e)(7) *Example 2,* first and third sentences.	1966	2006.
1.424–1(e)(7) *Example 2,* fifth sentence.	425(h)	424(h).
1.424–1(e)(7) *Example 2,* last sentence.	The exercise of such	Because the requirements of § 1.424–1(e)(3) and § 1.423–2(g) have not been met, the exercise of such.
1.424–1(e)(7) *Example 3,* first, second, and last sentences.	1965	2005.

24. In paragraph (e)(7), remove *Example 4.*

25. Adding paragraphs (f) and (g).

The additions and revisions are as follows:

§ 1.424–1 Definitions and special rules applicable to statutory options.

(a) *Substitutions and assumptions of options*—(1) *In general.* (i) This paragraph (a) provides rules under which an *eligible corporation* (as defined in paragraph (a)(2) of this section) may, by reason of a *corporate transaction* (as defined in paragraph (a)(3) of this section), substitute a new statutory option (new option) for an outstanding statutory option (old option) or assume an old option without such substitution or assumption being considered a modification of the old option. For the definition of *modification,* see paragraph (e) of this section.

(ii) For purposes of §§ 1.421–1 through 1.424–1, the phrase ''substituting or assuming a stock option in a transaction to which section 424 applies,'' ''substituting or assuming a stock option in a transaction to which § 1.424–1(a) applies,'' and similar phrases means a substitution of a new option for an old option or an assumption of an old option that meets the requirements of this paragraph (a). For a substitution or assumption to qualify under this paragraph (a), the substitution or assumption must meet all of the requirements described in paragraphs (a)(4) and (a)(5) of this section.

(2) *Eligible corporation.* For purposes of this paragraph (a), the term *eligible corporation* means a corporation that is the employer of the optionee or a related corporation of such corporation. For purposes of this paragraph (a), the determination of whether a corporation is the employer of the optionee or a related corporation of such corporation is based upon all of the relevant facts and circumstances existing immediately after the corporate transaction.

(3) *Corporate transaction.* For purposes of this paragraph (a), the term *corporate transaction* includes—

(i) A corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation;

(ii) A distribution (excluding ordinary dividends) or change in the terms or number of outstanding shares of such corporation (*e.g.*, a stock split or stock dividend);

(iii) A change in the name of the corporation whose stock is purchasable under the old option; and

(iv) Such other corporate events prescribed by the Commissioner in published guidance.

(4) *By reason of.* (i) For a change in an option or issuance of a new option to qualify as a substitution or assumption under this paragraph (a), the change must be made by an *eligible corporation* (as defined in paragraph (a)(2) of this section) and occur by reason of a *corporate transaction* (as defined in paragraph (a)(3) of this section).

(ii) Generally, a change in an option or issuance of a new option is considered to be by reason of a corporate transaction, unless the relevant facts and circumstances demonstrate that such change or issuance is made for reasons unrelated to such corporate transaction. For example, a change in an option or issuance of a new option will be considered to be made for reasons unrelated to a corporate transaction if there is an unreasonable delay between the corporate transaction and such change in the option or issuance of a new option, or if the corporate transaction serves no substantial corporate business purpose independent of the change in options. Similarly, a change in the number or price of shares purchasable under an option merely to reflect market fluctuations in the price of the stock purchasable under an option is not by reason of a corporate transaction.

(iii) A change in an option or issuance of a new option is by reason of a distribution or change in the terms or number of the outstanding shares of a corporation (as described in paragraph (a)(3)(ii) of this section) only if the option as changed or the new option issued is an option on the same stock as under the old option (or if such class of stock is eliminated in the change in capital structure, on other stock of the same corporation).

(iv) A change in an option or issuance of a new option is by reason of a change in the name of a corporation (as defined in paragraph (a)(3)(iii) of this section) only if the option as changed or the new option issued is an option on stock of the successor corporation.

(5) *Other requirements.* For a change in an option or issuance of a new option to qualify as a substitution or assumption under this paragraph (a), all of the requirements described in this paragraph (a)(5) must be met.

(i) In the case of an issuance of a new option (or a portion thereof) in exchange for an old option (or portion thereof), the optionee's rights under the old option (or portion thereof) must be

canceled, and the optionee must lose all rights under the old option (or portion thereof). There cannot be a substitution of a new option for an old option within the meaning of this paragraph (a) if the optionee may exercise both the old option and the new option. It is not necessary to have a complete substitution of a new option for the old option. However, any portion of such option which is not substituted or assumed in a transaction to which this paragraph (a) applies is an outstanding option to purchase stock or, to the extent paragraph (e) of this section applies, a modified option.

(ii) The excess of the aggregate fair market value of the shares subject to the new or assumed option immediately after the change in the option or issuance of a new option over the aggregate option price of such shares must not exceed the excess of the aggregate fair market value of all shares subject to the old option (or portion thereof) immediately before the change in the option or issuance of a new option over the aggregate option price of such shares.

(iii) On a share by share comparison, the ratio of the option price to the fair market value of the shares subject to the option immediately after the change in the option or issuance of a new option must not be more favorable to the optionee than the ratio of the option price to the fair market value of the stock subject to the old option (or portion thereof) immediately before the change in the option or issuance of a new option. The number of shares subject to the new or assumed option may be adjusted to compensate for any change in the aggregate spread between the aggregate option price and the aggregate fair market value of the shares subject to the option immediately after the change in the option or issuance of the new option as compared to the aggregate spread between the option price and the aggregate fair market value of the shares subject to the option immediately before the change in the option or issuance of the new option.

(iv) The new or assumed option must contain all terms of the old option, except to the extent such terms are rendered inoperative by reason of the corporate transaction.

(v) The new option or assumed option must not give the optionee additional benefits that the optionee did not have under the old option.

(vi) The new or assumed option must otherwise comply with the requirements of § 1.422–2 or § 1.423–2. Thus, for example, the old option must be assumed or the new option must be issued under a plan approved by the stockholders of the corporation changing the option or issuing the new option as described in § 1.422–2(b)(2) or § 1.423–2(c), as applicable.

(6) *Obligation to substitute or assume not necessary.* For a change in the option or issuance of a new option to meet the requirements of this paragraph (a), it is not necessary to show that the corporation changing an option or issuing a new option is under any obligation to do so. In fact, this paragraph (a) may apply even when the option that is being replaced or assumed expressly provides that it will terminate upon the occurrence of certain corporate transactions. However, this paragraph (a) cannot be applied to revive a statutory option which, for reasons not related to the corporate transaction, expires before it can properly be replaced or assumed under this paragraph (a).

(7) *Issuance of stock without meeting the requirements of this paragraph (a).* A change in the terms of an option resulting in a modification of such option occurs if an optionee's new employer (or a related corporation of the new employer) issues its stock (or stock of a related corporation) upon exercise of such option without satisfying all of the requirements described in paragraphs (a)(4) and (5) of this section.

(8) *Date of grant.* For purposes of applying the rules of this paragraph (a), a substitution or assumption is considered to occur on the date that the optionee would, but for this paragraph (a), be considered to have been granted the option that the eligible corporation is substituting or assuming. A substitution or an assumption that occurs by reason of a corporate transaction may occur before or after the corporate transaction.

* * * * *

(10) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. Eligible corporation. X Corporation acquires a new subsidiary, Y Corporation, and transfers some of its employees to Y. Y Corporation wishes to grant to its new employees and to the employees of X Corporation new options for Y shares in exchange for old options for X shares that were previously granted by X Corporation. Because Y Corporation is an employer with respect to its own employees and a related corporation of X Corporation, Y Corporation is an eligible corporation under paragraph (a)(2) of this section with respect to both the employees of X and Y Corporations.

Example 2. Corporate transaction. (i) On January 1, 2004, Z Corporation grants E, an employee of Z, an option to acquire 100 shares of Z stock. At the time of grant, the fair market value of Z stock is $200 per share. E's option price is $200 per share. On July 1, 2005, when the fair market value of Z stock is $400, Z declares a stock dividend that causes the fair market value of Z stock to decrease to $200 per share. On the same day, Z grants to E a new option to acquire 200 shares of Z stock in exchange for E's old option. The new option has an exercise price of $100 per share.

(ii) A stock dividend is a corporate transaction under paragraph (a)(3)(ii) of this section. Generally, the issuance of a new option is considered to be by reason of a corporate transaction. None of the facts in this *Example 2* indicate that the new option is not issued by reason of the stock dividend. In addition, the new option is issued on the same stock as the old option. Thus, the substitution occurs by reason of the corporate transaction. Assuming the other requirements of this section are met, the issuance of the new option is a substitution that meets the requirements of this paragraph (a) and is not a modification of the option.

(iii) Assume the same facts as in paragraph (i) of this *Example 2.* Assume further that on December 1, 2005, Z declares an ordinary cash dividend. On the same day, Z grants E a new option to acquire Z stock in substitution for E's old option. Under paragraph (a)(3)(ii) of this section, an ordinary cash dividend is not a corporate transaction. Thus, the exchange of the new option for the old option does not meet the requirements of this paragraph (a) and is a modification of the option.

Example 3. Corporate transaction. On March 15, 2004, A Corporation grants E, an employee of A, an option to acquire 100 shares of A stock at $50 per share, the fair market value of A stock on the date of grant. On May 2, 2005, A Corporation transfers several employees, including E, to B Corporation, a related corporation. B Corporation arranges to purchase some assets from A on the same day as E's transfer to B. Such purchase is without a substantial business purpose independent of making the exchange of E's old options for the new options appear to be by reason of a corporate transaction. The following day, B Corporation grants to E, one of its new employees, an option to acquire shares of B stock in exchange for the old option held by E to acquire A stock. Under paragraph (a)(3)(i) of this section, the purchase of assets is a corporate transaction. Generally, the substitution of an option is considered to occur by reason of a corporate transaction. However, in this case, the relevant facts and circumstances demonstrate that the issuance of the new option in exchange for the old option occurred by reason of the change in E's employer rather than a corporate transaction and that the sale of assets is without a substantial corporate business purpose independent of the change in the options. Thus, the exchange of the new option for the old option is not by reason of a corporate transaction that meets the requirements of this paragraph (a) and is a modification of the old option.

Example 4. Additional benefit. On June 1, 2004, P Corporation acquires 100 percent of the shares of S Corporation and issues a new option to purchase P shares in exchange for

an old option to purchase S shares that is held by E, an employee of S. On the date of the exchange, E's old option is exercisable for 3 more years, and, after the exchange, E's new option is exercisable for 5 years. Because the new option is exercisable for an additional period of time beyond the time allowed under the old option, the effect of the exchange of the new option for the old option is to give E an additional benefit that E did not enjoy under the old option. Thus, the requirements of paragraph (a)(5) of this section are not met, and this paragraph (a) does not apply to the exchange of the new option for the old option. Therefore, the exchange is a modification of the old options.

Example 5. Spread and ratio tests. E is an employee of S Corporation. E holds an old option that was granted to E by S to purchase 60 shares of S at $12 per share. On June 1, 2005, S Corporation is merged into P Corporation, and on such date P issues a new option to purchase P shares in exchange for E's old option to purchase S shares. Immediately before the exchange, the fair market value of an S share is $32; immediately after the exchange, the fair market value of a P share is $24. The new option entitles E to buy P shares at $9 per share. Because, on a share-by-share comparison, the ratio of the new option price ($9 per share) to the fair market value of a P share immediately after the exchange ($24 per share) is not more favorable to E than the ratio of the old option price ($12 per share) to the fair market value of an S share immediately before the exchange ($32 per share) (9/24 = 12/32), the requirements of paragraph (a)(5)(iii) of this section are met. The number of shares subject to E's option to purchase P stock is set at 80. Because the excess of the aggregate fair market value over the aggregate option price of the shares subject to E's new option to purchase P stock, $1,200 (80 × $24 minus 80 × $9), is not greater than the excess of the aggregate fair market value over the aggregate option price of the shares subject to E's old option to purchase S stock, $1,200 (60 × $32 minus 60 × $12), the requirements of paragraph (a)(5)(ii) of this section are met.

Example 6. Ratio test and partial substitution. Assume the same facts as in Example 5, except that the fair market value of an S share immediately before the exchange of the new option for the old option is $8, that the option price is $10 per share, and that the fair market value of a P share immediately after the exchange is $12. P sets the new option price at $15 per share. Because, on a share-by-share comparison, the ratio of the new option price ($15 per share) to the fair market value of a P share immediately after the exchange ($12) is not more favorable to E than the ratio of the old option price ($10 per share) to the fair market value of an S share immediately before the substitution ($8 per share) (15/12 = 10/8), the requirements of paragraph (a)(5)(iii) of this section are met. Assume further that the number of shares subject to E's P option is set at 20, as compared to 60 shares under E's old option to buy S stock. Immediately after the exchange, 2 shares of P are worth $24, which is what 3 shares of S were worth immediately before the exchange (2 × $12 = 3 × $8). Thus, to achieve a complete substitution of a new option for E's old option, E would need to receive a new option to purchase 40 shares of P (*i.e.*, 2 shares of P for each 3 shares of S that E could have purchased under the old option (2/3 = 40/60)). Because E's new option is for only 20 shares of P, P has replaced only ½ of E's old option, and the other ½ is still outstanding.

Example 7. Partial substitution. X Corporation forms a new corporation, Y Corporation, by a transfer of certain assets and, in a spin-off, distributes the shares of Y Corporation to the stockholders of X Corporation. E, an employee of X Corporation, is thereafter an employee of Y. Y wishes to substitute a new option to purchase some of its stock for E's old option to purchase 100 shares of X. E's old option to purchase shares of X, at $50 a share, was granted when the fair market value of an X share was $50, and an X share was worth $100 just before the distribution of the Y shares to X's stockholders. Immediately after the spin-off, which is also the time of the substitution, each share of X and each share of Y is worth $50. Based on these facts, a new option to purchase 200 shares of Y at an option price of $25 per share could be granted to E in complete substitution of E's old option. It would also be permissible to grant E a new option to purchase 100 shares of Y, at an option price of $25 per share, in substitution for E's right to purchase 50 of the shares under the old option.

Example 8. Stockholder approval requirements. (i) X Corporation, a publicly traded corporation, adopts an incentive stock option plan that meets the requirements of § 1.422–2. Under the plan, options to acquire X stock are granted to X employees. X Corporation is acquired by Y Corporation and becomes a subsidiary corporation of Y Corporation. Y Corporation maintains an incentive stock option plan that meets the requirements of § 1.422–2. Under the plan, options for Y stock may be granted to employees of Y or its related corporations. After the acquisition, X employees remain employees of X. In connection with the acquisition, Y Corporation substitutes new options for Y stock for old options for X stock that were previously granted to the employees of X. As a result of this substitution, on exercise of the new options, X employees receive Y Corporation stock.

(ii) Because Y Corporation has a plan that meets the requirements of § 1.422–2 in existence on the date it acquires X, the new options for Y stock are granted under a plan approved by the stockholders of Y. The stockholders of Y do not need to approve the X plan. If the other requirements of paragraphs (a)(4) and (5) of this section are met, the issuance of new options for Y stock in exchange for the old options for X stock meets the requirements of this paragraph (a) and is not a modification of the old options.

(iii) Assume the same facts as in paragraph (i) of this *Example 8*, except that Y Corporation does not maintain an incentive stock option plan on the date of the acquisition of X. The Y options will only be incentive stock options if they are granted under a plan that meets the requirements of § 1.422–2(b). Therefore, Y must adopt a plan that provides for the grant of incentive stock options, and the plan must be approved by the stockholders of Y in accordance with § 1.422–2(b). If the stockholders of Y approve the incentive stock option plan within 12 months before or after the date of the adoption of a plan by Y and the other requirements of § 1.422–2 and the requirements of this paragraph (a) are met, the issuance of the new options for Y stock in exchange for the old options for X stock meets the requirements of this paragraph (a) and is not treated as a modification of the old options for X stock. The result is the same if Y Corporation assumes the old options instead of issuing new options.

(iv) Assume the same facts as in paragraph (i) of this *Example 8*, except that there is no exchange of options. Instead, as part of the acquisition, X amends its plan to allow future grants under the plan to be grants to acquire Y stock. Because the amendment of the plan to allow options on a different stock is considered the adoption of the new plan, the stockholders of X must approve the plan within 12 months before or after the date of the amendment of the plan. If the stockholders of X timely approve the plan, the future grants to acquire Y stock will be incentive stock options (assuming the other requirements of § 1.422–2 have been met).

Example 9. Modification. X Corporation merges into Y Corporation. Y Corporation retains employees of X who hold old options to acquire X Corporation stock. When the former employees of X exercise the old options, Y Corporation issues Y stock to the former employees of X. Under paragraph (a)(7) of this section, because Y issues its stock on exercise of the old options for X stock, there is a change in the terms of the old options for X stock. Thus, the issuance of Y stock on exercise of the old options is a modification of the old options.

* * * * *

(c) * * * (1) * * *

(iv) A transfer between spouses or incident to divorce (described in section 1041(a)). The special tax treatment of § 1.421–2(a) with respect to the transferred stock applies to the transferee. However, see § 1.421–1(b)(2) for the treatment of the transfer of a statutory option incident to divorce.

* * * * *

(3) If an optionee exercises an incentive stock option with statutory option stock and the applicable holding period requirements (under § 1.422–1(a) or 1.423–1(a)) with respect to such statutory option stock are not met before such transfer, then sections 354, 355, 356, or 1036 (or so much of 1031 as relates to 1036) do not apply to determine whether there is a disposition of those shares. Therefore, there is a disposition of the statutory option stock, and the special tax treatment of § 1.421–2(a) does not apply to such stock.

(4) * * *

Example 7. On January 1, 2004, X Corporation grants to E, an employee of X

Corporation, an incentive stock option to purchase 100 shares of X Corporation stock at $100 per share (the fair market value of an X Corporation share on that date). On January 1, 2005, when the fair market value of a share of X Corporation stock is $200, E exercises half of the option, pays X Corporation $5,000 in cash, and is transferred 50 shares of X Corporation stock with an aggregate fair market value of $10,000. E makes no disposition of the shares before January 2, 2006. Under § 1.421–2(a), no income is recognized by E on the transfer of shares pursuant to the exercise of the incentive stock option, and X Corporation is not entitled to any deduction at any time with respect to its transfer of the shares to E. E's basis in the shares is $5,000.

Example 8. Assume the same facts as in *Example 7*, except that on December 1, 2005, one year and 11 months after the grant of the option and 11 months after the transfer of the 50 shares to E, E uses 25 of those shares, with a fair market value of $5,000, to pay for the remaining 50 shares purchasable under the option. On that day, X Corporation transfers 50 of its shares, with an aggregate fair market value of $10,000, to E. Because E disposed of the 25 shares before the expiration of the applicable holding periods, § 1.421–2(a) does not apply to the January 1, 2005, transfer of the 25 shares used by E to exercise the remainder of the option. As a result of the disqualifying disposition of the 25 shares, E recognizes compensation income under the rules of § 1.421–2(b).

Example 9. On January 1, 2005, X Corporation grants an incentive stock option to E, an employee of X Corporation. The exercise price of the option is $10 per share. On June 1, 2005, when the fair market value of an X Corporation share is $20, E exercises the option and purchases 5 shares with an aggregate fair market value of $100. On January 1, 2006, when the fair market value of an X Corporation share is $50, X Corporation is acquired by Y Corporation in a section 368(a)(1)(A) reorganization. As part of the acquisition, all X Corporation shares are converted into Y Corporation shares. After the conversion, if an optionee holds a fractional share of X Corporation stock, Y Corporation will purchase the fractional share for cash equal to its fair market value. After applying the conversion formula to the shares held by E, E has 10 Y Corporation shares and one-half of a share of X Corporation stock. Y Corporation purchases E's one-half share for $25, the fair market value of one-half of an X Corporation share on the conversion date. Because E sells the one-half share prior to expiration of the holding periods described in § 1.422–1(a), the sale is a disqualifying disposition of the one-half share. Thus, in 2006, E must recognize compensation income of $5 (one-half of the fair market value of an X Corporation share on the date of exercise of the option, or $10, less one-half of the exercise price per share, or $5). For purposes of computing any additional gain, E's basis in the one-half share increases to $10 (reflecting the $5 included in income as compensation). E recognizes an additional gain of $15 ($25, the fair market value of the one-half share, less $10, the basis in such share). The extent to which the additional $15 of gain is treated as a redemption of X Corporation stock is determined under section 302.

(d) *Attribution of stock ownership.* To determine the amount of stock owned by an individual for purposes of applying the percentage limitations relating to certain stockholders described in §§ 1.422–2(f) and 1.423–2(d), shares of the employer corporation or of a related corporation that are owned (directly or indirectly) by or for the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants, are considered to be owned by the individual. Also, for such purposes, if a domestic or foreign corporation, partnership, estate, or trust owns (directly or indirectly) shares of the employer corporation or of a related corporation, the shares are considered to be owned proportionately by or for the stockholders, partners, or beneficiaries of the corporation, partnership, estate, or trust. The extent to which stock held by the optionee as a trustee of a voting trust is considered owned by the optionee is determined under all of the facts and circumstances.

(e) *Modification, extension, or renewal of option.* (1) This paragraph (e) provides rules for determining whether a share of stock transferred to an individual upon the individual's exercise of an option after the terms of the option have been changed is transferred pursuant to the exercise of a statutory option.

(2) Any modification, extension, or renewal of the terms of an option to purchase shares is considered the granting of a new option. The new option may or may not be a statutory option. To determine the date of grant of the new option for purposes of section 422 or 423, *see* § 1.421–1(c).

* * * * *

(4)(i) For purposes of §§ 1.421–1 through 1.424–1 the term *modification* means any change in the terms of the option (or change in the terms of the plan pursuant to which the option was granted or in the terms of any other agreement governing the arrangement) that gives the optionee additional benefits under the option regardless of whether the optionee in fact benefits from the change in terms. In contrast, for example, a change in the terms of the option shortening the period during which the option is exercisable is not a modification. However, a change providing an extension of the period during which an option may be exercised (such as after termination of employment) or a change providing an alternative to the exercise of the option (such as a stock appreciation right) is a modification regardless of whether the optionee in fact benefits from such extension or alternative right. Similarly, a change providing an additional benefit upon exercise of the option (such as the payment of a cash bonus) or a change providing more favorable terms for payment for the stock purchased under the option (such as the right to tender previously acquired stock) is a modification.

(ii) If an option is not immediately exercisable in full, a change in the terms of the option to accelerate the time at which the option (or any portion thereof) may be exercised is not a modification for purposes of this section. Additionally, no modification occurs if a provision accelerating the time when an option may first be exercised is removed prior to the year in which it would otherwise be triggered. For example, if an acceleration provision is timely removed to avoid exceeding the $100,000 limitation described in § 1.422–4, a modification of the option does not occur.

(iii) A change to an option which provides, either by its terms or in substance, that the optionee may receive an additional benefit under the option at the future discretion of the grantor, is a modification at the time that the option is changed to provide such discretion. In addition, the exercise of discretion to provide an additional benefit is a modification of the option. However, it is not a modification for the grantor to exercise discretion reserved under an option with respect to the payment of a cash bonus at the time of exercise, the availability of a loan at exercise, or the right to tender previously acquired stock for the stock purchasable under the option. An option is not modified merely because an optionee is offered a change in the terms of an option if the change to the option is not made.

(iv) A change in the terms of the stock purchasable under the option that affects the value of the stock is a modification of such option, except to the extent that a new option is substituted for such option by reason of the change in the terms of the stock in accordance with paragraph (a) of this section.

(v) If an option is amended solely to increase the number of shares subject to the option, the increase is not considered a modification of the option but is treated as the grant of a new option for the additional shares.

(vi) Any change in the terms of an option made in an attempt to qualify the option as a statutory option grants additional benefits to the optionee and is, therefore, a modification.

(vii) An extension of an option refers to the granting by the corporation to the optionee of an additional period of time within which to exercise the option beyond the time originally prescribed. A renewal of an option is the granting by the corporation of the same rights or privileges contained in the original option on the same terms and conditions. The rules of this paragraph apply as well to successive modifications, extensions, and renewals.

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(6) [Reserved.]

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(f) *Definitions.* The following definitions apply for purposes of §§ 1.421–1 through 1.424–1:

(1) *Parent corporation.* The term *parent corporation*, or *parent*, means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(2) *Subsidiary corporation.* The term *subsidiary corporation,* or *subsidiary,* means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in an unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) *Effective date.* This section applies to any statutory option granted on or after the date that is 180 days after publication of final regulations in the **Federal Register**. Taxpayers can rely on these regulations for the treatment of any statutory option granted on or after June 9, 2003.

§ 1.6039–1 [Removed]

Par. 14. Section 1.6039–1 is removed.

§ 1.6039–2 [Redesignated]

Par. 15. Section 1.6039–2 is redesignated as 1.6039–1 and revised to read as follows:

§ 1.6039–1 Statements to persons with respect to whom information is furnished.

(a) *Requirement of statement with respect to incentive stock options under section 6039(a)(1).* Every corporation which transfers stock to any person pursuant to such person's exercise of an incentive stock option described in section 422(b) must furnish to such transferee, for each calendar year in which such a transfer occurs, a written statement with respect to the transfer or transfers made during such year. This statement must include the following information—

(1) The name, address, and employer identification number of the corporation transferring the stock;

(2) The name, address, and identifying number of the person to whom the share or shares of stock were transferred;

(3) The name and address of the corporation the stock of which is the subject of the option (if other than the corporation transferring the stock);

(4) The date the option was granted;

(5) The date the shares were transferred to the person exercising the option;

(6) The fair market value of the stock at the time the option was exercised;

(7) The number of shares of stock transferred pursuant to the option;

(8) The type of option under which the transferred shares were acquired; and

(9) The total cost of all the shares.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which records, or has by its agent recorded, a transfer of the title to stock acquired by the transferor pursuant to the transferor's exercise on or after January 1, 1964, of an option granted under an employee stock purchase plan which meets the requirements of section 423(b), and with respect to which the special rule of section 423(c) applied, must furnish to such transferor, for each calendar year in which such a recorded transfer of title to such stock occurs, a written statement with respect to the transfer or transfers containing the information required by paragraph (b)(2) of this section.

(2) The statement required by paragraph (b)(1) of this section must contain the following information—

(i) The name and address of the corporation whose stock is being transferred;

(ii) The name, address and identifying number of the transferor;

(iii) The date such stock was transferred to the transferor;

(iv) The number of shares to which title is being transferred; and

(v) The type of option under which the transferred shares were acquired.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent,* as used in this section means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(4) A statement is required by reason of a transfer described in section 6039(a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option. Thus, for example, if the owner has record title to a share or shares of stock transferred to a recognized broker or financial institution and the stock is subsequently sold by such broker or institution (on behalf of the owner), the corporation is only required to furnish a written statement to the owner relating to the transfer of record title to the broker or financial institution. Similarly, a written statement is required when a share of stock is transferred by the optionee to himself and another person (or persons) as joint tenants, tenants by the entirety or tenants in common. However, when stock is originally issued to the optionee and another person (or persons) as joint tenants, or as tenants by the entirety, the written statement required by this paragraph shall be furnished (at such time and in such manner as is provided by this section) with respect to the first transfer of the title to such stock by the optionee.

(5) Every corporation which transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of record title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for furnishing statements*—(1) *In general.* Each statement required by this section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time.* For good cause shown upon written application of the corporation required to furnish statements under this section, the Director, Martinsburg Computing Center, may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must contain a full recital of the reasons for requesting an extension to aid the Director in determining the period of the extension, if any, which will be granted and must be sent to the Martinsburg Computing Center (Attn:

Extension of Time Coordinator). Such a request in the form of a letter to the Martinsburg Computing Center signed by the applicant (or its agent) will suffice as an application. The application must be filed on or before the date prescribed in paragraph (c)(1) of this section for furnishing the statements required by this section, and must contain the employer identification number of the corporation required to furnish statements under this section.

(3) *Last day for furnishing statement.* For provisions relating to the time for performance of an act when the last day prescribed for performance falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(d) *Statements furnished by mail.* For purposes of this section, a statement is considered to be furnished to a person if it is mailed to such person's last known address.

(e) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

(f) *Electronic furnishing of statements.* [Reserved]

(g) *Effective date.* This section applies as of the date that is 180 days after publication of final regulations in the **Federal Register** to transfers of stock acquired pursuant to a statutory option on or after that date. Taxpayers can rely on these regulations with respect to the transfer of stock acquired pursuant to a statutory option on or after June 9, 2003.

PART 14a—TEMPORARY INCOME TAX REGULATIONS RELATING TO INCENTIVE STOCK OPTIONS

PART 14a—[REMOVED]

Par. 16. Part 14a is removed.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–13581 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–02–099]

RIN 1625–AA11 (Formerly RIN 2115–AE84)

Regulated Navigation Area in Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing a duplicate notice of proposed rulemaking concerning revisions to the regulated navigation area in Hampton Roads, Virginia. This duplicate notice of proposed rulemaking was inadvertently published after the initial publication of a substantially similar notice of proposed rulemaking. The initial notice of proposed rulemaking will remain unchanged.

DATES: The May 22, 2003, notice of proposed rulemaking ''Regulated Navigation Area in Hampton Roads, VA'' (68 FR 27948) is withdrawn on June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Lewis Fisher, Jr., Marine Safety Division, Fifth Coast Guard District, (757) 398–6387, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2003, we published a notice of proposed rulemaking entitled ''Regulated Navigation Area in Hampton Roads, VA'' in the **Federal Register** (68 FR 22648). The rulemaking concerned proposed revisions to the regulated navigation area in Hampton Roads, Virginia, designed to impose vessel reporting requirements and speed limit restrictions in certain areas of the port. On May 22, 2003, we published a substantially similar notice of proposed rulemaking entitled ''Regulated Navigation Area in Hampton Roads, VA'' in the **Federal Register** (68 FR 27948). The Coast Guard is withdrawing only the May 22, 2003, notice of rulemaking.

Withdrawal

Though the April 29, 2003, notice of proposed rulemaking (68 FR 22648) and the May 22, 2003, notice of proposed rulemaking (68 FR 27948) are not identical, the provisions are substantially similar. In order to alleviate public confusion and facilitate the development of a final rule, the Coast Guard is withdrawing the May 22, 2003, notice of proposed rulemaking ''Regulated Navigation Area in Hampton Roads, VA'' (68 FR 27948). The April 29, 2003, notice of proposed rulemaking ''Regulated Navigation Area in Hampton Roads, VA'' (68 FR 22648) will remain unchanged by this action and is anticipated to be the basis of a final rule.

Dated: June 3, 2003.

Sally Brice-O'Hara,

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

[FR Doc. 03–14433 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 68, No. 110
Monday, June 9, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on June 30 and July 1, 2003.

DATES: Monday, June 30, 2003, from 9 a.m. to 5 p.m., and Tuesday, July 1, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1858.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Monday, June 30, 2003, from 9 a.m. to 5 p.m., and Tuesday, July 1, 2003, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2003 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2003 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2003 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on July 1 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 20, 2003, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: May 30, 2003.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 03–14463 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek OMB Approval To Collect Information: Forms Pertaining to the Peer Review of ARS Research Projects

AGENCY: Agricultural Research Service (ARS), USDA.

ACTION: Notice and request for comments.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 and OMB implementing regulations. The Department is soliciting public comments on the subject proposal.

DATES: Written comments on this notice must be received by August 13, 2003.

ADDRESSES: Interested persons are invited to submit comments or request additional information regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Marcia Moore, Peer Review Program Coordinator; Office of Scientific Quality Review; Agricultural Research Agency, USDA; 5601 Sunnyside Avenue, Mailstop 5142; Beltsville, Maryland; 20705.

FOR FURTHER INFORMATION CONTACT: Marcia Moore, Agricultural Research Service Peer Review Program Coordinator, 301–504–3282.

SUPPLEMENTARY INFORMATION: The Office of Scientific Quality Review will seek approval from OMB to update six existing forms that will allow the ARS to efficiently manage data associated with the peer review of agricultural research. All forms are transferred and received in an electronic storage format that does not include on-line access.

Abstract: The Office of Scientific Quality Review was established in September of 1999 as a result of the Agricultural Research, Extension, and Education Reform Act 1998 (''The Act'')(Pub. L. 105–185). The Act included mandates to perform scientific peer reviews of all research activities conducted by the USDA. The Office manages the ARS peer review system by centrally planning peer panel reviews for ARS research projects on a five-year

cycle. Each set of reviews is assigned a chairperson to govern the review process. The majority of the peer reviewers are non-ARS scientists. Peer review panels are convened to provide in-depth discussion and review of the research project plans. Each panel reviewer receives information on 1–25 ARS research projects.

A total of about 220 research projects are reviewed annually by an estimated 100 reviewers; whereby approximately 200 are reviewed by panel and approximately 20 are reviewed by an ad hoc process. The organization and management of this peer review system, particularly panel reviews, is highly dependent on the use of forms.

The Office of Scientific Quality Review will seek OMB approval of the following forms:

1. Confidentiality Agreement Form—USDA uses this form to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement is signed prior to the reviewer's involvement in the peer review process. This form requires an original signature.

2. Panelist Informational Form—USDA uses this form to gather up-to-date background information about the reviewer. Reviewers often include sensitive information on this form. This form requires an original signature.

3. Peer Review of a ARS Research Project Form (Peer Review Form)—USDA uses this form to guide the reviewer's comments on the subject project. The form contains the reviewing criteria and space for the reviewer's narrative comments and evaluation.

4. Recommendations for ARS Research Project Form—(Recommendations Form, formerly known as ''Critique Form'') USDA uses this form to guide the panel's evaluation and critique of the review process. The form contains recommendations for the subject research project.

5. Panel Expense Report Form (Expense Report)—USDA uses this form to document a panel reviewer's expense incurred traveling to and attending a peer review meeting. The Expense Report includes lodging, meals, and transportation expenses. When completed, the form contains sensitive information.

Panel Invoice Form (Invoice)—USDA uses this form to document the transfer of a stipend to a peer reviewer. Reviewers receive stipends as compensation for serving as peer review panelists. This form requires an original signature.

(1) USDA's collection of information on the Confidentiality Agreement Form is needed to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement would be signed prior to the reviewer's involvement in the peer review process.

(2) USDA's collection of information on the Panelist Informational Form is needed to gather up-to-date background information about the reviewer. It contains sensitive information.

(3) USDA's collection of information on the Peer Review Form is needed to guide the reviewer's comments on the subject project. It contains the reviewing criteria and space to insert comments.

(4) USDA's collection of information on the Recommendations Form is needed to guide the panel's critique of the review process. It contains recommendations for the subject research project.

(5) USDA's collection of information on the Expense Report Form is needed to document a panel reviewer's expenses incurred by attending a peer review meeting. The Expense Report includes lodging, meals, and transportation expenses. It includes sensitive information.

(6) USDA's collection of information on the Invoice is needed to document the transfer of a stipend to the peer reviewer. The stipend is given to reviewers as appreciation for their time spent on the panel review process.

Estimate of Burden: The burden associated with this approval process is the minimum required to achieve program objectives. The information collection frequency is the minimum consistent with program objectives. The following estimates of time required to complete the forms are based on OSQR's experience in working with reviewers and accepting their input into our procedures.

1. Confidentiality Agreement Form: This form takes 10–15 minutes to complete. It only requires a signature and date, but the reviewer must read the terms of the agreement.

2. Panelist Informational Form: This form takes 20–30 minutes to complete. It resembles a typical application for personal information, many reviewers provide the same data to become grant reviewers.

3. Peer Review of an ARS Research Project Form (Peer Review Form): This form takes 4–6 hours to complete. Because this is a review, the page length significantly varies. Reviewers are free to write as much as they wish.

4. Recommendations for ARS Research Project Form (Recommendations Form, formerly known as ''Critique Form''): This form takes 1 hour to complete. Because this is a review, the page length significantly varies. Reviewers are free to write as much as they wish.

5. Panel Expense Report Form (Expense Report): This form takes 10–15 minutes to complete.

6. Panel Invoice Form (Invoice): This form takes 5–10 minutes to complete. This form has the reviewer's personal info pre-filled and the reviewer only verifies it's accuracy and signs.

Respondents and Estimated Number of Respondents: Scientific experts, currently working in the same discipline as the research projects under review, are selected to review research projects. These experts are notable peers within and external to the ARS. Annually, about 100 peer reviewers complete these forms. However, ad hoc reviewers are not paid a stipend, and they do not travel to meet with other reviewers; and thus will not complete Expense Report and Invoice Forms. These ad hoc reviewers, retained for special situations, will make up about a quarter of all the reviewers retained annually.

Frequency of Response:

Form	Number of respondents	Annual frequency
Confidentiality Agreement	100	1 per respondent.
Peer Review Forms (Required for all reviewers and they have 1–4 review assignments on average).	100	~4 per respondent (Total of 400).
Expense Report, Invoice, & Panelist Information Forms	75	1 per respondent for each form (Total of 225).
Recommendations Form (Required on panel reviews, whereby comments from the peer review form are combined into one file).	75	~2.5 per respondent (Total of 200).

Estimated Total Annual Burden on Respondents:

Form (Time required to complete)	Number completed annually	Total burden
Confidentiality Agreement (12 min.)	100	1200 min.
Peer Review Forms (~5 hrs)	400	2000 hrs.
Panelist Information Forms (25 min.)	225	5625 min.
Recommendations Form (1 hr)	200	200 hrs.
Invoice (7 min.)	225	1575 min.
Expense Report (12 min.)	225	2700 min.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chap. 35.

Comments: The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of ARS functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the estimated burden from proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 27, 2003.

Dr. Caird Rexroad,

Acting Associate Administrator, Agricultural Research Service, USDA.

[FR Doc. 03–14363 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–013N]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Adjusted Dollar Limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the dollar limitations on sales of meat and meat food products and poultry products to hotels, restaurants, and similar institutions that do not disqualify a store for exemption from Federal inspection requirements. By reason of FSIS' regulations, for calendar year 2003 the dollar limitation for meat and meat food products is remaining at $47,000 and for poultry products at $41,600. FSIS is retaining the dollar limitations from calendar year 2002 based on the small price changes for these products evidenced by the Consumer Price Index (CPI).

EFFECTIVE DATE: This notice is effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lynn Dickey, Ph.D., Director, Regulations and Directives Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700; telephone (202) 720–5627, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide that the statutory provisions requiring inspection of the slaughter of livestock or poultry and the preparation or processing of products thereof do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service to consumers at such establishments (21 U.S.C. 454(c)(2)and 661(c)(2)). In Title 9 of the Code of Federal Regulations §§ 303.1(d) and 381.10(d), respectively, FSIS regulations address the conditions under which requirements for inspection do not apply to retail operations.

Under these regulations, sales to hotels, restaurants, and similar institutions disqualify a store for exemption if they exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the CPI, published by the Bureau of Labor Statistics, indicates an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (*See* paragraphs (d)(2)(iii)(*b*) and (d)(2)(iii) of §§ 303.1 and 381.10.)

The CPI for 2002 reveals an average annual price increase for meat and meat food products of 0.2 percent and an annual average price decrease for poultry products of 0.7 percent. The price increase for meat and meat food products is $94 and the price decrease for poultry products is $291. Because the price of meat and meat food products and the price of poultry products have not changed by more than $500, in accordance with §§ 303.1 (d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, FSIS has retained the dollar limitation on sales to hotels, restaurants, and similar institutions at $47,000 for meat and meat food products and at $41,600 for poultry products for calendar year 2003.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied

health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on: June 4, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–14417 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB95

Forest Land Enhancement Program

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of interim directive; request for comment.

SUMMARY: In conjunction with an interim final rule published elsewhere in the same separate part of today's **Federal Register**, the Forest Service is issuing an interim directive to provide guidance to Forest Service employees for managing the Forest Land Enhancement Program (FLEP), which was authorized in the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). This interim directive is issued to the Forest Service Manual (FSM) Title 3300, Forestry Incentives, Chapter 3310, Cost-Sharing as ID 3310–2003–1. Comments received in response to this notice will be considered in development of the final directive.

DATES: This interim directive (ID 3310–2003–1) is effective on June 9, 2003. Comments must be received in writing by August 8, 2003.

ADDRESSES: Send written comments to Hal E. Brockman, Forest Service, Cooperative Forestry Staff, Mail Stop 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123; via electronic mail to *hbrockman@fs.fed.us*; or via facsimile to FLEP ID Comments at (202) 205–1271. The agency cannot confirm receipt of comments. A toll free number is available, 1–866–585–8540, for callers to record voice mail messages (up to 3 minutes long) with their comments on the interim directive. This toll free number will be active 24 hours a day during the comment period. Public comments submitted by voice mail will be transcribed for the public record. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim directive during regular business hours at the office of the Cooperative Forestry Staff, 4th Floor SE., Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–1389 to facilitate entry into the building.

A copy of the Farm Security and Rural Investment Act of 2002, sections 8001 and 8002 (Pub. L. 107–171), and other information on this program can be found on the World Wide Web/Internet at *http://www.fs.fed.us/spf/coop/flep.htm.* A copy of the interim directive (ID 3310–2003–1) is available electronically at *http://www.fs.fed.us/im/directives.htm.*

FOR FURTHER INFORMATION CONTACT: Hal E. Brockman, Cooperative Forestry Staff, (202) 205–1694.

SUPPLEMENTARY INFORMATION: The Department is adopting an interim final rule to establish a new subpart C in part 230 of Title 36 of the Code of Federal Regulations (CFR) that sets forth requirements for the management and operation of the new Forest Land Enhancement Program (FLEP), which was authorized in the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). The notice setting out this interim final rule and requesting comment can be found elsewhere in this part of today's **Federal Register**. The FLEP interim final rule is intended to improve the long-term sustainability of nonindustrial private forest lands in the United States by assisting landowners, through State Foresters, in more actively managing their forest lands and related resources through the use of State, Federal, and private sector resource management expertise, financial assistance, and educational programs. In conjunction with this interim final rule, the agency is issuing an interim directive to Forest Service Manual Chapter 3310 (ID 3310–2003–1) to provide additional guidance to Forest Service employees in the administration of the FLEP. This interim directive is available electronically on the World Wide Web/Internet at the Web site address provided in the **ADDRESSES** section of this notice. Comments received on the interim directive will be used in the development of the final directive.

Dated: April 11, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–14334 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, Forest Service USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, June 12, 2003, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting June 12, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, RAC members/subcommittee reports, merchantable materials projects, quorum and or proxy votes, establishment of a monitoring form, and a date for a field trip to one of the projects. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 03–14382 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resources Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of

1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, June 16, 2003. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA. The purpose of the meeting is: Take a short field trip for an on-site look at the goat brushing project, review any new RAC proposals, review progress of FY 2002 accounting, update on new Forest Service Region 5 RAC Web site, finalize Madera County RAC mission and clarify voting procedures.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, June 16, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA 93643, (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Take a short field trip for an on-site look at the goat brushing project, (2) review any new RAC proposals, (3) review progress of FY 2002 accounting, (4) update on new Forest Service Region 5 RAC Web site, (5) finalize Madera County RAC mission, and (6) clarify voting procedures. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 23, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–14383 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introduction, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Project Proposals/ Possible Action, (6) Update on Approved Projects, (7) Status of Members, (8) General Discussion, (9) Next Agenda.

DATES: The meeting will be held on June 30, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 26, 2003 will have the opportunity to address the Committee at those sessions.

Dated: June 3, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–14389 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request extension of a currently approved information collection, the Honey Survey.

DATES: Comments on this notice must be received by August 13, 2003 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Honey Survey.

OMB Control Number: 0535–0153.

Expiration Date of Approval: September 30, 2003.

Type of Request: Intent to extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Honey Survey collects information on the number of colonies, honey production, stocks, and prices. The survey provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. State universities and agriculture departments also use data from this survey. The Honey Survey has approval from OMB for a three year period. NASS intends to request that the survey be approved for another three years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 7,000.

Estimated Total Annual Burden on Respondents: 1,170 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

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.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 12, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–14364 Filed 6–6–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Serfilco, Ltd.

In the Matter of: Serfilco, Ltd., 1777 Shermer Road, Northbrook, IL 60062–5360, Respondent; Order

The Bureau of Industry and Security, United States Department of Commerce (''BIS''), having notified Serfilco, Ltd., 1777 Shermer Road, Northbrook, Illinois 60062–5360, (''Serfilco'') of its intention to initiate an administrative proceeding against Serfilco, pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''Act''),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) (''Regulations''),[2] based on allegations that Serfilco committed one violation each of Section 787A.3 and 787A.4 of the former Regulations, and four violations of Section 764.2(a) of Regulations by selling commodities to companies in the United States to be exported to Bahrain and Saudi Arabia, and negotiating the sale of commodities to be exported to the United Arab Emirates and Saudi Arabia, contrary to the terms of the June 10, 1996 Order denying all of Serfilco's export privileges to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen; and

BIS and Serfilco having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is Therefore Ordered:

First, that a civil penalty of $65,000 is assessed against Serfilco, of which $32,500 shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of the remaining $32,500 shall be made within six months from the date of the entry of the Order. Payments shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Serfilco shall be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of three years from the date of this Order, Serfilco, its successors or assigns, and when acting for or on behalf of Serfilco, its officers, representatives, agents or employees (''denied person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, that is subject to the Regulations, or in any other activity subject to the Regulations related to export to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen;

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 CFR parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter ''the former Regulations'')), and 15 CFR parts 768–799 (1997). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR parts 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The Regulations establish the procedures that apply to this matter.

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Serfilco by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 13th day of March 2003.

Lisa A. Prager,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 03–14377 Filed 6–6–03; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-791–809]

Notice of Extension of Time Limit for Preliminary Results of Administrative Antidumping Review: Certain Hot-Rolled Carbon Steel Flat Products from South Africa

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa in response to requests by petitioners Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation, and Nucor Corporation. The review covers shipments of this merchandise to the United States for the period May 3, 2001 through August 31, 2002, by Iscor Ltd. and Saldanha Steel Ltd. (together, Iscor/Saldanha[1]), and Highveld Steel & Vanadium Corp. Ltd. (Highveld). For the reasons discussed below, we are extending the preliminary results of this administrative review by 30 days, to no later than July 2, 2003.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Scot Fullerton at (202) 482–0197 or (202) 482–1386, respectively; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2001, the Department of Commerce published in the **Federal Register** the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa (66 FR 48242). On September 30, 2002, in accordance with Section 751(a) of the Tariff Act of 1930, as amended (the Act) and section 19 CFR 351.213(b) of the regulations, petitioners Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation requested a review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa. On September 30, 2002, petitioner Nucor Corporation also requested a review of this antidumping duty order. On October 24, 2002, we published a notice of ''Initiation of Antidumping Review.'' *See* 67 FR 65336. On December 30, 2002, Iscor/Saldanha informed the Department it was unable to respond to the Department's questionnaire. On January 21, 2003, Highveld informed the Department that it was withdrawing its participation in the administrative review.

On February 19, 2003, petitioners Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation submitted factual information and arguments for determining a new total facts available margin for respondents. On March 26, 2003, Highveld submitted comments contesting petitioners' methodology for updating Highveld's facts available margin. On May 20, 2003, Iscor/Saldanha also submitted comments contesting petitioners' methodology for updating the facts available margin.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the last day of the anniversary month of the order for which the administrative review was requested. Because of the complexity and timing of certain issues in this case, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. The Department requires additional time to evaluate information submitted by petitioners regarding the determination of facts available.

Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limits for the preliminary results by 30 days, to no later than July 2, 2003.

[1] In the final results of the antidumping duty investigation, the Department determined that Iscor and Saldanha were affiliated, and should be treated as a single entity for purposes of the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 48242 (Sept. 19, 2001) (LTFV investigation). This was based on information on the public record of the contemporaneous countervailing duty investigation of hot-rolled products from South Africa that 1) Iscor is a 50 percent shareholder in Saldanha, and is in a position to exercise control of Saldanha's assets, and 2) both companies produce the subject merchandise. In this review, the Department requested that, if the circumstances had not changed, the two parties file a combined response. The notice of appearance was filed for Iscor, including its subsidiary Saldanha.

Dated: June 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–14443 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–839]

Certain Polyester Staple Fiber from Korea; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review

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

ACTION: Notice of preliminary results of 2001–2002 administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Korea. The period of review is May 1, 2001, through April 30, 2002. This review covers imports of certain polyester staple fiber from two producers/exporters.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

DATES: EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1174.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce (''the Department'') published an antidumping duty order on certain polyester staple fiber (''PSF'') from Korea. (*See* 65 FR 33807). On May 6, 2002, the Department published a notice of ''Opportunity to Request Administrative Review'' of this order. (See 67 FR 30356). On May 30, 2002, Daeyang Industrial Co., Ltd. (''Daeyang''), Sunglim Co., Ltd. (''Sunglim''), Huvis Corporation (''Huvis''), and Estal Industry Co., Ltd. (''Estal'') requested administrative reviews. On May 31, 2002, Sam Young Synthetics Co., Ltd. (''Sam Young''), Mijung Ind. Co., Ltd. (''Mijung''), Keon Baek Co., Ltd. (''Keon Baek''), and East Young Co., Ltd. (''East Young'') made similar requests for administrative reviews. Also, on May 31, 2002, Stein Fibers, Ltd. (''Stein Fibers''), an interested party in this review, requested an administrative review of imports of the subject merchandise produced by Sam Young, Mijung, Keon Baek, East Young, Huvis, Daeyang, and Estal. On June 25, 2002, the Department published a notice initiating the review for the period May 1, 2001, through April 30, 2002. (*See* 67 FR 42753).

On July 10, 2002, we issued antidumping questionnaires in this review. On August 2, 2002, Sunglim withdrew its request for review. On August 16, 2002, Sam Young, Mijung, Keon Baek, Estal, and Daeyang withdrew their requests for review. Also, on August 16, 2002, Stein Fibers withdrew its request for administrative reviews of the shipments of Sam Young, Mijung, Keon Baek, Daeyang, and Estal. *See ''Partial Rescission''* section, below.

We received responses from East Young and Huvis on September 5, 2002. As a result of certain below cost sales being disregarded in the previous administrative review, on October 17, 2002, we instructed Huvis to respond to the cost questionnaire. On November 14, 2002, we received Huvis' response to the cost questionnaire.

On September 30, 2002, in accordance with 19 CFR 351.301(d)(2)(ii), Arteva Specialties S.a.r.l., d/b/a KoSa and Wellman, Inc. (''the petitioners''), alleged that East Young had made sales to the United Kingdom, East Young's reported third-country market, at prices below the cost of production (''COP'') during the POR. On October 2, 2002, East Young submitted an objection to the petitioners' September 30, 2002, COP allegation on the basis that it was untimely filed, inasmuch as the deadline for alleging that East Young made sales in its third-country market at prices below the COP was September 26, 2002. However, we accepted the petitioners' allegation of sales below COP and proceeded to examine the sufficiency of the allegation because it was not submitted so late that the Department would be unnecessarily delayed in reviewing the substance of the allegation nor would it cause other interested parties difficulties in representing their interests. *See* Memorandum from Team to Susan Kuhbach, ''*Petitioners' Allegation of Sales Below Cost of Production,*'' dated October 21, 2002, which is on file in the Central Records Unit (''CRU'') in room B-099 of the main Department building.

On October 29, 2002, East Young submitted further objections to the timeliness and merits of the petitioners' cost allegation. On November 4, 2002, the petitioners rebutted East Young's October 29, 2002, submission. On November 6, 2002, East Young rebutted the petitioners' November 4, 2002, submission. On December 6, 2002, we found that the petitioners' allegation did not provide a reasonable basis to initiate a COP investigation on East Young's U.K. sales because the below-cost sales were not representative of the broader range of foreign models that may be used to determine normal value (''NV'') for comparison to U.S. sales. See Memorandum from Team to John Brinkmann, *''Petitioners' Allegation of Sales Below the Cost of Production for East Young Co., Ltd.,''* dated December 6, 2002, which is on file in the CRU.

In its section B Questionnaire response, East Young reported the United Kingdom as its comparison market. In their September 30, 2002, cost allegation and in an October 28, 2002, letter, the petitioners alleged that the United Kingdom was not an appropriate third-country market for calculating East Young's NV because of the existence of a dumping finding on PSF from Korea in the European Union. On November 4, 2002, East Young submitted an objection to the petitioners' October 28, 2002, submission, stating that the United Kingdom is its most representative comparison market. In the Memorandum to Susan Kuhbach, *''Selection of Comparison Market for East Young,''* dated November 20, 2002 (*''East Young Comparison Market Memorandum''*), which is on file in the CRU, we recognized that the European Union has made a finding of dumping concerning PSF from Korea that includes PSF currently subject to an order in the United States and which applies to East Young's merchandise. As a result, we indicated that reliance on East Young's sales to the United Kingdom may not be appropriate for purposes of calculating NV in this review. While we did not immediately dismiss East Young's sales to the United Kingdom, we instructed East Young to submit a revised section B response that includes sales both to the United Kingdom and to its next largest third-country market for which no finding of dumping exists and which meets the criteria of section 773(a)(1)(B)(ii) of the Tariff Act of 1930, as amended (''the Act''). *See East Young Comparison*

Market Memo; see also ''Selection of Comparison Market'' section, below.

In November and December 2002 and February 2003, we issued supplemental questionnaires to East Young and Huvis. We received responses to these supplemental questionnaires in December 2002 and January and February 2003.

On January 9, 2003, in accordance with section 751(a)(3)(A) of the Act, we published a notice extending the time limit for the completion of the preliminary results in this case by 120 days (*i.e.*, until no later than June 2, 2003). (*See* 68 FR 1177).

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber (''PSF''). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Partial Rescission

As noted above, Sunglim, Sam Young, Mijung, Keon Baek, Estal, and Daeyang withdrew their requests for review, and Stein Fibers withdrew its request for review of Sam Young, Mijung, Keon Baek, Daeyang, and Estal. Because these withdrawals were timely filed and no other party requested a review of these companies, pursuant to 19 CFR 351.213(d)(1) we are rescinding this review with respect to these companies. We will instruct the U.S. Bureau of Customs and Border Protection (''BCBP'') to liquidate any entries from these companies during the period of review and to assess antidumping duties at the rate that was applied at the time of entry.

Verification

As provided in section 782(i) of the Act, in March and May 2003, we verified information provided by East Young and Huvis using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant sales, cost and financial records, and selection of original documentation containing relevant information. The Department reported its findings from the sales verifications on May 12, 2003. *See* Memorandum to the File, *''Verification of the Sales Response of East Young Co., Ltd.,''* dated May 12, 2003 (*''East Young Verification Report''*), and Memorandum to the File, *''Verification of the Sales Response of Huvis Corporation,''* dated May 12, 2003 (''*Huvis Sales Verification Report*''), which are on file in the CRU. Due to the timing of the cost verification of Huvis, the Department will report its findings from the cost verification after the preliminary results.

Fair Value Comparisons

To determine whether sales of PSF by the respondents to the United States were made at less than NV, we compared, as appropriate, export price (''EP''), to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. (For further details, *see* the ''Normal Value'' section, below.)

We compared U.S. sales to sales made in the appropriate comparison market within the contemporaneous window period, which extends from three months prior to the POR until two months after the POR. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market to compare to U.S. sales, we compared U.S. sales to constructed value (''CV''). In making product comparisons, consistent with our final determination in the original investigation, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: (1) composition; (2) type; (3) grade; (4) cross section; (5) finish; and (6) denier (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880, 16881 (March 30, 2000)).

Date of Sale

In its original questionnaire responses, East Young reported comparison market and U.S. sales using invoice date as the date of sale. Based on the description of the sales process provided by East Young, we note that, in the company's normal commercial practice, the sales invoice is normally issued after the date of shipment. Because the date of shipment almost always precedes the reported date of sale, we preliminarily find that the date of shipment better reflects the date on which East Young established the material terms of sale, in accordance with 19 CFR 351.401(i). Accordingly, we have relied on the date of shipment as the date of sale.

Export Price

For sales to the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because constructed export price methodology was not otherwise warranted. We calculated EP based on the FOB, C&F, CIF, EDDP (ex-dock duty paid), or CFR packed price to

unaffiliated purchasers in the United States. We made deductions, where appropriate, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to port of exportation, foreign brokerage and handling, wharfage, container tax, bill of lading charge, terminal handling charge, international freight, marine insurance, and U.S. customs duty.

We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. East Young and Huvis claim to have received duty drawback under the two systems in place in Korea: either the individual-rate system or the fixed-rate system (*i.e.*, the simplified fixed drawback system). In prior investigations and administrative reviews, the Department has examined the individual-rate system and found that the government controls in place enable the Department to examine the criteria under this system for receiving a duty drawback adjustment (*i.e.*, that (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received). *See Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea,* 62 FR 55574, 55577 (October 27, 1997). Huvis provided documentation demonstrating that it received duty drawback under the individual-rate system. We examined this documentation and confirmed that Huvis met the Department's two-prong test for receiving a duty drawback adjustment. Accordingly, we are allowing the full duty drawback adjustment on all of Huvis' U.S. sales.

For all sales by East Young, duty drawback was received under the fixed-rate system. The Department has found that the Korean fixed-rate duty drawback system does not sufficiently link import duties paid to rebates received upon export. Therefore, the fixed-rate system does not, in and of itself, meet the Department's criteria, *i.e.*, that the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and that there were sufficient imports to account for the rebates received. *See id.* In this case, East Young was unable to demonstrate successfully that duty drawback which it received under the fixed-rate system met the Department's criteria for a duty drawback adjustment. *See East Young Verification Report* at 22. Accordingly, for purposes of these preliminary results, we are not granting East Young duty drawback adjustments claimed under the fixed-rate system.

Finally, we made the following company-specific changes to EP. For East Young, we reclassified certain expenses reported by the respondent as direct selling expenses (*i.e.*, wharfage, container tax, bill of lading charge, terminal handling charge) as movement expenses. Also, based on our findings at verification, we recalculated East Young's reported packing costs and corrected the reporting of the U.S. matching control numbers to include a missing characteristic. For further detail on these changes, *see* Memorandum to the File, ''*Preliminary Results Calculation Memorandum for East Young Co., Ltd.,*'' dated June 2, 2003 (''East Young Calculation Memorandum''), which is on file in the CRU.

For Huvis, based on our verification findings, we revised the reporting of product finish and corrected the matching control numbers for certain product types. In addition, we revised foreign brokerage and handling expense, credit expense, and bank fees for certain observations. For further detail on these changes, *see* Memorandum to the File, ''*Preliminary Results Calculation Memorandum for Huvis Corporation*,'' dated June 2, 2003 (''Huvis Calculation Memorandum''), which is on file in the CRU.

Normal Value

A. *Selection of Comparison Market*

In order to determine whether there was a sufficient volume of sales of certain PSF in the home market to serve as a viable basis for calculating NV, we compared each respondent's home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. In the case of Huvis, because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provided a viable basis for calculating NV. Therefore, for Huvis, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade.

East Young reported that its home market sales of PSF during the POR were less than five percent of its sales to the United States. Therefore, East Young did not have a viable home market for purposes of calculating NV. As noted above in the ''Background'' section, East Young reported that the United Kingdom was its largest third-country market and, consequently, submitted its sales to the United Kingdom for purposes of calculating NV. Pursuant to section 773(a)(1)(B)(ii) of the Act, sales to a particular third-country market may be utilized if (I) the prices in such market are representative; (II) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (III) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. Based on our review of these criteria, the Department found that East Young had more than one potential comparison market that satisfied these criteria. *See East Young Comparison Market Memo.*

In accordance with 19 CFR 351.404(e), in selecting a third-country market where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act, the Department will generally select the third country based on the following criteria: (1) the foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries; (2) the volume of sales to a particular third country is larger than the volume of sales to other third countries; and (3) such other factors as the Department considers appropriate. Regarding the third criterion, the Department has never formally specified ''such other factors'' that the Department considers appropriate and, therefore, the Department's determination of whether other factors exist is made on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27358 (May 19, 1997).

We believe that the existence of a dumping finding in a third-country market which includes the merchandise and the company that is being investigated or reviewed by the Department is a relevant factor in determining whether to use such market as a basis for determining NV. Such a scenario signifies a clear reason to believe or suspect that a NV calculated using sales in such market would potentially be understated, thereby undermining the validity and accuracy of our dumping calculations. *See also Alloy Piping Products, Inc. v. United*

States, 201 F. Supp.ı2d 1267, 1277 (CIT 2002) (noting that ''the goal of accuracy cannot be achieved if Commerce relies upon dumped third country prices to calculate NV''). Accordingly, because the European Union has made a finding of dumping concerning PSF from Korea which includes the PSF currently subject to an order in the United States and to which East Young is subject, we are rejecting the use of the United Kingdom as a third-country comparison market for purposes of determining NV. Instead, for purposes of determining NV, we are relying on East Young's sales to its next largest third-country market for which no finding of dumping exists and which meets the criteria of section 773(a)(1)(B)(ii) of the Act, *i.e.*, Morocco.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[3]), we consider the starting prices before any adjustments. *See Micron Technology, Inc. v. United States, et. al.*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Huvis reported that it made direct sales to distributors and end users in both the home market and in the United States, and also to the United States through a trading company. East Young made direct sales to an end user in the comparison market and to distributors and end users in the United States. Each respondent has reported a single channel of distribution and a single level of trade in each market, and has not requested a level of trade adjustment. We examined the information reported by each respondent regarding its marketing process for making the reported comparison market and U.S. sales, including the type and level of selling activities performed and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets. Based on our analyses, we found a single level of trade in the United States, and a single, identical level of trade in the comparison market for both respondents. Thus, it was unnecessary to make a LOT adjustment for East Young or Huvis in comparing EP and comparison market prices.

C. *Sales to Affiliated Customers*

Huvis made sales in the home market to an affiliated customer. To test whether these sales were made at arm's length, we compared the starting prices of sales to the affiliated customer to those of unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to the affiliated customer was on average 99.5 percent or more of the price to Huvis' unaffiliated customers, we determined that the sales made to the affiliated customer were at arm's length and included those sales in our calculation of NV pursuant to 19 CFR 351.403(c).[4] Where prices to Huvis' affiliated customer were, on average, less than 99.5 percent of the prices to unaffiliated customers, we determined that these sales were not at arm's length and excluded them from our analysis.

D. *Cost of Production Analysis*

As discussed in the ''Background'' section above, there were reasonable grounds to believe or suspect that Huvis made sales of the subject merchandise in its comparison market at prices below the COP in accordance with section 773(b) of the Act.

1.Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of Huvis' costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (''SG&A'') expenses, including interest expenses, and the costs of all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted by Huvis in its cost questionnaire responses, except for the following adjustments. First, we adjusted Huvis' reported cost of manufacturing to account for purchases of terephthalic acid and ethylene glycol from affiliated parties at non-arm's length prices. *See* Memorandum from Robert Greger to Neal Halper, Director, Office of Accounting, ''*Cost Adjustments*,'' dated June 2, 2003 (''*Huvis Cost Memorandum*''), which is on file in the CRU. Second, we adjusted Huvis' submitted G&A expenses to exclude foreign exchange gains and losses, revenue from the sale of test materials, revenue on further processing and revenue on the sale of raw materials. *See Huvis Cost Memorandum*. Third, we adjusted Huvis' submitted financial expense ratio to include the total net foreign exchange gains and losses from the financial statements. *See Huvis Cost Memorandum*.

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (''G&A'') expenses, and profit for CV, where possible.

[4] We note that the Department recently adopted a new arm's length test whereby sales to affiliates will be determined to be at arm's length if the prices are, on average, within a range of 98 percent to 102 percent of prices to unaffiliated customers. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). The Department's new arm's length test is only applicable to investigations and reviews initiated on or after November 23, 2002, which is subsequent to the initiation of this review.

2. Test of Comparison Market Prices

For Huvis, on a product-specific basis, we compared the adjusted weighted-average COP figures for the POR to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. On a product-specific basis, we compared the COP, consisting of the cost of manufacturing, G&A and interest expenses, to the comparison market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard comparison market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of COP Test

Pursuant to section 773(b)(1), where less than 20 percent of Huvis' sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Huvis' sales of a given product are at prices less than the COP, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Huvis' comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

E. *Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on the price to unaffiliated customers. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, where appropriate, consistent with section 773(a)(6)(B)(ii) of the Act, for the following movement expenses: inland freight from the plant to the port of exportation, inland freight from the plant to the customer, foreign brokerage and handling, wharfage, container tax, bill of lading charge, terminal handling charge, and international freight. In addition, we made adjustments for differences in circumstances of sale (''COS'') in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on comparison market sales (credit expenses, bank charges, less charges, and letter of credit charges) and adding U.S. direct selling expenses (credit expenses, bank charges, and less charges). For East Young, we did not increase NV for duty drawback because, as stated in the ''Export Price'' section, East Young was unable to demonstrate successfully that duty drawback which it received under the fixed-rate system met the Department's criteria for a duty drawback adjustment.

Finally, we made the following company-specific changes to NV. For East Young, we reclassified certain expenses reported by the respondent as direct selling expenses (*i.e.*, wharfage, container tax, bill of lading charge, terminal handling charge) as movement expenses. Also, based on our findings at verification, we recalculated East Young's reported packing costs. *See East Young Calculation Memorandum.*

For Huvis, based on our findings at verification, we revised the reporting of product finish and recalculated the matching control numbers for certain product types. We also recalculated credit expenses by revising the short-term interest rate and correcting the credit periods for certain customers who purchase PSF on open payment terms. Finally, based on our verification findings, we made several revisions to the respondent's reported inland freight expenses. *See Huvis Calculation Memorandum.*

F. *Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for East Young, when sales of comparison products could not be found because there were no sales of a comparable product, we based NV on CV.

In accordance with sections 773(e)(1), (e)(2)(A), and (e)(3) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the merchandise, plus amounts for selling expenses, G&A (including interest), profit and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A, and profit on the amounts incurred and realized by East Young in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For a discussion of the calculation of G&A and interest expense ratios for East Young, *see East Young Calculation Memorandum.*

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we made circumstance-of-sale adjustments.

Preliminary Results of the Review

We determine that the following dumping margins exist for the period May 1, 2001, through April 30, 2002:

Exporter/manufacturer	Weighted-average margin percentage
East Young Co., Ltd. ..	4.07
Huvis Corporation	0.22*(de minimis)*

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of this

review. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will instruct the BCBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered quantity of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered quantity of the sales to that importer.

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of certain polyester staple fiber from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 11.35 percent, the ''all others'' rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–14444 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–810]

Stainless Steel Bar from India; Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2001, through January 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

DATES: EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; at telephone (202) 482–1503.

Background

On March 7, 2003, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2001 through January 31, 2002 (68 FR 11058). The final results for the antidumping duty administrative review of stainless steel bar from India are currently due no later than July 7, 2003.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act''), requires the Department of Commerce (''the Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department recently conducted sales verifications of each of the respondents involved in this administrative review and is currently conducting the cost of production verifications. In order to allow sufficient time for the parties to analyze the verification results and to submit written arguments and for the Department, in turn, to analyze those arguments, we find that it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, July 7, 2003). Therefore, the Department is extending the time limit for completion of the final results to no later than August 4, 2003, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 3, 2003.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 03–14442 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting for the Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings for the Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement (DPEIS)

SUMMARY: Pursuant to 15 CFR 990.23 & 990.56, notice is hereby given that two public meetings will be held to provide an opportunity for public comment and input on the ''Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003.'' Notice of the availability of this DPEIS was published in the **Federal Register** on May 9, 2003 and the comment period ends on July 9, 2003. This document was prepared by the state and Federal natural resource trustee agencies (National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior; Louisiana Oil Spill Coordinator's Office; Louisiana Department of Environmental Quality; Louisiana Department of Natural Resources; and Louisiana Department of Wildlife and Fisheries) to address natural resource damages in the State of Louisiana caused by discharges of oil, which are actionable under the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.* Pursuant to OPA, the above natural resource trustee agencies may claim damages from responsible parties to restore, rehabilitate, replace or acquire the equivalent of natural resources and services injured by oil spill incidents. The purpose of the Louisiana Regional Restoration Planning Program is to develop an institutional framework and procedures that will enable the trustees to select and implement projects that restore for losses of natural resources and services from unauthorized discharges of oil in a consistent and predictable manner. As part of the implementation of the Louisiana Regional Restoration Planning Program, nine Regional Restoration Plans will be developed. Each Regional Restoration Plan will identify existing, planned, or proposed projects that may provide appropriate restoration alternatives for natural resources injured by oil spill incidents and thereby enhance resolution of claims for natural resource damages caused by oil spill incidents in a more expeditious and cost-effective manner.

Dates/Location: Two public meetings to receive public comments on the ''Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003'' will be held on Monday, June 23, 2003. The daytime meeting is scheduled at 2 PM and the evening meeting is scheduled at 6:30 PM.

Both meetings will be held at the following location: Conservation and Mineral Board Resources Hearing Room, 1st floor—LaBelle Room, Department of Natural Resources, LaSalle Office Building, 617 N. 3rd Street, Baton Rouge, LA 70802.

ADDRESSES: Requests for copies of the ''Louisiana Regional Restoration Planning Program/Draft Programmatic Environmental Impact Statement, May 2003'' should be sent to William Conner, Chief , NOAA/Damage Assessment Center, 1305 East-West Highway, SSMC #4, 10th floor, Silver Spring, MD, 20910, at (301) 713–3038 ext. 190 or *William.Conner@noaa.gov.* Written comments on the program should be sent to NOAA to the person listed above or faxed to: (301) 713–4387. A copy of comments should also be sent to: NEPA Coordinator, NOAA/SP, Room 6121, 14th and Constitution, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: For further information, contact William Conner at (301) 713–3038 ext. 190, or at *William.Conner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Traditionally, Louisiana's economy has been based on the state's vast natural resources. Both renewable (hunting, fishing, forest products) and nonrenewable (cultural, oil, natural gas) resources are important, and the industries associated with each have coexisted for years. Although Louisiana's oil and gas industry tries to avoid adverse impacts on renewable natural resources, injuries do occur as a result of oil spill incidents. The cumulative impact of these incidents on fish, wildlife and the environment can be significant and adversely affect the industries and communities depending on natural resources for commerce and recreation.

Federal and state natural resource trustees are developing the first statewide comprehensive Regional Restoration Planning Program to assist the natural resource trustees in carrying out their responsibilities to restore the natural resources that have been injured by oil spill incidents. The goal of this planning effort is to establish a statewide program that will: expedite and reduce the cost of the Natural Resource Damage Assessment (NRDA) process; increase predictability by describing in detail the NRDA process; and increase restoration of lost natural resources and services by expediting resolution of claims.

The state and federal trustees have identified: the Louisiana Regional Restoration Planning Program structure; the decision-making process; the criteria that will be used to select the restoration project(s) that restore the natural resources injured by an incident; and several innovative settlement approaches that can expedite the NRDA process. The state is divided into nine regions. For each region, a regional plan will be developed that identifies: resources which could potentially be injured by incidents; appropriate restoration types to restore those resources; and available restoration projects for each of the restoration types.

The Louisiana Regional Restoration Planning Program will benefit the public, industry, and natural resource trustees by:

- Providing greater opportunities to restore injuries to trust resources caused by oil spill incidents;
- Potentially reducing the cost and time required for restoration planning and implementation;
- Pooling individual case recoveries to provide for implementation of larger, more ecologically significant restoration projects;
- Providing for more consistency and predictability through detailing the NRDA process, thereby reducing uncertainty to the public and industry;
- Improving coordination between restoration activities under the NRDA mandates and other restoration efforts in the State;
- Enhancing trustee capability to restore resources/services injured by oil incidents for which there is no viable RP;
- Maximizing opportunities for partnering among RPs, trustees, and other public and private restoration efforts; and
- Increasing opportunity for public participation in the NRDA process through pre-incident planning.

The National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior (DOI); Louisiana Oil Spill Coordinator's Office (LOSCO); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); and Louisiana Department of Wildlife and Fisheries (LDWF) are natural resource trustees designated pursuant to 33 U.S.C. 2706(c), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605. Pursuant to La. Rev. Stat. 30:2460, the State of Louisiana Oil Spill Contingency Plan (September 1995) describes the state trust resources to include the following: Vegetated wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend. DOI has been designated as trustee for the natural resources that it manages or controls. Examples of those resources are described in the National Contingency Plan, 40 CFR 300.600(b)(2) and (3), include the following and their

supporting ecosystems: Migratory birds, anadromous fish, endangered species and marine mammals, federally owned minerals, certain federally managed water resources, and natural resources located on, over, or under land administered by DOI. NOAA's trust resources include, but are not limited to: Commercial and recreational fish species, anadromous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

Pursuant to 15 CFR 990.56, the natural resource trustees are authorized to develop regional restoration plans as part of OPA's mandate for the trustees to restore, rehabilitate, replace, or acquire the equivalent of natural resources and services injured by oil spill incidents and to compensate for interim losses of such resources and services.

In compliance with 15 CFR 990.45, the trustees have opened an Administrative Record (Record). The Record is maintained in the NOAA Damage Assessment Center, SSMC #4, 1305 East-West Highway, Silver Spring, Maryland, 20910–3281, and duplicate copies of the Record will be maintained in Baton Rouge at the Louisiana Oil Spill Coordinator's Office, Suite 405, 150 Third Street, Baton Rouge, LA, 70801.

The Record includes documents that the trustees relied upon during the development of the Louisiana Regional Restoration Planning Program and the DPEIS. Pursuant to 15 CFR 990.23 & 990.56, the trustees sought public involvement in developing the Louisiana Regional Restoration Planning Program and Regional Restoration Plans through public review and comment of the documents contained in the Record as well as through publication of a ''Public Review Document of the Louisiana Regional Restoration Planning Program''. Further opportunity for public review will become available when the Louisiana Regional Restoration Planning Program/Final Environmental Impact Statement is prepared. The Record and the above documents are also available at the following Web site: *http://www.darp.noaa.gov/.*

Dated: June 3, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–14400 Filed 6–6–03; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060203D]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Squid, Mackerel, and Butterfish Committee, Surfclam and Ocean Quahog Committee with Industry Advisors, and Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, June 24, through Thursday, June 26, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA, telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, June 24, the Squid, Mackerel, and Butterfish Committee will meet from 10 a.m. until 1 p.m. The Surfclam and Ocean Quahog Committee with Industry Advisors will meet from 2 pm to 5 p.m. On Wednesday, June 25, Council will meet from 9 a.m. until 4 p.m. The Executive Committee will meet from 4 p.m. to 5 p.m. On Thursday, June 26, Council will meet from 9 a.m. until 1 p.m.

Agenda items for the Council's committees and the Council itself are: The Squid, Mackerel, and Butterfish Committee will discuss timing of Amendment 9, Amendment 10, and Framework 4; review Monitoring Committee's recommendations for 2004 quotas and management measures; and, develop the Committee's recommendations for 2004 quotas and management measures. The Surfclam and Ocean Quahog Committee, with Industry Advisors, will review staff recommendations for 2004 quotas and management measures; develop 2004 quota specification recommendations, and discuss Eastern Shore Seafood's request to begin Amendment 14. The Executive Committee will review and discuss outcomes from the Council Chairmen's meeting, and initiatives included in the Fisheries Quota Act of 2003 (Senate Bill 1106). The Council will review and adopt Framework 3 (authorizing quota rollover from Winter I to Winter II, and changing the start date for the summer period from May 1 to April 15), Framework 4 (authorizing transfer of scup at sea) or some combination of these two Frameworks to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); approve public hearing document for Amendment 9 to the Atlantic Mackerel, Squid and Butterfish FMP, review Committee's recommendations for 2004 quotas and management measures, and develop and recommend 2004 quota specifications and management measures for Atlantic mackerel, squids, and butterfish; review Committee's recommendations for 2004 quotas and management measures, and develop and approve 2004 quota specifications and management measures for surfclams and ocean quahogs; review, discuss and adopt management measures to be included in Amendment 2 to the Monkfish FMP; receive and discuss organizational and committee reports including: Executive Committee actions; Highly Migratory Species (HMS) issues; Research Set-Aside issues; Protected Resources issue and actions; New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, South Atlantic Council's report. They will act on any continuing and/or new business.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 2, 2003.

Richard W. Surdi,

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

[FR Doc. 03–14476 Filed 6–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060203C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Science Advisory Committee (SSAC) in June, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, June 23, 2003 at 10:00 a.m.

ADDRESSES: The meeting will be held at the Sheraton Four Points Hotel, One Mack Road, Woburn, MA 01801; telephone: (781) 935–8160.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The SSAC will meet to review and comment on the methods proposed for analyzing social and economic impacts of management measures of Monkfish Amendment 2. The Council's Monkfish Plan Development Team will consider the SSAC's guidance in developing the analysis of management alternatives.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: June 2, 2003.

Richard W. Surdi,

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

[FR Doc. 03–14475 Filed 6–6–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before August 8, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 2003.

Angela C. Arrington,

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

Office of Educational Research and Improvement

Type of Review: Extension.

Title: NCES Quick Response Information System.

Frequency: One-time.

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

Reporting and Recordkeeping Hour Burden:

Responses: 10,518.

Burden Hours: 7,889.

Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System for schools, districts, libraries and the Postsecondary Education Quick Information System for postsecondary institutions. The two survey systems are intended to be low burden, quick turnaround methods of information collection on education issues for which there is a policy need and no current relevant data. Surveys that have been conducted in these systems include surveys of telecommunications in schools, distance education and remedial activities in postsecondary institutions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2286. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14375 Filed 6–6–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before August 8, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 2003.

Angela C. Arrington,

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

Office of the Undersecretary

Type of Review: New.

Title: Clearance of Data Collection Instruments for the Evaluation of the Teaching American History Program.

Frequency: On Occasion.

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

Reporting and Recordkeeping Hour Burden:

Responses: 2,998.

Burden Hours: 2,491.

Abstract: The evaluation of the Teaching American History Grants Program (TAH program) is the first national study of federal support for teacher training in traditional American history. The study will gather data from the directors of projects supported by TAH grants, and from teachers who have participated in activities supported by TAH grants. The purpose of the evaluation is to inform future reauthorizations of the TAH program and to inform other Federal programs focusing on teacher training in specific areas.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2288. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–14376 Filed 6–6–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board to the International Energy Agency (IEA) will meet on June 17, 2003, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 17, 2003, beginning at 8:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on June 17, beginning at 9:30 a.m., including a preparatory encounter among company representatives from approximately 8:30 a.m. to 9 a.m.

The agenda for the preparatory encounter among company representatives is a review of the SEQ's meeting agenda. The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 107th Meeting
3. Program of Work 2003–2004
   —Review of EPPD Activities, 2003–2004
   —First Steps towards Emergency Response Exercise 3
4. Update on Compliance with International Energy Program Stockholding Commitments
5. The Current Oil Market Situation

6. Report on the Meeting of the Governing Board at the Ministerial Level
7. Review of Recent Political Events and their Impact on Oil Supply
—Review of IEA emergency responses
—Iraq
8. Report on Current Activities of the IAB
9. Other Policy and Legislative Developments in Member Countries
10. Activities with Non-Member Countries and International Organizations
—Workshop on ASEAN Oil Security and Emergency Preparedness, Fall, 2003
—Update on Stockholding Conference, Berlin, Sept. 19, 2003
—Joint Oil Data Initiative (JODI), Cairo, Fall, 2003
—Stockbuilding Workshop in India, late Fall, 2003
—Update on China's Stockbuilding
—Comparison of IEA and European Union Stockholding Obligations
11. Other Emergency Response Activities
—Results of Questionnaire on Minimum Operating Requirements
12. Emergency Response Reviews of IEA Member and Candidate Countries
—Revised Schedule of Emergency Response Reviews for 2003–2004
13. Other Documents for Information
—Emergency Reserve Situation of IEA Member Countries on April 1, 2003
—Emergency Reserve Situation of IEA Candidate Countries on April 1, 2003
—Monthly Oil Statistics: March 2003
—Base Period Final Consumption (BPFC): 2Q2002–1Q2003
—Quarterly Oil Forecast: Second Quarter 2003
—Panel of Arbitrators: Curriculum Vitae of J. Pešek
—Update of Emergency Contacts List
14. Other Business
—Dates of Next Meetings:
—November 18–20, 2003
—March 16–18, 2004

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel; representatives of members of the SEQ; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, June 3, 2003.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 03–14418 Filed 6–6–03; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 12, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

May 8, 2003 (open and closed).

B. Reports

- Corporate Approvals;
- FCS Building Association Quarterly Report;
- Allowance for Loan Loss Update;
- Financial Institution Rating System (FIRS)—Capital Discussion.

Closed Session *

New Business

- OSMO Quarterly Report.

*Session closed-exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: June 4, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–14543 Filed 6–5–03; 11:13 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Controlled Carriers Under the Shipping Act of 1984

June 3, 2003.

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is publishing an updated list of controlled carriers, *i.e.*, ocean common carriers operating in U.S.-foreign trades that are owned or controlled by foreign governments. Such carriers are subject to special regulatory oversight by the Commission under the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is publishing an updated list of controlled carriers. Section 3(8) of the Shipping Act of 1984 (''Shipping Act''), 46 U.S.C. app. section 1702(3), defines a ''controlled carrier'' as:

> An ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to any carrier if—
>
> (A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or
>
> (B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

As required by the Shipping Act, controlled carriers are subject to special oversight by the Commission. Section 9(a) of the Shipping Act, 46 U.S.C. app. section 1708(a), states, in part:

> No controlled carrier subject to this section may maintain rates or charges in its tariffs or service contracts, or charge or assess rates, that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, prohibit the publication or use of any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable.

Congress enacted these protections to ensure that controlled carriers, whose marketplace decision making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The controlled carrier list is not a comprehensive list of foreign-owned or -controlled ships or shipowners; rather, it is only a list of ocean common carriers (as defined in section 3(16) of the Shipping Act) that are owned or controlled by governments. Thus, tramp operators and other non-common carriers are not included, nor are non-vessel-operating common carriers, regardless of their ownership or control.

Nine previously classified controlled carriers have been declassified since the list was last issued on September 21, 2000 (65 FR 58086) (Sept. 27, 2000) for various reasons. Some have ceased operating as ocean common carriers in the U.S. trades, others have gone out of existence altogether. There is one new addition to the list.

Black Sea Shipping Company (Ukraine), Polish Ocean Lines (Poland), POL-America, Inc. (Poland) and International Transport Enterprise Co. (GETDD) Ltd. (People's Republic of China) are being removed from the list, as they no longer operate vessels nor conduct any other business in the U.S. foreign trades. Tientsin Marine Shipping Company (People's Republic of China), Pakistan National Shipping Corporation (Pakistan) and Egyptian Navigation Company (d/b/a Egyptian National Line) (Egypt) are being removed from the list, as they no longer operate vessels in the U.S. foreign trades, although they do appear to continue to operate as non-vessel-operating common carriers (''NVOCCs'') in the U.S. foreign trades.

China National Foreign Trade Transportation (Group) Corp. (d/b/a Sinotrans) (People's Republic of China) is also being removed from the list as this entity no longer does business in the U.S.-foreign trades, and accordingly, all tariffs in U.S.-foreign trades have been cancelled effective February 28, 2003.

Finally, although never appearing on a list published in the **Federal Register**, Shanghai Hai Hua Shipping Co., Ltd. (d/b/a HASCO) had been classified by the Commission as a controlled carrier on January 7, 2002. The Commission is now removing this classification, as HASCO operates no vessels in the U.S. foreign trades.

The single new addition to the list is Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines) (RPI No. 017703). Sinolines informed the Commission of its controlled carrier status by letter to the Commission's Secretary on June 26, 2002, as required by 46 CFR 565.4.

It is requested that any other information regarding possible omissions or inaccuracies in this list be provided to the Commission's Office of the General Counsel. The amended list of currently classified controlled carriers and their corresponding Commission-issued Registered Persons Index numbers are set forth below:

(1) Ceylon Shipping Corporation (RPI No. 016589)—Sri Lanka

(2) COSCO Container Lines Company, Limited (RPI No. 015614)—People's Republic of China

(3) China Shipping Container Lines Co., Ltd. (RPI No. 016435)—People's Republic of China

(4) Compagnie Nationale Algerienne de Navigation (RPI No. 000787)—Algeria

(5) Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines) (RPI No. 017703)—People's Republic of China

(6) Shipping Corporation of India Ltd., The (RPI No. 001141)—India

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–14394 Filed 6–6–03; 8:45 am]

BILLING CODE 6730–01–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 June 23, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. 2003 Voting Trust Agreement, and its trustees, Forest Levan Kelly, Oliver Tracy Kelly, and Albert Charles Kelly, all of Bristow, Oklahoma, William Royce Kelly, Tulsa, Oklahoma, and Allison Asbury Kelly, Okemah, Oklahoma; to acquire voting shares of Spirit Bankcorp, Inc., Bristow, Oklahoma, and thereby indirectly acquire voting shares of Spiritbank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, June 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14374 Filed 6–6–03; 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 Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. F.N.B. Corporation, Naples, Florida; to acquire up to 20 percent of the voting shares of Sun Bancorp, Inc., and thereby indirectly acquire voting shares of Sun Bank, both of Lewisburg, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. America Bancshares, Inc., Newport, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Sun Country Bank, Victorville, California.

Board of Governors of the Federal Reserve System, June 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–14373 Filed 6–6–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–49–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Reducing the Risk of Zoonotic Disease Transmission at Petting Zoos and Fairs: A Survey of Current Practices—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention. The purpose of this project is reduce transmission of zoonotic disease to those persons who interact with farm animals in a number of different settings. Though most of these interactions probably do not result in human illness, several recent outbreaks have highlighted the potential danger of infectious disease transmission in venues where the public comes into contact with animals and their environment. A large outbreak of *E. coli* O157:H7 infections among visitors to a petting zoo in Pennsylvania in 2000 prompted CDC to develop recommendations to address this issue. Several large outbreaks of *E. coli* O157:H7 have also occurred at county fairs from persons being exposed to animals and their environment. No state or federal laws exist that deal specifically with public health issues relating to interactions between the public and farm animals.

The proposed study consists of a self-administered, written questionnaire mailed to petting zoos and fairs (state, regional, and county). The survey asks individuals to describe their zoo or fair's current practices regarding human interaction with animals, food and beverage consumption in relation to animal interaction areas, and handwashing facilities. The list of zoos comes from facilities licensed by the U.S. Department of Agriculture to show animals for commercial purposes. The list of fairs comes from the International Association of Fairs and Expositions, a private trade organization that volunteered to participate with CDC in having its members complete this survey. Study objectives are to describe current practices and to determine how CDC, other federal agencies, and non-governmental organizations can best educate zoos and fairs about safe animal-human interaction. There is no cost to respondents.

Survey	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)
Written Questionnaire	1,400	1	10/60

Dated: June 2, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14384 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–73]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The NEISS Special Studies on Motor Vehicle Safety B—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Motor vehicle injuries are the leading cause of death in the U.S. for people aged 1–34. In 2000, more than 40,000 people died as a result of motor vehicle-related injuries. In addition, motor vehicle injuries account for millions of emergency department visits annually, with many victims suffering permanent disabilities. Our goal at the National

Center for Injury Prevention and Control is to reduce these deaths and disabilities. A recent priority-setting process revealed several gaps in our knowledge of motor vehicle safety that could be filled with enhancements to the NEISS All-Injury Program data collection system.

Scientific knowledge is being advanced through an expansion of the National Electronic Injury Surveillance System All Injury Program (NEISS–AIP), a collaborative effort by the National Center for Injury Prevention and Control (NCIPC) and the U.S. Consumer Product Safety Commission (CPSC). The NEISS–AIP collects data about all types and external causes of non-fatal injuries and poisonings treated in U.S. hospital emergency departments (EDs). Currently, NEISS–AIP collects information only on the most severe injury. CDC proposes to expand NEISS–AIP by inserting a special screen study for one year, which will be triggered by coding motor vehicle as the cause of the injury. This special screen will permit us to collect all injury diagnoses and body parts affected (up to five), as well as restraint use and blood alcohol concentration for all motor vehicle occupants, when this information is included in the medical chart. The second study will identify, within that population, child occupants aged 0–12 years. A telephone follow-back survey of parents and caregivers will then be conducted to collect information about their child's seating position, restraint type, and vehicle and crash characteristics. This project will provide vital information about the type and number of injuries incurred in order to improve upon existing interventions or develop new interventions. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Total burden hours
500	1	15/60	125

Dated: June 2, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–14385 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 03087]

Polychlorinated Biphenyls Exposure and Adverse Health Effects in Anniston, Alabama; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2003 funds for a cooperative agreement program to support public health conferences was published in the **Federal Register** dated May 29, 2003, Volume 68, Number 103, pages 32050–32053. The notice is amended as follows:

Page 32050, first column, directly following the program announcement title, remove Application Deadline: June 30, 2003, and replace with Application Deadline: July 15, 2003.

Page 32052, second column, under the heading of Submission Date, Time, and Address, remove the sentence ''The application must be received by 4 p.m. eastern time June 30, 2003'', and replace with the sentence ''The application must be received by 4 p.m. eastern time July 15, 2003.''

Dated: June 3, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14387 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03095]

Evaluation of Web-Based HIV Risk Behavior Surveillance Among Men Who Have Sex With Men; Notice of Availability of Funds

Application Deadline: July 9, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317K(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 274b (k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for evaluating web-based risk behavior surveillance among men who have sex with men (MSM). This program addresses the ''Healthy People 2010'' focus area of HIV.

The purpose of the program is to: (1) Field test Internet-based behavioral surveillance as an alternate venue for the national behavioral surveillance system; (2) identify the proportion of men who have sex with men (MSM) who are internet users and who do not attend venues where MSM are more commonly known to attend (MSM-identified venues); and (3) examine the comparability of behavioral risks between MSM recruited through Internet-based versus more traditional venue-based sampling methods.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV/STB/TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Background

A national behavioral surveillance system for MSM is expected to begin in 20 United States cities in 2003 using a venue-based, time-space sampling method. While several studies suggest that venue-based sampling is representative of most MSM, an increasing proportion of MSM may be using the Internet to meet sex partners and may not be available for sampling through a more traditional venue-based approach. Previous reports have identified high Internet usage (50 to 75 percent) and seeking of sex partners through the Internet (35 to 67 percent) among MSM. An outbreak of syphilis was also identified among an Internet-originated network of MSM denoting that men who meet partners through the Internet are at risk of acquiring sexually transmitted diseases. (For additional information please see Klausner JD, *et al.* ''Tracing a syphilis outbreak through cyberspace'' JAMA 2000; 284(4): 447–9.) Other studies have shown that an

Internet-based approach to collecting behavioral risk data are comparable to more conventional methods such as mail, telephone and in-person surveys, and may be superior in sampling MSM that are hard to reach at traditional MSM venues. Methodologies have also been developed to address confidentiality and duplication of data.

C. Eligible Applicants

Applications may be submitted by sites that are currently funded by CDC to conduct behavioral surveillance under Program Announcement 00005, entitled, ''HIV/AIDS Surveillance Cooperative Agreements,'' and other specified sites that are eligible to apply for funding in 2003.

These other sites are the state or local health departments whose jurisdictions include the top 15 Metropolitan Statistical Areas (MSA's) by number of people living with AIDS at the end of 1999 as reported in ''HIV/AIDS Surveillance Supplemental Report,'' (2000; 7(No.1: 10–11).

These sites are the directly funded city health departments of:

New York City, NY; Los Angeles, CA; San Francisco, CA; Chicago, IL; Houston, TX; Philadelphia, PA.

These sites are the state health departments containing the following MSA's:

Washington, DC; Miami, FL and Ft Lauderdale, FL; Atlanta, GA; Boston, MA; Baltimore, MD; San Juan, PR; Newark, NJ; Dallas, TX.

An additional five areas are also eligible to apply in 2003: these are State health departments containing the following MSAs:

Detroit, MI; New Haven, CT; New Orleans, LA; San Diego, CA; Seattle, WA.

One of the purposes of this program is to compare the web-based behavioral surveillance project with the new national behavioral surveillance initiative. This requires that project activities be conducted in the same project areas previously funded for comparability of data.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $500,000 is available in FY 2003, to fund approximately four awards. It is expected that the average award will be $125,000, ranging from $125,000 to $250,000. It is expected that the awards will begin on or about August 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. 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.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant state or local health department funds available for HIV Prevention and Surveillance. Funds may not be used to provide direct medical care or prevention case management.

Funding Preference

Funding preferences may be given to achieve geographic distribution.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Collaborate with CDC and other funded sites to develop a protocol for an Internet-based behavioral surveillance project.

b. Participate in required planning meetings with other funded sites and CDC.

c. Conduct formative research to determine sites (chat rooms, Web sites, etc.) in which recruitment of study participants will occur.

d. Collaborate with CDC and other funded sites to develop and test an Internet-based behavioral risk factor survey.

e. Collaborate with CDC and other funded sites to identify or develop a local project Web site where the survey instrument will reside.

f. In accordance with a study protocol, administer the survey to a minimum of 500 MSM sampled through time-space or probability sampling methods, including significant representation of persons of color.

g. Collaborate with CDC and other funded sites to develop and implement a local public information campaign.

h. Maintain a secure environment to protect the security and confidentiality of data obtained in this activity.

i. Report project data to CDC in a timely manner according to established protocols for data collection, quality assurance, storage and transfer.

j. Disseminate findings for use in state/local prevention and treatment services planning and evaluation.

2. CDC Activities

a. Develop and test an Internet-based survey instrument.

b. Create and maintain a project database and data management system, including systems to address data security and duplication of participants.

c. Provide technical assistance and expertise for Web site selection and development.

d. Provide technical support on all web-based technologies, software and data base issues.

e. Facilitate the development of site-specific operational plans.

f. Provide technical assistance to support implementation of agreed upon methods to accomplish project objectives.

g. Participate in the analysis and dissemination of data. Conduct and/or coordinate analyses of the multi-site data and distribute information to support national HIV prevention and surveillance efforts.

F. Content

Applications

The 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 narrative should be no more than 20 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Include evidence of your ability to target racial/ethnic minority populations and enroll samples of racial/ethnic minority MSM through the Internet.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The program plan should address activities to be conducted over the entire three-year project period. The budget must cover the first one-year budget period.

In addition, CDC is particularly interested in promoting improved

understanding of behavioral risk factors in communities of color. Therefore, all applicants are encouraged to include a plan that directly addresses how racial/ethnic minorities will be reached through this project.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). 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 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 July 9, 2003. Submit the application to:

Technical Information Management-PA# 03095, CDC Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

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 applications 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 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 application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants 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 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:

1. The quality of the applicant's plan to develop, implement and administer the project operations and the degree to which the objectives and time schedules are reasonable, time-phased, address activities to be conducted over the entire three-year project period, and are appropriate for accomplishing project goals. The extent to which the applicant provides evidence of their ability to implement the proposed methodology. The quality of the applicants plan to address Recipient Activities outlined in the ''Program Requirements'' section of this announcement.

The degree to which the applicant has met the CDC policy requirements regarding the inclusion of ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes, 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. (45 points.)

2. The degree to which the qualifications, duties, responsibilities, and time allocation of proposed staff (including potential contractors), are justified and appropriate to accomplish study objectives. The degree to which the proposed staff will be able to provide appropriate scientific oversight, as well as programmatic and administrative support for the proposed activities. The extent to which collaborating entities (*e.g.,* community groups, community gatekeepers, CBOs, behavioral scientists) are appropriate (*i.e.,* meet specific needs), sufficient, promote project objectives, and document their ability in letters of support. (30 points.)

3. The degree to which the applicant provides evidence of their understanding of the project and objectives. (25 points.)

4. The extent to which the budget, which should cover the first one-year budget period, is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored.)

5. Does the application adequately address the requirements of title 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.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

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–4 HIV/AIDS Confidentiality Provisions

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–22 Research Integrity

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 Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Brenda Hayes, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2741. E-mail address: *bkh4@cdc.gov.*

For program technical assistance, contact: Ken Bell, Public Health Advisor, Behavioral and Clinical Surveillance Branch, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road Mailstop E46, Atlanta, GA 30333. Telephone: 404–639–2970. E-mail address: *kbell@cdc.gov.*

Dated: June 3, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–14386 Filed 6–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10086]

Emergency Clearance; Notice of Funding Availablility and Public Information Collection Requirements Submitted to the Office of Management and Budget; Correction

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** issue of Friday, May 30, 2003, 68 FR 32520, FR Doc. 03–13582, make the following corrections:

1. On page 32521, column 2, paragraph 1, line 2, the date, ''July 21, 2003'', should read ''June 27, 2003.''

2. On page 32521, column 2, paragraph 1, line 7, and paragraph 4, last line, the date, ''July 16, 2003'', should read ''June 13, 2003.''

Dated: June 2, 2003.

Julie Brown,

Acting Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–14378 Filed 6–6–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Examining Services and Best Practices of Intermediary Organizations and the Faith- and Community-Based Organizations They Serve.

OMB No.: New Collection.

Description: Currently, the Administration for Children and Families, Department of Health and Human Services, is conducting the project ''Examining Services and Best Practices of Intermediary Organizations and the Faith- and Community-Based Organizations They Serve.'' The purpose of the project is to examine (1) the role of intermediary organizations in assisting faith- and community-based organizations in building their capacity to serve needy individuals and families; (2) innovative and best practices among intermediary organizations; (3) promising practices among faith- and community-based organizations; (4) methods to evaluate the services of both types of organizations; and (5) methods to assess and benchmark performance among faith- and community-based groups. Priority will be given to programs that focus on the following areas; homelessness, hunger, at-risk children, transition from welfare to work, and intensive rehabilitation. The project involves the conduct of case studies of up to 10 intermediary organizations and approximately three to four faith-based and community-based organizations that receive assistance or services from each of the intermediaries. Information collection will be through informal discussions and observations on-site at the organizations, using uniform protocols.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intermediary Staff Interview Guide	40	2	2.5	200
Intermediary Staff Interview Guide	80	2	1.5	240
Estimated Total Annual Hours				400

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork

Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: June 3, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14473 Filed 6–6–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged nonfederal home energy resources for low income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to the Department of Health and Human Services (HHS) for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87.

The LIHEAP Leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and, the fair market value of these resources/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged nonfederal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a 3-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660
Estimated Total Annual Burden Hours				2,660

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 3, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–14474 Filed 6–6–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 19, 2003, from 8 a.m. to 4:30 p.m. and on June 20, 2003, from 8:30 a.m. to 3 p.m.

Location: Hilton Gaithersburg, Grand Ballrooms A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 19, 2003, the committee will hear updates on the following tentative topics: Medical Device User Fee and Modernization Act, secure e-mail and electronic submissions, white particulate matter in blood bags, safety reporting requirements for human drug and biological products, and bovine spongiform encephalopathy in Canada. The committee will further hear informational presentations on severe acute respiratory syndrome and West

Nile virus. On June 20, 2003, the committee will hear presentations, discuss, and provide recommendations on the topic of recovered plasma. In the afternoon, the committee will hear an informational presentation on the current thinking and indications for use on vaccinia immune globulin intravenous. The background material for this meeting will be posted 1 working day before the meeting under ''Blood Products Advisory Committee'' on the Dockets Management Branch Web site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 13, 2003. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:30 a.m. and 2:30 p.m. and 3:30 p.m. on June 19, 2003, and between approximately 9:30 a.m. and 10:30 a.m. and 2 p.m. and 2:30 p.m. on June 20, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood at 301–827–3514 or Pearline K. Muckelvene at 301–827–1281 at least 7 days in advance of the meeting. Persons attending FDA advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA regrets that it was unable to publish this notice 15 days prior to the Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–14450 Filed 6–4–03; 4:10 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under the authority of sections 103 and 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Pub. L. 100–713.

The following is a list of Indian Health Scholarship Recipients funded under sections 103 and 104 for Fiscal year 2002:

Abeita, Steven John, University of New Mexico—Albuquerque, Pueblo of Isleta, NM Acothley, Regina, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah.

Adakai, Tamelyn Blythe, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah

Adams Moses, Cynthia Regina, Tulsa Junior College, Muskogee (Creek) Nation, Oklahoma

Adams, Andrea L., University of North Dakota, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT

Aitson, Joseph James, Cameron University, Kiowa Indian Tribe of Oklahoma

Albers, Travia Alan, University of Maryland, Turtle Mountain Band of Chippewa Indians of North Dakota

Alcorn, Winter Dawn, Rogers State College, Cherokee Nation, Oklahoma

Alden Littlelight, Roanne Gail, Pacific University College, Crow Tribe of Montana

Alden-Diaz, Lorrie Elison, Salt Lake Community College, Crow Tribe of Montana

Alexander, Lise Kalliah, University of Washington School of Medicine, Confederated Tribes of the Grand Ronde Community of Oregon

Allery, Lonnie William, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota

Allick, Shannon Lynn, Minot State University, Turtle Mountain Band of Chippewa Indians of North Dakota

Allison, Carol Ann, Montana State University—Northern, Turtle Mountain Band of Chippewa Indians of North Dakota

Allison, Roselinda, University of Phoenix, Navajo Tribe of Arizona, New Mexico, & Utah

Allison-Quick, Eunice Mary, University of Oregon, Blackfeet Tribe of the Blackfeet Indian Reservation of MT

American Horse, Candace, Montana State University—Billings, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT

Anagal, Laura Ann, Northland Pioneer College, Navajo Tribe of Arizona, New Mexico, & Utah

Anagick, Laverne Kathryn, University of Alaska School of Nursing, Native Village of Unalaklett

Anderson, Destiny Dawn, University of North Dakota, Blackfeet Tribe of the Blackfeet Indian Reservation of MT

Anderson, Ella Mae, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah

Anderson, Sandra Dee, Arizona State University, Navajo Tribe or Arizona, New Mexico, & Utah

Andis, Letetia Lynn, Bacone College, Cherokee Nation, Oklahoma

Armijo, Heather Denise, New Mexico State University, pueblo of Jemez, NM

Arnold, Carly Ellen, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah

Arnold, Delphine, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah

Arredondo, LaDonna Leann, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma

Ashley, Jeannette, New Mexico State University—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah

Ashmore, Audra Wabaunsee, University of Oklahoma, Seneca—Cayuga of Oklahoma

Atene, Kathleen Cheryl, Northern Arizona University, Navajo Tribe of Arizona, New Mexico & Utah

Azure, Alissa Joy, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota

Babcock, Amy Roxanne, Tulsa City Area Voc Tech School, Cherokee Nation, Oklahoma

Baca, Vonda Jean, Albuquerque Tech—Voc Institute, Pueblo of Jemez, NM

Baca, Wilma Joyce, Albuquerque Tech—Voc Institute, Pueblo of Jemez, NM

Bacoch, Michaele, University of the Pacific School of Pharmacy, Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, CA

Bain, Edlin David, University of New Mexico College of Pharmacy, Navajo Tribe of Arizone, New Mexico, & Utah

Barbone, Michelle Dawn, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah

Barnes, Kellie Elizabeth, University of Oklahoma, Chickasaw Nation, Oklahoma

Barnett, Stephanie Deann, University of Tulsa, Cherokee Nation, Oklahoma

Barry, Christina Jean, University of South Alabama, Central Council of the Tlingit & Haida Indian Tribes

Barse, Allison Joy, Kansas Newman College, Kickapoo Tribe of Oklahoma

Bartlett, Lyndell Joy, Montana State University—Bozeman, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Bates, Vanesscia, Washington University, Navajo Tribe of Arizona, New Mexico, & Utah
Battese, Kelly Joseph, University of Kansas School of Pharmacy, Miami Tribe of Oklahoma
Bearmedicine, Jennifer Lynn, Salish—Kooteenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Becenti, Shawnadine Karen, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, and Utah
Becenti, Thelissa Leann, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Beetso, Allyson Nicole, Phoenix College, Navajo Tribe of Arizona, New Mexico, & Utah
Beetso, Juanita, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Carlyle-Wilmer, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Dawn Dora, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Beegay, Grace Delcinia, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Lisa Danelle, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Lorena Rose, La Sierra University, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Michelle, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Paula Moiselle, Weber State University, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Pierrette Rose, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Sheena Maria, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Tamana Dollicia, University of the Pacific, Navajo Tribe of Arizona, New Mexico, & Utah
Begay, Velma Mae, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Begaye, Julianna, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Behymer, Virginia May, University of Alaska—Anchorage, Aleut, AK
Belcourt, Jaime Ruth, Montana State University School of Nursing, Three Affiliated Tribes of the Fort Berthol Reservation, ND
Benally, Jolene, Arizona Western College, Navajo Tribe of Arizona, New Mexico, & Utah
Benally, Yolanda Jean, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Benally-Thompson, Bret R., University of Minnesota—Duluth, Minnesota Chippewa Tribe (White Earth Band)
Berg, Emily Wauneka, Fort Lewis College, Navajo Tribe of Arizona, New Mexico, & Utah
Berger, Jeffrey Michael N., Fort Peck Community College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Berryman, Mykala Sara, University of Oklahoma—Norman, Choctaw Nation of Oklahoma
Bessette, Megan Holly, Whitman College, White Mountain Apache Tribe of the Fort Apache Reservation, AZ, Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), OK
Beyale, Shannon Marie, University of Oklahoma—Norman, Choctaw Nation of Oklahoma
Big Man, Luzenia Yellowmule, University of New Mexico—Albuquerque, Crow Tribe of Montana
Bigback, Jennifer Lee, Ohio State University College of Medicine, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT
Bighorse, Amanda Nicole, Northeastern State University, Cherokee Nation, Oklahoma
Bill, Miranda Lee, Cal State University Chico, Cortina Indian Rancheria of Wintun Indians of California
Billy, Larissia Jenny, University of Nevada—Reno, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Bingham, Zachary Scott, University of New Mexico—Albuquerque, Cherokee Nation, Oklahoma
Bishop, Jennifer Lynn, University of Tulsa, Seneca—Cayuga Tribe of Oklahoma
Blackwater, Temerra, The University of Utah, Navajo Tribe of Arizona, New Mexico, & Utah
Blackwater, Vera, New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Blevins, Reigna Kay, North Dakota State University, Choctaw Nation of Oklahoma
Blindman, Charlene Sue, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Blue Arm, Noelle E., University of North Dakota, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Blue, Sheanoa Lynn, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota
Boling, Adella Krista Marie, Pacific University College, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Booth, Loretta Marie, Pacific University College, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Bowers, Joel N., Paris Junior College, Choctaw Nation of Oklahoma
Bowles, Charles Justin, Oklahoma State University, Citizen Potawatomi of Oklahoma
Boyd, Cassandra Iva, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Boyd, Evelyn Marie, Presentation College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Bradley, Stephanie, East Carolina University School of Medicine, Eastern Band of Cherokee Indians of North Carolina
Brady, Meagan Leigh, University of Oklahoma, Comanche of Oklahoma
Branham, Jamie Kathleen, University of Iowa Dental School, Cherokee Nation, Oklahoma
Brantingham, Michael James, Pacific Union College, Eskimo
Bressman, Rebecca Rae, Portland Community College, Citizen Potawatomi Nation, Oklahoma
Brewster, Sarah Kate, Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Briggs, Misty Elaine, Northeastern State University, Cherokee Nation, Oklahoma
Brinson, Timothy James, East Central University, Citizen Potawatomi Nation, Oklahoma
Brooks, Lisa Michelle, University of Maryland, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Brooks-Dugger, Shelly Beth, Southwest Texas State University, Cherokee Nation, Oklahoma
Brorby, Misty Dawn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Brown, Amanda Susan, Montana State University—Billings, Assiniboine, & Sioux Tribes of the Fort Peck Indian Reservation, MT
Brown, Christina Ann, University of California—San Diego, Paiute—Shoshone Indians of the Bishop Community of the Bishop Colony, CA
Brown, Laverne, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Brown, Tamara Danielle, University of Washington, Walker River Paiute Tribe of the Walker River Reservation, Nevada
Bryant, Idella Marie, Midwestern University, Navajo Tribe of Arizona, New Mexico, & Utah
Bryant, Joseph Preston, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Buckner, Jennifer Lynn, University of New Mexico—Albuquerque, Cheyenne—Arapaho Tribes of Oklahoma
Buenting, Lisa Lynette, Lowa Linda University, Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, CA
Bull, Lois Ann, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Bunting, Tischa Lee, Butler County Community College, Cherokee Nation, Oklahoma Burbank, Lenora Michele, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Burk, Kristi Carroll, Fort Lewis College, Alaska Native Burkhart, Lisa Marie Foster, University of Colorado—Colorado Springs, Navajo Tribe of Arizona, New Mexico, & Utah
Burnside, Clint Ed, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Burris, Brandon Christopher, University of Texas—Austin, Caddo Indian Tribe of Oklahoma
Burr-Selle, Kandi Kay, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Busch, Richard Eugene, University of Alaska—Fairbanks, Alaska Native Butte,

Jennifer Lynn, Glendale Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Butterfly, Glenn Curtis, Pima Medical Institute, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Calf Looking, John Fitzgerald, University of Washington Medex Northwest Program, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Calf Robe, Douglas Wayne, University of Washington Medex Northwest Program, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Callan, Cheryl Janine, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Calvin, Shawn Allen, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Campbell, Jamie Renae, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Carey, Amanda Kay, Northeastern State University, Cherokee Nation, Oklahoma
Carlson, Ingrid Marie, University of Washington Medex Northwest Program, Qagan Tayagungin Tribe of Sand Point Village
Carter, Jason Daniel, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Carter, Nani Danielle, Unversity of Oklahoma Health Science, Cherokee Nation, Oklahoma
Cary, Brenda Lee, University of Minnesota—Twin Cities Medical School, Oneida Tribe of Indians of Wisconsin
Cassutt, Robyn-Amonda, Dakota Wesleyan, Central Council of the Tlingit & Haida Indian Tribes
Castillo, Genevieve, TVI Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Cavanaugh, Casey Lynne, Idaho State University, Paiute—Shoshone Tribes of the Duck Valley Reservation, NV
Caylor, Ruby Leona, Dakato Wesleyan University, Yankton Sioux Tribe of South Dakota
Champ, Jonalena, University of Houston, Crow Tribe of Montana
Chapman, Christy Shannon, University of New Mexico, Zuni Tribe of the Zuni Reservation, NM
Charette, Nicole Lynn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Charles, Tracey Roseann, University of Tennessee—Memphis, Choctaw Nation of Oklahoma
Chavez, Leann Ahkeebah, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Chee, Lorinda, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Chee, Rochanda G., University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Chelberg, Robert Paul, University of Massachusetts, Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Childress, Michelle Josett, University of Central Oklahoma, Seminole Nation of Oklahoma
Chimoni, Reinette J., University of New Mexico—Gallup, Zuni Tribe of the Zuni Reservation, NM
Clancy, Vanessa Mae, Montana State University—Northern, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Clark, Jayne, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Clark, Kari Rose, Mesa Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Clark, Patricia Jane, North Dakota State University, Minnesota Chippewa Tribe (White Earth Band)
Clarke, Alberta D., University of Phoenix, Navajo Tribe of Arizona, New Mexico, & Utah
Clarkson, Rachel Beth, University of Central Oklahoma, Cherokee Nation, Oklahoma
Clauschee, Reginald, Pima Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Clauschee, Susan Francine, Pima Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Clemens, Danielle Nicole, University of New Mexico—Albuquerque, Pueblo of Acoma, NM
Cochran, Arlene Ann, Montana State University—Northern, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Cochran, Suzanne, Montana State University—Northern, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Colbert, Alexandria Naomii, University of Oklahoma—Norman, Chickasaw Nation of Oklahoma
Coleman, Kristi Lynn, Southwestern Oklahoma State, Choctaw Nation of Oklahoma
Cooeyate, Erin Quin, University of New Mexico—Gallup, Zuni Tribe of the Zuni Reservation, NM
Cook, Elizabeth Jane, Southeastern Oklahoma State University, Choctaw Nation of Oklahoma
Cook, Michael Gerald, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Cooper, April Deann, University of Central Arkansas, Cherokee Nation, Oklahoma
Corson, Hillary Lena, Montana State University—Bozeman, Crow Tribe of Montana
Couch, Ashley, Ariel, Connors, State College, Cherokee Nation, Oklahoma
Coulter, Daniel Lee, Creighton University of School of Medicine, Citizen Potawatomi Nation, Oklahoma
Cox, Gretchen Dove, Fresno City College, Picayune Rancheria of Chukchansi Indians of California
Cree, Sharon, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Cremer, Paul Clay, Princeton University, Choctaw Nation of Oklahoma
Cribbs, Carolyn Suze, Sonoma State University Dept of Nursing, Cherokee Nation, Oklahoma
Croff, Heather Marie, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Croley, Amanda Jo, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Cross, Bryan Von, University of Oklahoma, Cherokee Nation, Oklahoma
Crow Ghost, Richard Joseph, Bismark State College, Standing Rock Sioux North & South Dakota
Crumley, Jennifer June, Northeastern State University, Choctaw Nation Oklahoma
Cruz, Christina, University of New Mexico, Pueblo of San Juan, NM
Cruz, Leeann Katri, New Mexico State University, Pueblo of Acoma, NM
Cullen Carroll, Shanna Marie, Alliant International University, Osage Tribe, Oklahoma
Cunningham—Hartwig, Roxie, Kim, University of Washington School of Medicine, Nez Perce of Idaho
Dailey, Samuel, University of Alabama—Birmingham, Navajo tribe of Arizona, New Mexico, & Utah
Davis, Allison Kay, University of North Dakota, Crow Creek Sioux Tribe of the Crow Creek Reservation, SD
Davis, Alona, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Amber Lynn, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Davis, Heather Rae, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Jason Russell, Lane Community College, Chickasaw Nation, Oklahoma
Davis, Marcia D., Seminole State College, Choctaw Nation of Oklahoma
Dawes, Kari Elaine, University of Iowa, Cherokee Nation, Oklahoma
Day, Autumn Ann, Cornell University, Minnesota Chippewa Tribe, MN (Leech Lake Band)
Decker, Amber Victoria, Rocky Mountain College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Dees, Marijane Megan, Oklahoma Baptist University, Choctaw Nation of Oklahoma
Dele, Lessina, Midwestern University, Navajo Tribe of Arizona, Mew Mexico, & Utah
Delmar, Marjorie, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Demientieff, Manon Kristine, California State University, Nenana Native Association
Deroche, Elisabeth Louise, Central Washington University, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Desautel, Alice Junee Lu, Wenatchee Valley College North, Confederated Tribes of the Colville Reservation, WA
Dixon, Damon Brian, University of North Dakota, Hopi Tribe of AZ
Dixon, Malia K., New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Dodson, Trudy Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Dominguez, Deborah M., Albuquerque Technical Vocation, Navajo Tribe of Arizona, New Mexico, & Utah
Dominguez, Lorrie Ann, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah

Draper, Melanie Brooke, University of Alaska School of Nursing, Cherokee Nation, Oklahoma
Dugan, Carysa Malaret, Arizona School of Health Sciences, Nez Perce of Idaho
Duncan, Roberta Marie, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Dunlap, Erin Lee, University of Oklahoma, Cherokee Nation, Oklahoma
Dunn, Akilah Talibah, Seminole State College, Chickasaw Nation of Oklahoma
Earley, Mary Margaret, University of Tulsa, Cherokee Nation, Oklahoma
Eddy, Julia L., Graceland University, Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona & California
Eddy, Patricia Ann, Northland Pioneer College, Navajo Tribe of Arizona, New Mexico, & Utah
Eder, Shirley—Anne, Northern Montana College, Assiniboine & Sioux Tribe of the Fort Peck Indian Reservation, MT
Edwards, Kerry Rachelle, University of Oklahoma, Cherokee Nation, Oklahoma
Edwards, Ralph Casey, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Elkhair-Brown, Michelle Lianne, Johnson County Community College, Muskogee (Creek) Nation, Oklahoma
Ellis, Scott Anthony, Oklahoma City University, Cherokee Nation, Oklahoma
Elmore, Amber Dawn, Northeastern State University, Chickasaw Nation of Oklahoma
Emerson, Janice Odette, Univerity of Oklahoma Health Sciences Center, Kiowa Indian Tribe of Oklahoma
Endischee, Flonda, University of the Pacific School of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Epaloose, Cassie, PIMA Community College, Zuni Tribe of the Zuni Reservation, NM
Eriacho, Margaret Alisha, University of New Mexico—Albuquerque, Zuni Tribe of the Zuni Reservation, NM
Etsitty, Marlene J., San Juan College, Navajo Tribe of Arizona, New Mexico, & Utah
Eubanks, Andrea Jill, Connors State College, Cherokee Nation, Oklahoma
Eversole, Maryn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Feather, Sharon Ann, Cankdeska Cikana Community College, Devils Lake Sioux
Fence, Heather Katherine, Angelo State University, Cherokee Nation, Oklahoma
Ferris-Lane, Dana Faye, College of the Redwoods, Hoopa Valley Tribe, CA
Fetzer, John Ward, North Dakota State University, Minnesota Chippewa Tribe (White Earth Band)
Finkbonner, Miriam Ann, Whatcom Community College, Lummi Tribe of the Lummi Reservation, WA
Fisher, Joe Keith, University of New Mexico, Choctaw Nation of Oklahoma
Fishinghawk, Bobbi Genevieve, University of Kansas School of Medicine, Cherokee Nation, Oklahoma
Fishinghawk, Lance Franklin, Northeastern State University, Cherokee Nation, Oklahoma
Foote, Brittnee Irene, Bismarck State College, Turtle Mountain Band of Chippewa Indians of North Dakota
Foster, Melvin Dale, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Fragua, Kari Lynn, University of New Mexico—Albuquerque, Pueblo of Jemez, NM
Francis, Kaydee Ann, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Francis, Michelle J., Northland Pioneer College, Confederated Tribes of the Colville Reservation, WA
Francis, Molly Marie, Creighton University, Confederated Tribes of the Colville Reservation, WA
Francisco, Nalda Yazzie, New Mexco State University, Navajo Tribe of Arizona, New Mexico, & Utah
Franklin, Richard Arnold, Northeastern State University, Cherokee Nation, Oklahoma
Frankovic, Adam Matthew, Central Washington University, Cherokee Nation, Oklahoma
Fredy, Jefferson, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Freeland-Sam, Veronica Marie, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
French, Zachary Ashton, University of Oklahoma, Cherokee Nation, Oklahoma
Friede, Priscilla Jenee, Montana State University, Chippewa Cree Indians of the Rocky Boy's Reservation, MT
Frizzell, Felicia Yelena, Stanford University, Mescalero Apache Tribe of the Mescalero Reservation, NM
Gaddy, Jasmine Reanna, Temple University School of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Gamble-Sampson, Wanda, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Gardner, Angela Danita, Rogers State College, Cherokee Nation, Oklahoma
Garner, LaQuita Jo, Great Plains Technology, Mississippi Band of Choctaw Indians, MS
Garness, Mary, University of Wisconsin—Superior, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Gatewood, Vangie Mae, University of Wisconsin, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Gerry, Jon Michael, Stanford University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Gerry, Ryan Richard, Harvard Medical School, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Giles, Erin Ayn, Southern College of Optometry, Cherokee Nation, Oklahoma
Gilham, Maureen Eloise, Carroll College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Gillies, Kenneth Jay, North Dakota State University, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Gilmore, Jennifer Jane, Dixie State College of Utah, Navajo Tribe of Arizona, New Mexico, & Utah
Girty, Logan Ellis, University of Oklahoma, Caddo Indian Tribe of Oklahoma
Glasses, Devin Garrick, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Glock-James, Jacquelyn, Southwest Missouri State University, Choctaw Nation of Oklahoma
Gloshay, Jr., Eddie, University of Arizona, White Mountain Apache Tribe of the Fort Apache Reservation, AZ
Gobert, Rachel Rose, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Gonzales, Nicolle Lenn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Goodman, Gayla Beth, University of Maryland School of Medicine, Kickapoo Tribe of Oklahoma
Gorman, Duane Thomas, Weber State University, Navajo Tribe of Arizona, New Mexico, & Utah
Gorman, Emmeline Paula, Mesa Community, Navajo Tribe of Arizona, New Mexico, & Utah
Goulet, Jessica Louie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Granger Nez, Sharon, Coconino County Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Gray, Cori Ann, University of Oklahoma Health Sciences Center, Osage Tribe, Oklahoma
Greenwood, Tami Lynette, East Central University, Choctaw Nation of Oklahoma
Griffith, Kimberly Dawn, Grand Canyon University, Tohono O'odham Nation of Arizona
Groten, Eric Dartanium, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Guin, Heather Elaine, University of Tulsa, Muskogee (Creek) Nation, Oklahoma
Guy, Melissa, University of Colorado Health Science Center, Navajo Tribe of Arizona, New Mexico, & Utah
Haddox, Natalie Rose, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Hagerty, Kori Lynn, University of New Mexico—Albuquerque, Blackfeet Tribe of the Blackfeet Indian Reservation of MT Tribe of the Blackfeet Tribe of the Blackfeet Indian Reservation of MT Indian Reservation of MT
Hall, Sheila Marie, Loyola Marymount University, Minnesota Chippewa Tribe (White Earth Band)
Hamby, Kenneth Jerome, Kirksville College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Hammons, Tracie Janene, Connors State College, Cherokee Nation, Oklahoma
Harjo, Rebecca Ruth, University of Southern California School of Social Work, Muskogee (Creek) Nation, Oklahoma
Harker, Erica Michelle, University of New Mexico, Zuni Tribe of the Zuni Reservation, NM
Harrington, Latoya Ann, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Harris, Elizabeth Kate, Oklahoma State University College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Harris, Lynn Marie, North Carolina State University, Lumbee
Harrison, Gilbert, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah

Harrison, Lisa Lizette, University of Wisconsin, Ho-Chunk Nation of Wisconsin
Hassen, Kathleen Lois, Kalamazoo Valley Community College, Sault St. Marie Tribe of Chippewa Indians of Michigan
Hastie, Carrie Suzette, Purdue University, Orutsararmuit Native Village
Hawkins, Amy Delah, Tulane University Health Sciences Center, Muskogee (Creek) Nation, Oklahoma
Hawley, Edward Carl, Montana State University, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Hazeldine, Becky Ann, Northland Community College, Minnesota Chippewa Tribe, MN (Leech Lake Band)
Headdress, Gale Crystal, Northern Montana, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Healing Ground, Dulcie Nicole, University of Minnesota, Turtle Mountain Band of Chippewa Indians of North Dakota
Henderson, Michelle Lynn, University of Texas, Navajo Tribe of Arizona, New Mexico, & Utah
Henio, Regina, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Henson, Mike Allen, University of Oklahoma Health Service, Comanche of Oklahoma
Henson-Meigs, Amy Jo, University of Tulsa, Cherokee Nation, Oklahoma
Herder, Katrina Joy, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Hernandez, Evelyn Leone, Walla Walla College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Hick, Carrie, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Hicklin, Cheryl, Winston-Salem State University, Seneca Nation of New York
Hicks, Ashley Marion, University of Alaska Anchorage, Mentasta Traditional Council
Hollow, Collette Caroline, Heritage College, Confederated Tribes of the Colville Reservation, WA
Hoover, Jamie Ellen, Arizona School of Health Sciences, Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Hopkins, Delbert Samuel, University of North Dakota, Sisseton—Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Horan, Therese Marie, Seattle University, Central Council of the Tlingit & Haida Indian Tribes
Houston, Lindsay Nicole, Bacone College, Cherokee Nation, Oklahoma
Howell, Jesse Ray, University of Central Oklahoma, Choctaw Nation of Oklahoma
Howeya, Lori Leon, University of New Mexico, Pueblo of Acoma, NM
Howling Wolf, William L., University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Hubbell, Nicholl Kristen, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Hubbell, Rochelle Lynne, University of Arizona, San Carlos Apache Tribe of the San Carlos Reservation, AZ
Huber, Donna Marie, University of Phoenix, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Hulsey, Heidi Lynne, Portland Community College, Lummi Tribe of the Lummi Reservation, Washington
Humphreys, Christina Lilly, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Hunt, Matthew Hensdale, North Carolina State University, Lumbee
Hunter, Misty Rae, Oglala Lakota College, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Hyatt, Jacqueline Rooke, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Hyden, Andreana Dee, Grand Canyon College, Navajo Tribe of Arizona, New Mexico, & Utah
Interpreter, Christina Lynn, Northern Arizona University, Hopi Tribe of AZ
Jackson, Candy Lou, Idaho State University, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, WI
Jackson, Melissa Sue, Northeastern Oklahoma A&M College, Eastern Shawnee Tribe of Oklahoma
James, Darrel Deon, Mountain View College, Choctaw Nation of Oklahoma
James, Jessica Natasha, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
James, Rachel, Albuquerque Technical Vocation, Navajo Tribe of Arizona, New Mexico, & Utah
James, Wendi Lee Ann, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma
Janis, Fawn Renee, Ogalala Lakota College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Jarvis, Pamela, College St. Scholastica, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Jefferson, Deloris Ann, Murray State College, Chickasaw Nation of Oklahoma
Jefferson, Natalie Ruth, University of Kansas School of Social Welfare, Choctaw Nation of Oklahoma
Jensen, Janelle Blake, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Joe, Felma Marie, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Joe, John, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Johnson, Beverly Mae, University of Washington, Emmonak Village
Johnson, Elizabeth Jane, Central Oregon Community College, Confederated Tribes of the Warm Springs Reservation of Oregon
Johnson, Gini Azure, University of New Mexico, Assiniboine & Sioux Tribe of the Fort Peck Indian Reservation, MT
Johnson, Joyce-Melvina, Northeastern State University, Cherokee Nation, Oklahoma
Johnson, Kimberlee Jo, East Central University, Chickasaw Nation of Oklahoma
Johnson, Roxanne Marie, Univeristy of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Johnson, Sausha Rae, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Johnson, Tara Lee, Northern Arizona Univerisy, Navajo Tribe of Arizona, New Mexico, & Utah
Johnson, Yolanda, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Joice, Kara Lynn, University of Kansas, Cherokee Nation, Oklahoma
Joice, Kelly A., University of Oklahoma, Cherokee Nation, Oklahoma
Jones, Christopher Lee, University of North Dakota, Cherokee Nation, Oklahoma
Jones, Generosa Diane, Drake University College of Pharmacy, Choctaw Nation of Oklahoma
Jones, Julia M., Northern Arizona University, Navajo Tribe of Arizona, New Meixo, & Utah
Jordan, Jesse Melinda, University of Alaska Anchorage, Village of Kalskag
Joseph, Ruth, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Julian, Serena Yazzie, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Jumbo, Ronald Dean, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Juneau, Rose Ann, Salish-Kootenai Community College, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Kanuho, Daryl, Mesa Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Kardonsky, Kimberly Jay, Medical College of Wisconsin, Jamestown S'Klallam Tribe of Washington
Keel, Andrea Lynn, University of Oklahoma, Chickasaw Nation of Oklahoma
Kelley, Lynette Rae, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Kelley, Ralph Zane, University Health Sciences College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Kelley, Valerie, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Kelliher, Allison Miranda, University of Washington School of Medicine, Nome Eskimo Community
Kenneth, Lena Mae, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Keplin, Angela Ann, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Ketcher, Jeremy Wayne, Connors State College, Cherokee Nation, Oklahoma
Kewenvoyouma, Vachel Rebecca, Yavapai College, Navajo Tribe of Arizona, New Mexico, & Utah
Kickingbird, Lauren Marie, University of Central Oklahoma, Kickapoo Tribe of Indians of the Kickapoo Reservation of Kansas
Kinlecheenie, Orlinda Lou, Northland Pioneer College, Navajo Tribe of Arizona, New Mexico, & Utah
Kinney, Sahar Amelia, Tufts University, Turtle Mountain Band of Chippewa Indians of North Dakota
Kirk, John Vincent, Oklahoma State University College of Osteopathic Medicine, Cherokee Nation, Oklahoma

Kramer, Erin Lea, University of Oklahoma, Cherokee Nation, Oklahoma
LaFromboise, Dawn Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
LaFromboise, Sandy Marie, Minot State University, Tuttle Mountain Band of Chippewa Indians of North Dakota
Lambert, Marshelle Annette, Walla Walla College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Landers, Joseph Henry, East Central University, Muskogee (Creek) Nation, Oklahoma
Lang, Sharon W., Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Lansing, Letitia Bianca, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Large, Stephanie Ashley, University of Oklahoma School of Social Work, Muskogee (Creek) Nation, Oklahoma
Lashley, Nathan James, Finch University of Health Services, Cherokee Nation, Oklahoma
Laurence, Kami Lynn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Laurence, Stacie, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Lawrence, Gary Lynn, Northeastern State University, Choctaw Nation of Oklahoma
Lay, Pamela Christine, University of Phoenix, Muskogee (Creek) Nation, Oklahoma
Leader Charge, Lila Rose, Ogalala Lakota College, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Lee, Calbert Aaron, University of New Mexico—Albuquerque, Navajo Tribe of AZ NM & UT
Lee, Colleen Linda, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Lee, Lori C., Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Leekity, Marilyn Kelley, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Leemhuis, Stephanie Brook, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Legarde, Victoria Leann, Gonzaga University, Arapahoe Tribe of the Wind River Reservation, WY
Lemas, Dominick Joseph, University of Vermont, Citizen Potawatomi Nation, Oklahoma
Leslie, Lerae J., Glendale Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Lessert, Amanda Kaye, Creighton University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Lewis, Erik Clay, Salish—Kootenai Community College, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Limphy, Cheyenne Rose, Montana State University School of Nursing, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT
Lincoln, Kelly Michelle, Boston College, Navajo Tribe of Arizona, New Mexico, & Utah
Littlefield, Teeoti Nicole, Seminole Junior College, Chickasaw Nation of Oklahoma
Lomay, Vicky Tsinnijinnie, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Long, Christina Marie, University of South Dakota, Lower Brule Sioux Tribe of the Lower Brule Reservation, SD
Longhorn, Kaselyn Diane, East Central University, Absentee—Shawnee Tribe of Indians of Oklahoma
Longie, Michelle Renee, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Looney, Joshua Carson, University of Oklahoma, Cherokee Nation, Oklahoma
Lopez, Candace Erin, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Lopez, Matthew Adam, Kansas State University, Walker River Paiute Tribe of the Walker River Reservation
Lowery, Brad Elliot, North Carolina State University, Lumbee
Loy, Arlene, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Lynch, Candace Andrea, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Makai, Myra Demetria, University of New Mexico, Gila River Indian Community of the Gila River Indian Reservation, AZ
Malaterre, Jessica Kim, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Maloney, Violet Spring, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Mandan, Samona Fern, University of North Dakota, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Marshall, Kristian Evan, Northeastern State University, Cherokee Nation, Oklahoma
Martin B, Carmelita A., University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Martin-Feliz, Candelaria Cynthia, University of North Dakota, Navajo Tribe of Arizona, New Mexico, & Utah
Martinez, Kimberly Ann, Northeastern Oklahoma A&M College, Eastern Shawnee of Oklahoma
Martinez, Leah M., University of New Mexico, Pueblo of Acoma, NM
Martinez, Marie Jeannette, Weber State University, Navajo Tribe of Arizona, New Mexico, & Utah
Marvin, Misty Dawn, Oklahoma State University, Cherokee Nation, Oklahoma
Mason, Laquita Joy, University of Montana State School of Pharmacy, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Mathis, Trina C., University of Phoenix, Navajo Tribe of Arizona, New Mexico, & Utah
Matt, Georgia Lee, University of Utah, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Maxon, Jeff Allen, North Dakota State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
May, Katie Lynn, University of Oklahoma, Cherokee Nation, Oklahoma
McArthur, Anna K., North Dakota State University, Minnesota Chippewa Tribe, MN (White Earth Band)
McCabe, Devon Aurora, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
McCorkle, Cody W., University of Arkansas, Citizen Potawatomi Nation, Oklahoma
McCuistion, Robin Edward, Western Washington University, Aleut, AK
McGeshick, Cole David, Montana State University, Sokoagon Chippewa Community, WI
McGhee, Julie Lynette, University of Oklahoma Health Sciences Center, Poarch Band of Creek Indians of Alabama
McGilbary, Kristie Rae, Seminole State College, Kiowa Indian Tribe of Oklahoma
McGlothin, Travis Michael, Harvard Medical School, Pueblo of Laguna, NM
McKerry, Jason Amel, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
McLain, Stefanie Jeanne, Oklahoma State University, Cherokee Nation, Oklahoma
McLaughlin, Audrey Jane, Pierce Community College, Yurok Tribe of the Yurok Reservation, California
McNeal, Rebecca Lynne, Oklahoma University Health Science, Choctaw Nation of Oklahoma
Meeks, Alicia Ann, East Central Oklahoma State University, Chickasaw Nation of Oklahoma
Meets, Bridget Mae, University of Montana, Confederated Salish & Kootenai Tribes of the Flathead Reservation, MT
Mellon, Travis James, University of the Health Sciences College, Pueblo of Zia, NM
Menka, Nazune Meega, Arizona State University, Native Village of Koyuk
Merritt, Sarah Elisabeth, East Central Oklahoma State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Miles, Mary Kristen, Northern Oklahoma College, Osage Tribe, Oklahoma
Miller, Amanda Stephanie, Northeastern State University, Cherokee Nation, Oklahoma
Miller, Carl Eugene, Northeastern State University, Muskogee (Creek) Nation, Oklahoma
Miller, Jacklyn Jean, University of North Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Miller, Priscilla Jean, University of Alaska, Agdaagux Tribe of King Cove
Mittelstedt, Richard L., Idaho State University, Shoeshone—Bannock Tribes of the Fort Hall Reservation of Idaho
Momberg, Christina Ann, Salish—Kootenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Monette, Eugene Louis, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Montano, Alicia Dawn, University of Arizona—Tucson, Navajo Tribe of Arizona, New Mexico, & Utah
Moore, Jennifer Marie, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Morgan, Norena, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Morris, Elizabeth Lynette, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma

Morris, Jeffrey Scott, University of Minnesota, Quechan Tribe of Fort Yuma Indian Reservation, California and Arizona
Morris, Winifred, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Morrison, Clint Justin, University of Oklahoma, Chocktaw Nation of Oklahoma
Morrison, Gerlinde Maria, University of Montana, Crow Tribe of Montana
Mousseau, Francine Louise, University of North Dakota, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Murphy, Tamelot Lynne, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Murray, Carl Arthur, Oklahoma State University, Choctaw Nation of Oklahoma
Murray, Kerry William, University of Colorado, Shoshone Tribe of the Wind River Reservation, Wyoming
Muskett, Eunice Annazbah, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Myron, Micah Aaron, Walla Walla College, Hopi Tribe of Arizona
Naasz, Katrina Hillary, University of Colorado, Navajo Tribe of Arizona, New Mexico, & Utah
Nadeau, Shawn Rochelle, Viterbo College, Turtle Mountain Band of Chippewa Indians of North Dakota
Nahno-Kerchee, Walter Jay, Oklahoma University Health Science College, Comanche Nation, Oklahoma
Namingha, Emery, University of New Mexico, Zuni Tribe of the Zuni Reservation, NM
Nelson, Shannon Lynn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Nephew-Kennedy, Lesley Ellen, SUNY at Buffalo School of Social Work, Seneca Nation of New York
Nez, Eldonna Ida, University of Alaska, Navajo Tribe of Arizona, New Mexico, & Utah
Nez, Lula, New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Nicks, Deanna Marie, Pima Medical Institute—Mesa, Hopi Tribe of Arizona
Nidiffer-Shelor, Amber Lynn, University of Oklahoma, Cherokee Nation, Oklahoma
Nilchee, Gregory Hashke Yitahoogal, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Nimsey, Dallas Micah, Southwestern Oklahoma State University, Kiowa Indian Tribe of Oklahoma
Nioce, Paul Anthony, Washburn University, Citizen Potawatomi Nation, Oklahoma
Noisy Hawk, Lyle James, Harvard University School of Education, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
North, Elizabeth Marie, Eastern Oregon University, Confederated Tribes of the Siletz Reservation, OR
Odaye, Deena May, Grand Canyon College, Reno—Sparks Indian Colony, NV
Okleasik, Sara A., Pacific University, Nome Eskimo Community
Old Elk, Georgianna WW, American University, Assiniboine & Sioux Tribes of the Fort Peck Reservation, MT
Olic, Latona Michelle, University of Wyoming School of Pharmacy, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Oliver, Jody Ann, Boise State University, Shoshone—Bannock Tribes of the Fort Hall Reservation of Idaho
O'Neal, Jamie Diane, Northern State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Oosahwe, Christen Brook, Northeastern State University, Cherokee Nation, Oklahoma
Osborn, Kasie D., Carl Albert State College, Cherokee Nation, Oklahoma
Owens, Johnie Louis, Kirksville College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Oxford, Dustin Joseph, Northeastern State University, Cherokee Nation, Oklahoma
Padilla, Tessia Marie, Albuquerque Technical Vocation, Pueblo of San Felipe, NM
Paniagua, Calvin Frederick, Arizona School of Health Sciences, Little Traverse Bay Bands of Odawa Indians, Michigan
Pappan, Cynthia Rae, Creighton University School of Pharmacy, Turtle Mountain Band of Chippewa Indians of North Dakota
Parker, Mahate Ann, East Central University, Comanche of Oklahoma
Parker, Rahnia Jean, University of Alaska System, Native Village of Kipnuk
Paul, Kimberly Lynn, Blackfeet Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Pecoss, Susanna Elizabeth, University of New Mexico, Pueblo of Cochiti, NM
Peltier, Crystal Gayle, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Pepper, Traci Danielle, Tricounty Community College, Eastern Band of Cherokee Indians, North Carolina
Peratrovich, Valene Maria, Oregon State University, Alaska Native
Perdue, Mark Wayne, University of Oklahoma, Cherokee Nation, Oklahoma
Pereira, Christina Charlene Bell, University of Arizona, Tohono O'odham Nation of Arizona
Pete, Lyle Henry, Mesa Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Peterman, Sawyer, Dine College, Navajo Tribe of Arizona, New Mexico, & Utah
Peterson-Lewis, Annie May, University of Alaska, Aleut, AK
Pfilger, Natasha Renee, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Phillips, Cara Leigh, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Phillips, Crystal Lea, University of Oklahoma, Cherokee Nation, Oklahoma
Platta, Veralyn, New Mexico State University, Mescalero Apache Tribe of the Mescalero Reservation, NM
Pleasants, Tina Marie, Washington State University, Central Council of the Tlingit & Haida Indian Tribes
Pletnikoff, Elise Marie, Carroll College, Shoonaq Tribe of Kodiak, Alaska Native
Poe, Jill R., Northeastern State University, Osage Tribe, Oklahoma
Poolaw, Audrey Winnie, Southwestern Oklahoma State University, Comanche Nation, OK
Price, Aaron Joseph, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Puhuyaoma, Tammy Kaee, Coconino County Community College, Hopi Tribe of Arizona
Randy-Veinote, Ruth W., University of the Pacific, Comanche Nation, OK
Rainwater, Chelsea Lurie, College of Charleston, Pee Dee Indian Association
Rand, Kevin Bruce, University of Wisconsin, Minnesota Chippewa Tribe, MN (White Earth Band)
Rasor, Joseph James, Midwestern University, Navajo Tribe of Arizona, New Mexico, & Utah
Razote, Antoinette Jo, Central Washington University, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Red Elk, Lindsey Beth, Arizona State University, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Redsteer, Sandra Jeanette, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Renfrow, Miranda Kirstin, Northeastern State University, Choctaw Nation of Oklahoma
Reynolds, Joel Wayne, University of South Dakota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Rice, Lily A., Mankato State College, Prairie Band Potawatomi Nation, KS
Richan, Eilene Faye, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota
Richards, Spencer L., Black Hills State University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Riding In, Debra Sue, Oregon State University School of Pharmacy, Confederated Tribes of the Siletz Reservation, OR
Riffe, Evelyn Laura, Oregon State University, Hooper Bay
Riley, Gail Arlene, Albuquerque Tech-Voc Institute, Pueblo of Nambe, NM
Riley, Rebecca C., University of New Mexico, Pueblo of Acoma, NM
Ringer Knudson, Nicolette Jean, University of Minnesota, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Robideau, Eileen Catherine, University of Alaska, Nenana Native Association
Robinson, Charlene, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Robison-Rivera, Kristie Marie, Southwestern Oklahoma State University, Apache Tribe of Oklahoma
Rogers, Brandon Scott, Northeastern University, Cherokee Nation, Oklahoma
Roselius, Kassi, Southern Nazarene University, Citizen Potawatomi Nation, Oklahoma
Rouillard, Allison Marie, University of North Dakota, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Rouse, Brant Philip, University of Oklahoma, Cherokee Nation, Oklahoma
Ruleford, Miranda Louisa, University of Tula, Cherokee Nation, Oklahoma
Sahmaunt, Marcia Ann, University of Oklahoma, Kiowa Indian Tribe of Oklahoma
Salois-Albert, Shaundra Marie, Salish Kootenai College, Confederated Salish & Kootenia Tribes of the Flathead Reservation, MT

Sanders, Chatherine Blythe, University of North Carolina, Eastern Band of Cherokee Indians of North Carolina
Sanders, Michael Shawn, University of Oklahoma, Cherokee Nation, Oklahoma
Sanderson, Kendra Marie, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Sando, Alberta Aleta, University New Mexico, Pueblo of Jemez, NM
Sando, Larnell Marie, New Mexico State University, Pueblo of Jemez, NM
Sandoval, Racheal Michele, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Sawney, Laura Renee, Northeastern State University, Cherokee Nation, Oklahoma
Scabbyrobe, Earl-Dean, Salish Kootenai College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Scalpcane-Moore, Lavonne Jean, Salish-Kootenia Community College, Northern Cheynne Tribe of the Northern Cheyenne Indian Reservation MT
Schmidt, Erin Michelle, Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Schmitt, Joel Gavin, Boise State University, Jamestown Klallam Tribe of Washington
Scott, Jessica Robin, University of Washington, Central Council of the Tlingit & Haida Indian Tribes
Scott, Steven Ray, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Seyler, Debra Jean, Northland Pioneer College, Confederated Salish & Kootenai Tribes of the Flathead Reservation MT
Shangin, Nicole Danielle, Seattle Pacific University, Ivanoff Bay Village
Shea, Tamara Renee, University of Alaska System, Athabascan Alaska Native
Shelly, Amanda Elaine, Bacone College, Cherokee Nation, Oklahoma
Shepard, Christopher Allan Joseph, Pomona College, Santee Sioux Tribe of the Santee Reservation of Nebraska
Shinn-Jones, Darcy Marie, Northeastern State University, Cherokee Nation, Oklahoma
Shipton, Virginia Helen, University of Alaska, Native Village of St. Michael
Show, Michelle, University of Washington, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Shutiva, Derek J., Newman University, Pueblo of Acoma, NM
Silvers, Kristin Gail, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Simmons, Jeremiah David, Stanford University, Yankton Sioux Tribe of South Dakota
Simonson, Germaine, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Sirany, Anne-Marie Elizabeth, Boston University, Minnesota Chippewa Tribe, MN (White Earth Band)
Sirmans, Jayna Deneice, University of Houston College of Optometry, Choctaw Nation of Oklahoma
Skaggs, Amanda Marie, Northeastern State University, Cherokee Nation, Oklahoma
Slyker, Amanda Colleen, Macalester College Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Slyker, J. Nikolas, University of Montana, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Smart, Ned R., New Mexico Highland University, Navajo Tribe of Arizona, New Mexico, & Utah
Smith, Angele Marie, Lewis and Clark State College, Shoshone-Pauite Tribes of the Duck Valley Reservation, NV
Smith, Dallas Rockford, Grand Canyon College, Navajo Tribe of Arizona, New Mexico, & Utah
Smith, Eliza-Mae C., Bacone College, United Keetoowah Band of Cherokee Indians in Oklahoma
Smith, Jaaniece Rene, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Smith, Patricia K., Fort Peck Community College, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, MT
Smith, Phyllis Marie, Montana State University, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Smith, Seneca Martin, University of Oklahoma Health Science, Muskogee (Creek) Nation, Oklahoma
Smith, Stephaine, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Spears, Raina Ann, Oklahoma State University, Choctaw Nation of Oklahoma
Spencer, Anne P., University of New Medico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Spoon, Shawna Francene, University of Oklahoma, Sac & Fox Nation, Oklahoma
Spotted Horse, Patricia Jean, American University, Standing Rock Sioux Tribe of N. & S. Dakota
St. Claire, Billie Jo, North Dakota University, Turtle Mountain Band of Chippewa Indians of North Dakota
St. Claire, Rhea Neachet, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Stachura, Christopher Jose, University of Kansas, Menominee Indian Tribe of Wisconsin
Starr, Daniel Curtis, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Stewart, Rodney Shane, Rogers State College, Cherokee Nation, Oklahoma
Still, Melissa Brook, University of Central Arkansas, Cherokee Nation, Oklahoma
Stone, Meghan Brooke, University of Central Arkansas, Cherokee Nation, Oklahoma
Stout, Lana Dawn, Oklahoma State University, Cherokee Nation, Oklahoma
Stoope, Rebekah Sue, University of Central Oklahoma, Choctaw Nation of Oklahoma
Succo, Delores Ann, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Sun Rhodes, Neil Altair, Oregon Health Sciences University, Arapahoe Tribe of the Wind River Reservation, Wyoming
Sweeney, Michael Aaron, Brigham Young University, Choctaw Nation of Oklahoma
Tapahe, Sharon Jean, Brigham Young University, Navajo Tribe of Arizona, New Mexico, & Utah
Tapp, Jamie Lynn, Oklahoma City University, Chickasaw Nation of Oklahoma
Tawyesva, Yoland Lei, Northland Pioneer College, Hopi Tribe of Arizona
Taylor, Alexandra Ana, University of Alaska School of Nursing, Native Village of Shishmaref
Teasyatwho, Arlene Jean, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Teller, Pamela, Arizona State University, Narragansett Indian Tribe of Rhode Island
Teller, Terry Lee, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico & Utah
Ten Fingers, Javan Anthony, John F. Kennedy University, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Tenequer, Valerie Leigh, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Tenorio, Rachell Marie, University of New Mexico, Pueblo of Santo Domingo, NM
Thomas, Curtiss—Lee, Northwest Technical College, Turtle Mountain Band of Chippewa Indians of North Dakota
Thomas, Jacob Frederick, Concordia College, Turtle Mountain Band of Chippewa Indians of North Dakota
Thompson, Benjamin Campbell, Northeastern State University, Cherokee Nation, Oklahoma
Thompson, Jennifer Lynn, Western Carolina University, Eastern Band of Cherokee Indians of North Carolina
Thompson, Lorinda, Northland Pioneer College, White Mountain Apache Tribe of the Fort Apache Reservation, AZ
Thompson, Paula Gail, Gateway Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Thompson, Stacey Marie, University of New Mexico College of Pharmacy, Navajo Tribe of Arizona, New Mexico, & Utah
Thompson, Toshina Krystal, Fort Lewis College, Navajo Tribe of Arizona, New Mexico, & Utah
Tiger, Brandy Susan, Arizona School of Health Sciences, Muskogee (Creek) Nation, Oklahoma
Tillman, Amy Beth, University of Central Oklahoma, Choctaw Nation of Oklahoma
Toadlena, Evelyn, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Todicheeney, Sharon Ann, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Tom, Ardith Renee, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Tom, Jennifer Michell, Hunter College, Choctaw Nation of Oklahoma
Toppah, Teresa Ann, Tarrant County College, Kiowa Indian Tribe of Oklahoma
Torralba, Vernon Charles, College of St. Scholastica, Crow Tribe of Montana
Torres, Michelle Lynn, Heritage College, Chippewa—Creek Indians of the Rocky Boy's Reservation, MT
Townsend, Travis J., University of New Mexico, Pueblo of Acoma, NM
Toya, Alleyne U., TVI Community College, Pueblo of Laguna, NM
Tracy, Cassandra Glenbah, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah

Trimm, Amber—Ladawn, East Central University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD
Trombley, Diana Lynn, Salish Kootenai Community College, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Trujillo, Jesse Juan, University of Washington, Pueblo of San Juan, NM
Tsethlikai, Tami—Denice, University of New Mexico—Albuquerque, Zuni Tribe of the Zuni Reservaiton, NM
Tsingine, Georgia Lynn, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Tso, Joann Carla, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Tso, Vera Jane, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Tso-Garcia, Jennifer Lynn, University of Washington, Navajo Tribe of Arizona, New Mexico, & Utah
Tsosie, Roberta Ann, Long Technical College, Navajo Tribe of Arizona, New Mexico, & Utah
Tunnell, Kimberly Renee, Oklahoma State University, Kiowa Indian Tribe of Oklahoma
Tupponce, Thomas Edward, Old Dominion University, Upper Mattaponi Indian Tribe
Turney, Jarett Brandon, Marquette University Dental School, Cherokee Nation, Oklahoma
Tveit, Adrienne Hilda, Washington State University, Central Council of the Tlingit & Haida Indian Tribes
Uhl, Sarah Elizabeth, Baylor University, Cherokee Nation, Oklahoma
Underwood, Eugenia Raeann, East Central Oklahoma State University, Mississippi Band of Choctaw Indians, MS
Uttchin, Venus, University of Oklahoma, Muskogee (Creek) Nation, Oklahoma
Valdo, Gerald David, Colorado State University, Pueblo of Acoma, NM, NM
Van Winkle, Tom R., Trinity Christian College, Navajo Tribe of Arizona, New Mexico, & Utah
Vance, Ronda Lynn, University of North Dakota, Muskogee (Creek) Nation, Oklahoma
Vargas, Raquel Ann, University of Texas Medical Branch—Galveston, Choctaw Nation of Oklahoma
Varnell, Cassidy Gertrude, Connors State College, Cherokee Nation, Oklahoma
Velasquez, Mary Christina, New Mexico Highlands University, Southern Ute Tribe
Vlasoff, Martha Jay, University of Alaska—Anchorage, Native Village of Eyak (Cordova)
Wagner, John William, Montana State University—Bozeman, Blackfeet Tribe of the Blackfeet Indian Reservation of MT
Walker, Erin Frances, University of Wisconsin, Little Traverse Bay Bands of Odawa Indiana, MI
Walker, Jonathan Bayless, Oklahoma Christian College, Choctaw Nation of Oklahoma
Walker, Marshall Austin, University of Oklahoma—Norman, Cherokee Nation, Oklahoma
Walker, Stacee Lynn, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Wallace, Kacey Leann, Oklahoma State University College of Osteopathic Medicine, Choctaw Nation of Oklahoma
Walton, Amber Nicole, Washington University, Navajo Tribe of Arizona, New Mexico, & Utah
Wanna, Nicholas Lee, Northwestern Health Services, Sisseton—Wahpeton Sioux Tribe of the Lake Traverse Reservation, SD
Waquie, Monica Janet, New Mexico Highlands University, Pueblo of Jemez, NM
Ward, Micah N., Oklahoma City Community College, Citizen Potawatomi Nation, OK
Ward, Rolanda Reason, University of Alaska Anchorage, Egegik Village
Wartz, Kaye Ellen, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Wasin Zi, Fawn Catherine, University of Maryland, Standing Rock Sioux Tribe of North and South Dakota
Watford, Velma Jean, Pima Community College, Navajo Tribe of Arizona, New Mexico, & Utah
Watson, Matthew Mendioro, Columbia University College of Physicians & Surgeons, Ottawa Tribe of Oklahoma
Watts, Candace Summerz, Sweet Briar College, Navajo Tribe of Arizona, New Mexico, & Utah
West, Jonathan Lee, Northeastern State University, Cherokee Nation, Oklahoma
White, Erin Janet, University of North Carolina—Chapel Hill, Lumbee
White, Karen Ann, Apollo College, Navajo Tribe of Arizona, New Mexico, & Utah
Whiteface, Angel Rose, Oglala Lakota College, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Whitechair, Robbie Gayle, University of New Mexico, Navajo Tribe of Arizona, New Mexico, & Utah
Whitechair, Rosalita Marie, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Whitehorse, Veronica Ann, San Diego State University, Navajo Tribe of Arizona, New Mexico, & Utah
Widmyer, Janet May, University of Alaska, Ketchikan Indian Corp
Wilbourn, Crystal Lea, Belmont University, Cherokee Nation, Oklahoma
Wiley, Matthew Hallett, East Central University, Muskogee (Creek) Nation, Oklahoma
Wilkerson, Thaddus Donavan, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Willcuts, Peggy Sue, South Dakota State University, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Willeto, Virginia, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Williams Burns, Amanda Kay, Southwestern Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Williams, Rhonda Lynette, University of New Mexico—Albuquerue, Navajo Tribe of Arizona, New Mexico, & Utah
Williams, Scott Bradley, Northeastern State University, Cherokee Nation, Oklahoma
Willman, Peggy Ann, University of Alaska, Native Village of Ambler
Wilson, Chase Te, Southeastern Oklahoma State University, Muskogee (Creek) Nation, Oklahoma
Wilson, Dena Lynn, University of Washington School of Medicine, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Wilson, Ellen Lucille, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation, ND
Wilson, Kelli Rae Lee, University of New Mexico—Albuquerque, Seminole Nation of Oklahoma
Wilson, Sunni Elaine, Northeastern State University, United Keetoowan Band of Cherokee Indians in Oklahoma
Windam, Tera Beth, Northeastern State University, Cherokee Nation, Oklahoma
Windship, Venita Lynn, Eastern Oklahoma State College, Choctaw Nation of Oklahoma
Wiseman, Toni Jeanne, Oklahoma City University, Muskogee (Creek) Nation, Oklahoma
Wood, Chad Nathaniel, University of Utah College of Medicine, Cherokee Nation, Oklahoma
Woodard, Amanda-Lea, University of Oklahoma—Norman, Cherokee Nation, Oklahoma
Woodard, David Rush, University of Missouri, Osage Tribe, OK
Woodruff, Patience M., University of North Dakota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD
Woods, Lacy Ann, East Central University, Chickasaw Nation of Oklahoma
Worker-Geiger, Shanna Renee, Grand Canyon University, Navajo Tribe of Arizona, New Mexico, & Utah
Wright, Theodore Charles, University of Alaska, Central Council of the Tlingit & Haida Indian Tribes
Yandell, Seth David, University of Texas Medical Branch—Galveston, Choctaw Nation of Oklahoma
Yarbrough, Latasha Renee, Rose State College, Cheyenne-Arapaho Tribes of Oklahoma
Yazzie, Abiegail B., New Mexico Highlands University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Carmelita Jean, University of New Mexico—Gallup, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Charisse Lindsey, Arizona State University,, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Kathleen Elaine, Indiana University East, Narragansett Indian Tribe of Rhode Island
Yazzie, Maria, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Nazhone Paul, University of Arizona College of Medicine, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Olivia, North Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Sharon, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Shelia Rae, Northern Arizona University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie, Shihomi Rae, University of New Mexico—Albuquerque, Navajo Tribe of Arizona, New Mexico, & Utah

Yazzie, Timothy, Midwestern University, Navajo Tribe of Arizona, New Mexico, & Utah
Yazzie-Francisco, Myra Lynn, Phoenix College, Navajo Tribe of Arizona, New Mexico, & Utah
Yellowhair, Jeannine Ann, New Mexico State University, Navajo Tribe of Arizona, New Mexico, & Utah
Young, Naomi Jean, University of Arizona, Navajo Tribe of Arizona, New Mexico, & Utah
Young, Sawar Chalutch, University of Washington, Yurok Tribe of the Yurok Reservation, California
Young Wallace, Liana J., University of Alaska Southeast, Central Council of the Tlingit & Haida Indian Tribes
Yuselew, Aaron, Pima Medical Institute—Albuquerque, Zuni Tribe of the Zuni Reservation, NM
Zachery, Kathryn Sue, University of Oklahoma—Norman, Muskogee (Creek) Nation, Oklahoma
Zahne, Janis Ivy, Arizona State University, Navajo Tribe of Arizona, New Mexico, & Utah
Zospah, Raelene Dee, Montana State University, Navajo Tribe of Arizona, New Mexico, & Utah
Zuni, Angelica Celeste, Fort Lewis College, Pueblo of Isleta, NM
Zwaryck, Shelby Leona, University of Montana School of Pharmacy, Chippewa-Cree Indians of the Rocky Boys Reservation, MT
Zwaryck, Tonk Marie, Salish Kootenai College, Chippewa-Cree Indians of the Rocky Boys Reservation, MT

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, Telephone: (301) 443–6197, Fax: (301) 443–6048.

Dated: June 2, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NCI Cancer Information Service Demographic/Customer Service Data Collection

SUMMARY: 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 National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The National Cancer Institute Cancer Information Service Demographic Customer Service Data Collection. *Type of Information Collection Request:* Revision with change of a currently approved collection. (OMB No. 0925–0208, expiring 10–31–2003) *Need and Use of Information Collection:* The National Cancer Institute's Cancer Information Service (CIS) provides the latest information on cancer, clinical trials, and tobacco cessation. Characterizing users and how they found out about the CIS is essential to customer service, program planning and promotion. This effort involves a brief survey of users of the 1–800–4–CANCER toll-free service and LiveHelp, a web-based chat service. The telephone survey contains seven questions—3 customer service and 4 demographic—asked of a subset of callers (cancer patients, their family or friends, and the general public) at the end of usual service for an annual total of approximately 286,000 callers. One hundred percent of these callers will be asked the three customer service questions for an annual total of approximately 286,000 callers; 25% of callers will be asked the four demographic questions for an annual total of approximately 71,500 callers. If the call is the result of a special promotion, 50% of callers will be surveyed for demographics. Special promotions account for an estimated 30% of calls for an annual total of approximately 42,900 callers. The combined annual total is 400,400 callers. The LiveHelp web survey involves asking the same seven questions to 50% of the same subset of users for an annual total of approximately 5,500 users. The combined total to be surveyed each year is 405,900 users of the telephone and LiveHelp services for a total of 1,951 annual burden hours. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows:

TABLE 1.—RESPONDENT AND BURDEN ESTIMATE

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Individuals or Households				
Telephone:				
—3 questions (100%)	286,000	1	0.00328	937
—4 questions (25%)	71,500	1	0.0083	594
—4 questions (50%)/special promotions	42,900	1	0.0083	356
Subtotal	400,400			1,888
LiveHelp:				
—7 questions (50%)	5,500	1	0.0116	64
Subtotal	5,500			64
Annualized Totals	405,900			1,952

The annualized cost to respondents is estimated at: $31,904. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (3) Ways to 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.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Madeline LaPorta, Deputy Director, Office of Cancer Information Service, National Cancer Institute, 6116 Executive Boulevard, MSC 8322, Bethesda, Maryland 20892–8322, telephone (301) 594–8025, fax (301) 402–0555.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of the publication.

Dated: June 2, 2003.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–14419 Filed 6–6–03; 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, Research on the Mental Health of Minority Populations.

Date: June 25, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sara K Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

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: May 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14420 Filed 6–6–03; 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 T35 short Term Training Applications.

Date: June 13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sandy Warren, DmD, MpH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 435–1019, *warrens@csr.nih.gov.*

This notice is being published less that 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 GMA1 01Q: Dermatology and Rheumatology: Quorum.

Date: June 16–17, 2003.

Time: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.nih.gov.*

This notice is being published less that 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 Cancer Detection by Lymphocyte Metabolite Activity.

Date: June 17, 2003.

Time: 2 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: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less that 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: June 19–20, 2003.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Innate Immunity/Host Defense.

Date: June 20, 2003.

Time: 7:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221 *laingc@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods

Integrated Review Group, Social Sciences, Nursing Epidemiology and Methods 5.

Date: June 20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

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 Radiation Biology and Medical Physics.

Date: June 20, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–2681, *mayyasis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–L (30) Review of Four s10 Proposals.

Date: June 20, 2003.

Time: 11 a.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: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Collaborative Projects.

Date: June 20, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, (301) 435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel Biophysical Study of a Ribozyme.

Date: June 20, 2003.

Time: 5 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton Hotel, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SRB 50R: Bioengineering Research Partnerships: PAR03–032.

Date: June 22, 2003.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, DsC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business Innovation Research Grants.

Date: June 22–23, 2003.

Time: 7 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillon, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Diagnostic and Treatment.

Date: June 23–24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Leda Maria Cummings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *cumminle@csr.nih.gov.*

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group Orthopedics and Musculoskeletal Study Section.

Date: June 23–24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group Cardiovascular and Renal Study Section.

Date: June 23–25, 2003.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Reproductive Biology Study Section.

Date: June 23–24, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Biochemical Endocrinology Study Section.

Date: June 23, 2003.

Time: 8 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: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Molecular, Cellular and Developmental Neurosciences 3.

Date: June 23–24, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group Biobehavioral and Behavioral Processes 4, Cognition and Perception.

Date: June 23–24, 2003.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Metallobiochemistry Study Section.

Date: June 23–24, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1723, *nelsonja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict Special Emphasis Panel on Visual Attention.

Date: June 23, 2003.

Time: 1 p.m. to 2:30 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: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm: 3184 MSC: 7848, Bethesda, MD 20892, (301) 402–4454, *champoum@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Bridges Student Association.

Date: June 23, 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: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Department of Health and Human Services, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CPA 04M: Prostate Pathology.

Date: June 23, 2003.

Time: 1 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: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Bioengineering Research Grant Review.

Date: June 23, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship Study Section ZRG1 F02A (20)L.

Date: June 24, 2003.

Time: 7:30 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: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG 1 NMS: Nutritional and Metabolic Sciences.

Date: June 24, 2003.

Time: 8 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: Harry Brodie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6158, MSC 7892, Bethesda, MD 20892, (301) 402–6297

Name of Committee: Center for Scientific Review Special Emphasis Panel Genetic and Physical Analysis of Recombination Repair.

Date: June 24, 2003.

Time: 4 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: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

Name of Committee: Center for Scientific Review Special Emphasis Panel Chemistry/Biophysics SBIR/STTR Panel.

Date: June 25, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Experimental Therapeutics Subcommittee 2.

Date: June 25–27, 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: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Microbial Physiology and Genetics Subcommittee 1.

Date: June 25–26, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Neal B. West, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514. *westnea@cst.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Social Sciences, Nursing, Epidemiology and Methods 1.

Date: June 25–27, 2003.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Terrace Hotel, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, EdD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 PC (00) S Lipoprotein Metabolism.

Date: June 25, 2003.

Time: 7 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 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: May 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–14421 Filed 6–6–03; 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: Safe Schools/Healthy Students Sustainability Study—New—This study, a project of SAMHSA's Center for Mental Health Services (CMHS), involves a survey of project directors or other designated staff associated with the Safe Schools/Healthy Students (SS/HS) Initiative. The SS/HS Initiative is a collaborative effort between the U.S. Departments of Education, Health and Human Services, and Justice. Under this initiative, local education agencies (LEAs) were awarded grants in partnership with their local mental health agency and their local juvenile justice agency. Between September 1999 and September 2002, 143 communities received three-year awards under the SS/HS Initiative.

As this Initiative was designed to facilitate sustainable change within communities, CMHS would like to determine the extent to which systems-level changes, programs, and services initiated as part of SS/HS continue when the grant ends. A web-based survey of project directors will be conducted annually for three years. Respondents will be project directors or other designated staff responsible for continuing programs and services following the SS/HS grant.

This information will be used by CMHS to improve the grant making process and the provision of technical assistance. The following table describes the response burden associated with this data collection.

Year	Number of respondents	Responses per respondent	Hours per response	Total burden hours
One	77	1	.5	39
Two	97	1	.5	49
Three	143	1	.5	72
Total	317	.....	.....	160
3-yr. Annual Average	106	.....	.....	53

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: June 2, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–14388 Filed 6–6–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15189]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters related to recreational boating safety.

DATES: Application forms should reach us on or before September 9, 2003.

ADDRESSES: You may request an application form by writing to Commandant, Office of Boating Safety (G–OPB–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–1077; or by faxing 202–267–4285. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey N. Hoedt, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC members are drawn equally from the following three sectors of the boating community: State officials responsible for State boating safety programs, recreational boat and associated equipment manufacturers, and national recreational boating organizations and the general public. Members are appointed by the Secretary of the Department of Homeland Security.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications received in response to this notice for the following eight positions that expire or become vacant in December 2003: Two representatives of State officials responsible for State boating safety programs, two representatives of recreational boat and associated equipment manufacturers, and four representatives of national recreational boating organizations and the general public. Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Prior applicants should submit an updated application to ensure consideration for the vacancies announced in this notice. Each member serves for a term of up to 3 years. Some members may serve consecutive terms.

In support of the policy of the U. S. Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: June 2, 2003.

Jeffrey J. Hathaway,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 03–14436 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1466–DR]

Alabama; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA–1466–DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATE: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14410 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATES: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Allen County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14404 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1459–DR]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1459–DR), dated April 24, 2003, and related determinations.

EFFECTIVE DATES: May 29, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 24, 2003:

Leake County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14403 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1470–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1470–DR), dated May 23, 2003, and related determinations.

EFFECTIVE DATE: May 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from severe storms, tornadoes and high winds on May 5–8, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos M. Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Calhoun, Clay, Chickasaw, Itawamba, Lee, Lowndes, Monroe, Pontotoc and Webster Counties for Individual Assistance.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14411 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Crawford, Maries, and Oregon Counties for Public Assistance.

Bollinger, Franklin, Knox, Miller, Osage, Pulaski, and Washington Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14405 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14406 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1465–DR]

Oklahoma; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1465–DR), dated May 10, 2003, and related determinations.

EFFECTIVE DATE: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14409 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1464-DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 8, 2003:

Anderson, Knox, and Loudon Counties for Individual Assistance.

Cumberland and Roane Counties for Individual Assistance (already designated for Public Assistance.)

Bedford County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14407 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1464–DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–14408 Filed 6–6–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 23, Payment for Appointment Counsel in Involuntary Child Custody Proceedings in State Courts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 this notice announces that the Bureau of Indian Affairs is seeking to extend clearance for an information collection request. The information collection, Payment for Appointment Counsel in Involuntary Child Custody Proceedings in State Courts, is cleared under OMB Control Number 1076–0111. Interested parties are invited to comment on this collection.

DATES: Submit comments on or before August 8, 2003.

ADDRESSES: Written comments should be sent directly to Larry Blair, Bureau of Indian Affairs, Office of Tribal Services, Division of Human Services, 1951 Constitution Avenue, NW., (MS–320–SIB), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 513–7621, Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

A state court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a State court may send written notice to the Bureau of Indian Affairs (Bureau) when appointment of counsel is not authorized by State law. The cognizant Bureau Regional Director uses this information to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please note, any comments, names and addresses concerning this submission will be available for public review during regular business hours (8 a.m. to 4:30 p.m). If you wish your name and address withheld you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. 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.

III. Data

Title of the Information Collection: Payment for Appointment Counsel in Involuntary Indian Child Custody Proceedings in State Courts.

Nature of Action: Renewal of 1076–0111.

Summary of Collection of Information: The collection of information will ensure that the provisions of Public Law 95–608 are met.

Affected Entities: State Courts and Individual Indian pursuant to 25 CFR 23.13 in order to obtain a benefit.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 2.

Estimated Time Per Application: 8 hours.

Estimated Total Annual Burden Hours: 16 hours.

Dated: June 2, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–14402 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–03–1310–MSES 46350]

Proposed Reinstatement of Terminated Oil and Gas Lease, Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease, MSES 46350, Jefferson Davis County, Mississippi, was timely filed and accompanied by all required rentals and royalties. No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rental and royalties at rates of $10 per acre and 12⅔ percent. Payment of $500 in administrative fees and a $158 publication fee has been made.

FOR FURTHER INFORMATION CONTACT: Gina Goodwin, Land Law Examiner, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153 at (703) 440–1534.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is proposing to reinstate the lease effective the date of termination, January 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)).

Dated: April 24, 2003.

Walter Rewinski,

Acting Associate State Director.

[FR Doc. 03–14454 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EQ; N–2769]

Termination of Airport Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination.

SUMMARY: This action terminates Airport Lease N–2769 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

DATES: The effective date is July 9, 2003.

ADDRESSES: Address all written comments concerning this notice to: Jeffrey A. Weeks, AFM Nonrenewable Resources, Bureau of Land Management, HC 33 Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Technical Information: Doris Metcalf, Lead Realty Specialist, at 775–289–1852 or e-mail *Doris_Metcalf@nv.blm.gov* or Cynthia Longinetti, Resource Assistant, at 775–289–1809 or e-mail *Cynthia_Longinetti@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: Under the authority delegated by Appendix 5 of

Bureau of Land Management Manual Supplement 1203, dated November 25, 1998, Private Airport Lease N–2769, located on the following lands, is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 5 N., R. 67 E., Section 33, S½N½, Section 34, SWNE, S½NW.

Containing 280 acres in Lincoln County, Nevada.

The classification under the Act of May 24, 1928, segregated the public land from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws. Airport Lease N–2769 is no longer required and has been closed in accordance with BLM and FAA requirements. The land is now open under the public land laws, including the mining and mineral leasing laws.

Dated: April 28, 2003.

Gene A. Kolkman,

Field Manager.

[FR Doc. 03–14451 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–1430–ET; AZA–13014]

Public Land Order No. 7570; Partial Revocation of Secretarial Order Dated July 2, 1902, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial Order dated July 2, 1902, insofar as it affects approximately 159 acres of land withdrawn for the Bureau of Reclamation's Salt River Project. This order makes the land available for conveyance under the Recreation and Public Purposes Act.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, BLM Phoenix Field Office, 21605 North 7th Ave., Phoenix, AZ 85027, 623–580–5570.

SUPPLEMENTARY INFORMATION: The land is no longer needed for reclamation purposes and the Bureau of Reclamation concurs with the partial revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated July 2, 1902, which withdrew land for the Bureau of Reclamation's Salt River Project, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

T. 1 N., R. 2 E.,
Sec. 30, lot 3, NE¼SW¼, and N½SE¼.

The area described contains approximately 159 acres in Maricopa County.

2. The land described in Paragraph 1 is hereby made available for conveyance under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 (1994).

Dated: May 21, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 03–14455 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–5700–EU; CACA–43472]

Notice of Realty Action: Non-Competitive Sale of Public Lands, El Dorado County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The public lands identified below have been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750–51; 43 U.S.C. 1713, and 90 Stat. 2757–58, 43 U.S.C. 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), at not less than appraised market value. The market value opinion of the approved appraisal is $25,000. The potential buyer of the parcel Joseph F. Parisi will make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface.

Mount Diablo Meridian

T. 9 N., R. 12 E.,
Sec. 21, W½NW¼NW¼NE¼,
S½NW¼NW¼SE¼NE¼,
SW¼NW¼SE¼NE¼.

Containing 4.06 acres more or less.

The purpose of the proposed sale is to dispose of a parcel of public land that is difficult and uneconomic to manage as part of the public lands of the United States. It is also proposed for sale in order to resolve a trespass of Joseph F. Parisi. The proposed sale is consistent with the Folsom Field Office Sierra Planning Area Management Framework Plan (July 1988), and the public interest will be served by offering the parcel for sale. The parcel will be offered for non-competitive sale to Joseph F. Parisi, the adjacent landowner.

Pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), the proceeds from the sale will be deposited into a Federal Land Disposal Account and used to acquire non-federal land within the State of California. The money will be used to purchase lands for the BLM, National Park Service, Forest Service, or Fish and Wildlife Service.

Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will reserve the following: By Executive Order for Power Site Reserve 416, subject to Section 24 of the Federal Power Act on July 24, 1997. Reservation for ditches and canals.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments pertaining to this action. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the land sale, including relevant planning and environmental documentation, may be obtained from the Folsom Field Office at the above address. Telephone calls may be directed to Jodi Swaggerty at (916) 985–4474.

SUPPLEMENTARY INFORMATION: Objections to the sale will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first. Pursuant to the application

to convey the mineral estate, the mineral interests of the United States are segregated by this notice from appropriation under the public land laws, including the mining laws for a period of two years from the date of filing the application.

Dated: January 17, 2003.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 03–14447 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–76239, N–76847, and N–76858]

Notice of Realty Action (NORA) of the Segregation and Competitive Sale of Public Lands in White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action (NORA) of the segregation and competitive sale of public lands in White Pine County, Nevada.

SUMMARY: The public lands listed below in White Pine County, Nevada have been examined and found suitable for disposal, at not less than fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713, and 1719). Upon publication of this notice in the **Federal Register**, the public lands listed below will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws.

DATES: Interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources, on or before July 24, 2003.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, will be available at the Ely Field Office of the Bureau of Land Management, 702 North Industrial Way, Ely, Nevada 89301–9408 or by contacting Brenda Linnell, Realty Specialist, at the above address or by telephone (775) 289–1808.

Competitive Land Sale and Segregation: The following described parcels of land, situated in White Pine County are being offered as a competitive sale on August 19, 2003.

Mount Diablo Meridian, Nevada

Parcel 1, casefile N–76239 located at:

T. 14 N., R. 64 E.,

Section 32, NW¼, W½W½NE¼,

Containing 200.00 acres more or less.

Parcel 2, casefile N–76847 located at:

T. 17 N., R. 55 E.,

Section 6, W½SW¼SE¼NW¼, a portion of lot 5 generally described as the E½SE¼SW¼NW¼ (pending redesignation by supplemental plat as lot 13, Section 6),

Containing 10.00 acres more or less.

Parcel 3, casefile N–76858 located at:

T. 10 N., R. 62 E.,

Section 5, SW¼NE¼, SE¼NW¼,

Containing 80.00 acres more or less.

These lands are not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. The subject lands will be sold for at least fair market value (FMV) as determined by appraisal. In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests.

Each parcel will be offered by sealed bid and at oral auction. All sealed bids must be received at the BLM Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301–9408, or hand delivered at the BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada no later than 4:15 PM, PDT, August 15, 2003. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel. Each sealed bid shall be accompanied by a bid deposit of not less than 20 percent of the amount bid and full payment of the $50.00 non-refundable filing mineral fee in the form of cash, certified check, postal money order, bank draft, cashiers check, or personal check made payable to ''USDI, Bureau of Land Management.

The highest qualified sealed bid for each parcel will become the starting bid for the oral bidding. If no bids are received, oral bidding will begin at the appraised FMV. All parcels will be offered by oral auction at 10 AM, PDT, August 19, 2003, at the BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada. Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

The highest qualifying bid for each parcel, whether sealed or oral, will be declared the high bid. The high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. If not paid by close of the auction, funds must be delivered no later than 4:15 PM, PDT, the day of the sale to the BLM Ely Field Office. Should the highest bidder default, the next highest bidder will be declared the high bidder.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the high bidder and cause the bid deposit to be forfeited to the BLM. If the highest qualified bid is rejected or the bidder released from it, the authorized officer will determine if the parcel shall be reoffered to the next highest bidder.

If the lands are not sold, they may remain available for sale on a continuing basis until sold. Sealed bids will be accepted on every Wednesday (by 4 pm PDT) of each month commencing the first week of September 2003 till the parcel is sold or by January 23, 2004, at no less than the fair market value. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and clearly marked ''SEALED BID: NV–430–1430–EU September 2003, for Parcel # as appropriate. Bid amounts must be stated in the bid and signed. All bids shall be accompanied by a bid deposit of 20 percent of the amount bid and full payment of the $50.00 non-refundable filing mineral fee in the form of cash, certified check, postal money order, bank draft, cashiers check, or personal check made payable to ''USDI, Bureau of Land Management. The remainder of the full bid price must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the apparent

bidder and cause the bid deposit to be forfeited to the BLM.

Federal law requires that bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing and potential uses for nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas mineral deposits, and geothermal steam and associated geothermal resources in the land subject to this conveyance, including, without limitation, the disposition of these substances under the mineral leasing laws and Geothermal Steam Act, would be reserved to the United States. Its permittees, licensees and lessees, have the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes necessary access and exit rights and the right to conduct all necessary and incidental activities including, without limitation, all drilling, underground, storage and transportation facilities deemed reasonably necessary.

3. All land parcels are subject to all valid and existing rights. Encumbrances of records are available for review during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, Nevada.

4. The parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or leasees, or any third party, arising out of, or in connection with, the patentee's use, occupancy, or operations of the patented real property. The indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or leasees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state laws. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant Field Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. Any comments received during the process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to the Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from the public release will be honored to the extent permissible by law.

Dated: April 23, 2003.

Jeffrey A. Weeks,

Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 03–14449 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–76188]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purposes lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*). The Crossing, a nonprofit Christian church proposes to use the land for development of a church campus consisting of a sanctuary, chapel, community hall, offices, bookstore and classrooms.

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 9, NW¼SE¼SE¼, E½SW¼SE¼SE¼.
Consisting of 15 acres.

The land is not required for any federal purpose. Lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. All valid and existing rights.

2. Those rights for utility purposes (flood control purposes) which have been granted to Clark County, Nevada, by right-of-way N–59041 pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for public roads which have been granted to Clark County by right-of-way grant N–63015 pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130 or by calling (702) 515–5129.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed classification for lease/conveyance of the lands to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the proposed facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision or any other factor not related to the suitability of the land for the proposed church facilities. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this Realty action. In the absence of any adverse comments, the classification of the land described in the Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Jacqueline Gratton,

Acting Assistant Field Manager, Division of Lands.

[FR Doc. 03–14452 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–PA]

Notice of Intent To Prepare the Arkansas River Travel Management Plan and Amend the Royal Gorge Resource Management Plan

AGENCY: Bureau of Land Management; Royal Gorge Field Office, Interior.

ACTION: Notice of Intent to prepare the Arkansas River Travel Management Plan and to consider amending the Royal Gorge Resource Management Plan (RMP).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to initiate a comprehensive planning effort to address Off-Highway Vehicle (OHV) travel and other related road and trail issues for a portion of the Royal Gorge Field Office. The plan, entitled the Arkansas River Travel Management Plan (TMP), will focus specifically on those BLM Public Lands that lie between Canon City and Salida, Colorado, and involves approximately 210,000 acres of Public Lands located in central and western Fremont County and northern Custer County, CO. The TMP will amend the Royal Gorge RMP. The TMP and plan amendment implement decisions made in the Royal Gorge RMP to limit OHV use to designated roads and trails, and to develop local travel management plans with public participation. The amendment process will be used to establish a system of designated roads and trails that meets the needs of the public and protects the cultural and natural resources of the Public Lands. The amendment and associated EA will be prepared pursuant to the BLM planning regulations in 43 CFR part 1600. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria. The EA will analyze and compare the impacts of any changes in OHV designation and management with the continuation of current management, and other alternatives that may be identified. The TMP is being prepared through coordination with other federal, state

and local agencies, and affected public land users.

DATES: This notice initiates the public scoping process. Comments on issues and concerns can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RMP amendment/EA. All public meetings will be announced through the local news media, newsletters, and the BLM Web site at: *http://www.co.blm.gov/ccdo/canon.htm,* at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held during the plan scoping period. Early participation is encouraged and will help determine the future travel management of the public lands involved in this amendment. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment upon the publication of the BLM draft RMP amendment, EA, and an unsigned Finding of No Significant Impact (FONSI).

ADDRESSES: Written comments should be sent to Bureau of Land Management, Royal Gorge Field Office, ATTN: Arkansas River TMP, 3170 East Main Street, Canon City, CO 81212; FAX 719–269–8599. Documents pertinent to this proposal may be examined at the Royal Gorge Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Royal Gorge Field Office during regular business hours (8 am to 4:30 pm), Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Dave Walker, Team Leader, at the Royal Gorge Field Office address listed above or by calling (719) 269–8545, or e-mail at *David_Walker@blm.gov.*

SUPPLEMENTARY INFORMATION: The use of roads and trails for motorized and non-motorized recreation activities is an important use of BLM Public Lands. In response to recommendations made by the Front Range Resource Advisory Council, the BLM proposes developing a travel management plan and establishing OHV travel designations to restrict motorized travel to designated roads and trails. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The preliminary issues include: Impacts to public land users and adjacent private landowners; impacts to wildlife habitat; and impacts to water quality, vegetation, including riparian and wetland areas, and soils. These issues, along with others that may be identified through public participation, will be considered in the planning process. After gathering public comments on what issues the plan amendment should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan amendment. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, forestry, outdoor recreation, law enforcement, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, vegetation, and fire.

Notification will be made to the Governor of Colorado, the Fremont and Custer County Commissioners, adjacent landowners, and potentially affected members of the public.

Roy L. Masinton,

Field Manager.

[FR Doc. 03–14448 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–03–1610–JP–064B]

Notice of Intent To Designate Routes of Travel and Amend the Redding Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to designate routes of travel and amend the Redding Resource Management Plan (RMP).

DATES: Scoping comments will be accepted in person, by mail and email until July 9, 2003. Comment periods and planning meetings will be publicized in Shasta and Trinity counties through local news media.

ADDRESSES: Comments should be sent to Charles M. Schultz, Field Manager, Bureau of Land Management, Redding Field Office, 355 Hemsted Dr., Redding, CA 96002.

FOR FURTHER INFORMATION CONTACT: Andy Isola, Outdoor Recreation Planner, at the above address, telephone number (530) 224–2126, or e-mail: *aisola@ca.blm.gov.*

SUMMARY: The Bureau of Land Management proposes to amend the Redding Resource Management Plan pursuant to the Code of Federal Regulations (CFR) at 43 CFR 1610.2(c). The proposed amendment would establish or revise designations of ways, routes, and trails for off-highway vehicles in accordance with 43 CFR part 8342. The proposals will include public lands in the Interlakes Special Recreation Management Area, a complex of routes west of French Gulch Road and east of County Line Road North, the Sacramento River Bend Area of Critical Environmental Concern (ACEC), and other areas that may be identified in the planning process.

SUPPLEMENTARY INFORMATION: Input from previous public meetings and written comments from previous public discussions will be used to define issues. Preliminary issues identified include: Off-highway vehicle recreation use; adequate vehicle access for other casual uses, and visitor safety. All vehicular travel on public lands in the planning area will be restricted to the designated routes.

Planning criteria will honor valid existing rights. The amendment will be consistent with officially approved resource related plans, policies and programs of other Federal agencies, State and local governments, and Indian Tribes, so long as the guidance and plans are consistent with the purposes,

policies and programs of Federal laws and regulations applicable to public lands. The plan will comply with trail designation regulations (43 CFR part 8340). The planning process shall include an environmental assessment with a biological evaluation prepared in compliance with the National Environmental Policy Act of 1969 (NEPA), the President's Council of Environmental Quality (CEQ) regulations (40 CFR part 1500), and BLM planning regulations (40 CFR part 1600). The Bureau will rely largely on existing route inventory data, information obtained from coordination with other federal, state, and local agencies, and public comments.

Comments, including names and addresses of respondents, will be available for public review at the Redding Field Office during normal working hours (7:45 AM to 4:30 PM, except holidays), and may be published as part of the EA or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: March 7, 2003.

Charles M. Schultz,

Field Manager.

[FR Doc. 03–14446 Filed 6–6–03; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–017]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: June 16, 2003, at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. Nos. 731–TA–1034–1035 (Preliminary) (Certain Color Television Receivers from China and Malaysia)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on June 16, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before June 23, 2003.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–14619 Filed 6–5–03; 3:07 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day notice of information collection under review: new collection Advanced Explosives Destruction Techniques (AEDT) training course follow-up evaluation form

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joanne Bailey, Learning Systems Management Division, 800 K Street NW., Suite 600, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, Local, or Tribal Government. Other: None. The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. The Kirkpatrick 4-Level Model is used to evaluate ATF training programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 354 respondents will complete a 12 minute survey.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 71 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 3, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–14381 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: renewal of an existing collection report of mail order transactions.

SUMMARY:

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Renewal of an existing collection.

(2) *Title of the Form/Collection:* Report of Mail Order Transactions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Comprehensive Methamphetamine Control Act of 1996 (Public Law 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are forty (40) total respondents for this information collection. Thirty-seven (37) respond on paper, taking 1 hour for each response to do so. Three respondents submit electronically, taking 15 minutes to do so. Respondents are required by law to respond monthly.

(6) *An estimate of the total public burden (in hours) associated with the collection:* This collection requires a total of 453 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 3, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–14352 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: renewal of an existing collection; annual reporting requirement for manufacturers of listed chemicals.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Renewal of an existing collection.

(2) *Title of the Form/Collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Business or other for-profit. Other: None. This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents respond annually to this information collection, with each response estimated to take four hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* This information collection is estimated to take 400 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 3, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–14353 Filed 6–6–03; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 9, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant—*

Peter Doran, Earth and Environmental Sciences (MC 186), University of Illinois at Chicago, Chicago, IL 60607.

Activity for Which Permit Is Requested

Take and Import Into the United States. Last season, as part of the McMurdo Dry Valley Long Term Ecological Research project, the applicant collected sediment cores from the lakes in the Taylor Valley to determine the paleoenvironment and legacy in the current ecosystem. Data from the lake water suggest that while most of the lakes have retained their ice covers for thousands of years, the East Lobe of Lake Bonney may have only formed a perennial ice cover in the 200 years. All the Taylor Valley lakes have dead seal and penguin remains on their ice surfaces. They remain on the surface because they are too big for the sun to melt them significantly into the ice. Therefore, establishing the time since these animals died will determine the minimum age of the lake ice covers. The applicant proposes to collect samples (1–5 gm) of bone or soft tissue from the most decayed penguin and seal carcasses on the lake surfaces. These samples will be returned to the United States for further study. It has been established that a carbon reservoir correction of ~ 1200 years should yield reasonable radiocarbon ages for these animals.

Location

Lake Bonney, Taylor Valley.

Dates

November 1, 2003 to December 31, 2003

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–14422 Filed 6–6–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation; 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 Small Business Industrial Innovation (SBIR)—(61).

Date and Time: June 17–18, 2003, 8 a.m.–5 p.m.

Type of Meeting: Open.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Kesh Narayanan, Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation (703) 292–7076, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda: June 17, 2003, Room 1235.

8:30 am—Welcome.
8:35 am—Introductions.
9:15 am—Break.
9:30 am—SBIR/STTR Program Overview.
12 noon—Lunch.
1 pm—Special Topics.
3 pm—Break.
3:15 pm—Open Discussion.
5 pm—Adjourn.

Agenda: June 18, 2003, Room 1235.

8:15 am—Open Discussion.
10 am—Break.
10:15 am—Discussion and Preparation of Committee Report.
12 noon—Lunch.
1 pm—Discussion and Preparation of Committee Report.

3 pm—Feedback from the Committee.
5 pm—Adjourn.

Dated: June 3, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–14362 Filed 6–6–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Co., Fermi 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Detroit Edison Company (the licensee) to withdraw its May 23, 2003, application for an amendment to Facility Operating License No. NPF–43 issued to the licensee for operation of the Fermi 2, located in Monroe County. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on June 25, 2002 (67 FR 42819).

The purpose of the licensee's amendment request was to modify the Fermi 2 Technical Specifications by revising the requirements for system operability during movement of recently irradiated fuel assemblies in the secondary containment.

Subsequently, the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 23, 2002, and (2) the staff's letters dated May 14, 2003, and June 3, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of June 2003.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–14398 Filed 6–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2377]

Environmental Assessment and Finding of No Significant Impact Related to the Approval of the Decommissioning Plan for Kaiser Aluminum & Chemical Corporation, Tulsa Facility, Tulsa, OK

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the Decommissioning Plan (DP) for Kaiser Aluminum & Chemical Corporation (Kaiser), Tulsa Facility, Tulsa, Oklahoma (Ref. 1), and DP Addendum (Ref. 2) submitted to NRC on May 25, 2001, and May 9, 2002, respectively. Kaiser is obligated to remediate the Tulsa, Oklahoma facility to meet the release criteria established in 10 CFR part 20, subpart E. Kaiser has proposed a decommissioning approach that will achieve unrestricted release of the site.

II. Environmental Assessment

Introduction

On March 7, 1958, the Atomic Energy Commission (AEC) issued Source Material License No. C–4012 to Standard Magnesium Corporation (Standard Magnesium), a Division of Kaiser Chemical Company, for possession of magnesium-thorium alloy. Standard Magnesium purchased magnesium-thorium scrap metal for reclaiming purposes. The end product from Standard Magnesium's manufacturing process was magnesium anodes used for cathodic protection on items such as tanks and pipelines. NRC License No. STB–472 superceded License No. C–4012 on November 22, 1961. On June 5, 1968, License No. STB–472 was amended to include the possession of uranium, so that Standard Magnesium could process magnesium slag containing uranium. It does not appear that uranium was ever received or processed on site. On March 16, 1971, License No. STB–472 was terminated at the licensee's request.

In 1991, Oak Ridge National Laboratory (ORNL) was contracted, by NRC, to review and evaluate all nuclear material licenses terminated by NRC or its predecessor agencies since inception of material regulation in the late 1940s. One of the objectives of this review was to identify sites with a potential for meaningful residual contamination, based on information in the license documentation. ORNL identified the Kaiser site as having the potential for residual contamination. On November 17, 1993, an NRC inspector surveyed the Kaiser facility to assess the potential for residual contamination at the site. The inspector found contamination on the surface, indicating that waste magnesium-thorium slag was improperly disposed of in the past. Off-site residual thorium contamination was first identified during a subsequent NRC inspection conducted on June 29, 1994. The off-site thorium contamination is due to slag dumping in areas to the east and south of the current Kaiser property boundary, on property which belonged to Standard Magnesium during licensed operations. NRC notified Kaiser on August 19, 1994, that the site had been added to the Site Decommissioning Management Plan (SDMP). Kaiser has agreed to conduct remediation activities in accordance with current regulations and release limits, even though it is not currently a licensee.

A detailed discussion of the contamination present at the site is presented in Chapter 4 of the DP, and Chapter 4 of the DP Addendum.

Purpose and Need for Proposed Action

The Kaiser property contains thorium contaminated dross/soil. This property was owned and operated by Kaiser's predecessor, Standard Magnesium. Standard Magnesium extracted magnesium from magnesium thorium alloys. The thorium-bearing slag was disposed of on-site and onto, what is now, land adjacent to the Kaiser property. Kaiser has completed remediation of the adjacent property and is now proposing plans to remediate its property.

Extensive site characterization studies conducted by Kaiser (Ref. 3 and Ref. 4), indicate that Th-228, Th-230 and Th-232 are present in dross/soil on the Kaiser property. In 1995, an investigation was performed to characterize soils and sludges in the Retention and Reserve Pond areas containing thorium with respect to criteria used by the NRC for release of sites for unrestricted use, as set forth in the NRC Branch Technical Position, Disposal or On-Site Storage of Residual Thorium or Uranium Wastes From Past Operations (Ref. 5). From the characterization data, affected material volumes were estimated by performing kriging calculations. The estimate from

the kriging calculations yielded a total volume of 113,504 cubic meters (m^3) [4,007,909 cubic feet (ft^3)] of material with Th-232 + Th-228 concentrations greater than 370 milli Becquerels per gram (mBq/g) (10 picocuries per gram (pCi/g)), and a volume of 143,288 m^3 (5,059,614 ft^3) of material with concentrations greater than 222 mBq/g (6 pCi/g). With the addition of stockpiled soils, (8071 m^3 (285,000 ft^3) of material moved on-site during the Adjacent Land Area Remediation project), the kriging estimate for the total volume of affected soil in the Retention Pond and Reserve Pond areas is 151,370 m^3 (5,345,000 ft^3). The thorium concentration for on-site material ranges from approximately 74 mBq/g to 15.4 Bq/g (2 pCi/g to 416 pCi/g) for Th-232 + Th-228.

In the DP, Kaiser identified the potential for radioactive material under concrete paved surfaces and building floor areas in the operations area. Subsequently, Kaiser submitted a report on additional site characterization activities conducted to identify radioactive material located beneath structures in the operations area (Ref. 4). Kaiser has determined that modifications of on-site buildings/structures during operations resulted in surface and subsurface soil contamination beneath concrete paved surfaces and building floor areas in the operations area. Residual radioactive material exists in the following areas: (1) Beneath a significant portion of the Flux Building structure; (2) beneath the northern portion of the concrete pad which was once used as a slag storage area; (3) beneath the north portion of the Crusher Building structure and the paved area north/northeast of the Crusher Building; (4) beneath the concrete paving area located west of the Maintenance Building; and (5) beneath a portion of the concrete area inside of the Warehouse Building. Kaiser estimates that approximately 1699 m^3 (60,000 ft^3) of material will be excavated during decommissioning activities in the former operational area.

The purpose of the proposed action is to reduce residual radioactivity at the Kaiser facility to a level that permits release of the property for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed action for decommissioning that ensures protection of the public health and safety of the environment.

The Proposed Action

Kaiser is proposing to remediate its facility to meet the unrestricted release criteria of 10 CFR Part 20, Subpart E, by identifying, excavating, and disposing material with Th-232 concentrations greater than 1151 mBq/g (31.1 pCi/g). Specifically, Kaiser proposes to conduct excavation activities in four phases:

Phase 1—remove material stockpiled from the adjacent land remediation. Materials from the existing stockpile will be transported to a new storage area and sorted. Materials above 1151 mBq/g (31.1 pCi/g) will be shipped to a disposal site licensed to receive the material.

Phase 2—excavate material from the former operational area and transport to the pond parcel. Material with Th-232 concentrations greater than 1151 mBq/g (31.1 pCi/g) will be segregated and shipped to a disposal site licensed to receive the material. Material below criteria will be placed in the pond parcel as backfill.

Phase 3—excavate and transport material from the reserve pond area to the stockpile area for processing. Material above 1151 mBq/g (31.1pCi/g) will be shipped to a disposal site licensed to receive the material. Below-criteria material will be returned to the excavation.

Phase 4—excavate material from the retention pond area and former spillway. Material will be transported to the stockpile area and processed/disposed as in previous phases. It is estimated that approximately 170,592 m^3 (6,028,000 ft^3) of material will be excavated during decommissioning activities. Of this volume, 33,984 m^3 (1,200,000 ft^3) will have Th-232 concentration greater than 1151 mBq/g (31.1 pCi/g), and will require off-site disposal.

A detailed discussion of the proposed decommissioning activities at the site is presented in Chapter 8 of the DP, and Chapter 8 of the DP Addendum.

Alternatives to the Proposed Action

The proposed remediation approach allows Kaiser to meet NRC's requirements for unrestricted release of the site, uses proven technology, and is protective of human health and the environment. However, there are two alternatives to the proposed action of excavating and disposing of above-criteria material at a licensed disposal facility; (1) To take no action, and (2) to excavate contaminated material such that the site would be suitable for restricted release. The no-action alternative is not acceptable because soil contains thorium at levels which would cause a dose exceeding NRC's limits presented in 10 CFR 20.1402 (25 mrem/yr (25mSv/yr) plus ALARA). Kaiser does not consider the restricted release alternative to be advantageous at this time for environmental, technical and economic reasons. Therefore, these alternatives are not considered further in this EA.

The Affected Environment and Environmental Impacts

The Kaiser facility is located at 7311 East 41st Street in Tulsa, Oklahoma. It is situated in Tulsa County, Oklahoma, about 5 miles southeast of the downtown center of the City of Tulsa. The site initially occupied approximately 23 acres of land on both sides of 41st Street. The remediation area is bounded by the south fence line, the freshwater pond embankment on the west, Fulton Creek ditch on the north, the east fence line, and the northern and western edges of the flux building and paved area. The areas to be remediated include a portion of the 4-acre operational area south of the railroad, and a large portion of the 14-acre pond parcel located north of the railroad. The pond parcel is divided into three parts—the unaffected freshwater pond to the west (approximately 4 acres), the affected retention pond/reserve pond area to the east (approximately 9 acres), and the area containing the flux building and paved area (approximately 1 acre).

Remediation of the Kaiser property could result in both radiological and non-radiological environmental impacts. Radiological environmental impacts that could result from the remediation of the facility include exposure, inhalation, and ingestion hazards to workers and the public. These hazards could occur during excavation, transport, or backfilling of the contaminated soil.

Potential radiological impacts during excavation and backfilling include: (1) Exposure; (2) inhalation and ingestion to workers; and (3) inhalation and ingestion to the public. Kaiser has committed to perform work activities in accordance with the Health & Safety Plan (HSP) (Chapter 10 of the DP), and the Environmental Health and Safety Plan (EHSP) (Appendix E of the DP).

Worker doses due to direct exposure to the contaminated soil are expected to be small. Site characterization revealed that 95 percent of the material contains less than 1850 Bq/kg (50 pCi/g) thorium. Since worker exposure time will be short, and thorium concentrations are relatively low, Kaiser estimates that doses due to direct contact with soil will be less than 1 millisievert per year (mSv/yr) [100 millirem per year (mrem/yr)].

Inhalation and ingestion impacts will be minimized to the workers and public by controlling airborne material levels.

Kaiser has determined that in order to reach 10 percent of the derived air concentration (DAC) limit, the soil must exceed 7.4 Bq/g (200 pCi/g) Th-232 + Th-228. Based on characterization information, Kaiser has a good database to identify where soil exceeds 7.4 Bq/g (200 pCi/g) Th-232 + Th-228. If the Th-232 + Th-228 is less than 7.4 Bq/g (200 pCi/g) soil, Kaiser will perform occasional air sampling near the dust source. If the soil exceeds 7.4 Bq/g (200 pCi/g) Th-232 + Th-228 where airborne dust from nearby soil might reach 0.1 DAC, Kaiser will perform continuous, stationary air sampling near the dust source while workers are present.

Air sampling will also be conducted at work area boundaries to evaluate off-site releases. Action will be taken if radioactivity levels exceed 50 percent of the regulatory limit at the work area boundary.

Kaiser's DP includes controls for keeping radiation exposures to workers, and the public, ''as low as is reasonably achievable'' (ALARA). These controls include implementing: (1) The HSP and EHSP; (2) radiation worker training; (3) a respiratory protection program; (4) safety work permit procedures; and (5) radioactive material storage and handling procedures. In addition, Kaiser presented an ALARA analysis (Chapter 7 of the DP) which compared dose and cost of the planned action with the cost benefits of incremental soil removal to further reduce the dose. The analysis demonstrates that removal of additional soil/dross is not cost beneficial.

The potential for radiological impacts during transportation is limited. Spillage during transportation is the only credible scenario for workers receiving a potential dose. Since any spills could be immediately recovered, doses due to direct exposure will be minimal. The potential exists for contaminated material to become airborne during loading, unloading, or as a result of accidental spills. In the DP, Kaiser commits to using a controlled material handling/processing/storage area to package waste for disposal. Packaging will include Department of Transportation and disposal facility approved containers. After packaging, waste will be transferred to a secured on-site storage area or loaded directly for shipping. Potential radiological impacts to workers and the public due to airborne material will be controlled as described above.

Potential radiological impacts resulting from the stockpiling of the contaminated soil on Kaiser property include doses to the public from airborne material and precipitation runoff. In the DP, Kaiser commits to minimize the spread of contamination by lining the stockpile area with a high density polyethylene liner, or equivalent. In addition, berms or ditches will be constructed at the stockpile perimeter to control precipitation falling on the stockpile. Kaiser has committed to minimize storm water contact with stockpiled soil. Contact may be minimized by: (1) Diverting water around remediation and stockpile areas; (2) covering stockpiles; or (3) performing work during dry season.

The potential for groundwater contamination at the site is minimal. Site characterization sampling at the site indicates that the vertical migration of the thorium is limited. Sampling revealed that thorium concentrations dropped quickly in undisturbed soil.

Potential non-radiological impacts include; increased traffic from transportation of waste, esthetic degradation, and economic impacts. Waste will be transported by either rail or truck. Kaiser estimates that approximately 33,984 m^3 (1,200,000 ft^3) of material will be generated for off-site disposal. This volume of material will require less than 1000 rail cars, which will be spread over a three year time period. Therefore, the impact from transportation should be insignificant.

The Kaiser facility is located in an area which is completely developed with no pre-settlement vegetation existing. Land use within a one mile radius from the site is a mixture of commercial, industrial, and residential. Commercial or industrial properties in the area include Union Pacific Railroad (right-of-way), Specific Systems, Beejay Inc., Smalley Equipment, and Red Man. Kaiser has committed to restore the site following remediation. Restoration will include; placement of vegetative cover, seeding and mulching, permanent surface water controls, and permanent erosion and sedimentation controls. U.S. Fish and Wildlife Service has determined that the proposed action will not have an adverse impact on threatened and endangered species. The Oklahoma Historical Society informed Kaiser that there are no historic properties affected by the project. The Oklahoma Archeological Survey has stated that no archeological sites are listed as occurring within the project area and no archeological materials are likely to be encountered. Further, the Creek Nation of Oklahoma informed Kaiser, that there are no religious or sacred sites within the project area that will be affected by the undertaking of this project. Therefore, the esthetic impact from decommissioning activities should be insignificant.

The residential population within a 3 km (1.9 miles) radius of the site is approximately 24,000. Additionally, in 1990, there were approximately 3500 business entities with in the same area. The facility lies within two separate zones; the Industrial Moderate District and Industrial Light District. Zoning within the vicinity of the facility is not expected to change. According to Chapter 15.0 of the DP, less than 15 workers will be required to perform decommissioning activities. Due to the small number of workers required for decommissioning, and the short duration of the project, this effort should have minimal socioeconomic impact on the community.

Air quality and noise impacts will result from excavation and transport of waste. Kaiser will use appropriate dust control measures during excavation. These activities will be sporadic in nature and relatively short in duration; and, therefore, will have minimal impact on the surrounding community and environment.

NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Consulted

NRC staff provided a draft of the EA to Oklahoma Department of Environmental Quality (ODEQ) for review. By facsimile dated May 30, 2003, ODEQ informed NRC that it had no comments on the draft EA.

NRC contacted the U.S. Fish and Wildlife Service to ensure that the proposed action will not have an adverse impact on threatened and endangered species. Mr. Ken Frazier informed the NRC on April 16, 2003, that the proposed action will have no impact on threatened and endangered species.

Prior to approval of the Kaiser Phase 1 DP, NRC contacted the Oklahoma Historical Society to determine if the proposed action would have any adverse impacts on sacred or historical properties near the Kaiser site. The Oklahoma Historical Society informed Kaiser, by letter dated August 31, 1999, that there are no historic properties affected by the project.

The Oklahoma Archeological Survey informed NRC, by letter dated August 6, 1999, that no archeological sites are listed as occurring within the project area and no archeological materials are likely to be encountered.

The Creek Nation of Oklahoma informed Kaiser, by letter dated August 5, 1999, that there are no religious or sacred sites within the project area that will be affected by the undertaking of this project.

Conclusions

Kaiser has committed to perform remediation activities in accordance with an acceptable DP. NRC staff believes the DP provides adequate controls to keep potential doses to workers and the public from direct exposure, airborne material, and released effluents, ALARA.

NRC staff also believes that the remediation alternative proposed by Kaiser minimizes the potential dose to members of the public, and other environmental impacts. Potential doses to members of the public will be minimized by removing contaminated soil from Kaiser property and making the site suitable for unrestricted release. The proposed remediation alternative also minimizes the potential environmental impacts. Kaiser will excavate and dispose of soil with Th-232 concentrations greater than 1151 mBq/g (31.1 pCi/g), thereby removing a significant source of contamination from the local environment. Therefore, the potential environmental impact from the proposed action is insignificant.

List of Preparers

John Buckley, Project Manager, Division of Waste Management
J.C. Dehmel, Health Physicist, Division of Waste Management
Adrienne Lester, Environmental Scientist, Division of Waste Management

References

1. Kaiser Aluminum and Chemical Corporation, ''Decommissioning Plan,'' June 2001.
2. Kaiser Aluminum and Chemical Corporation, ''Decommissioning Plan Addendum,'' May 2002.
3. Advanced Recovery Systems/Nuclear Fuel Services, Inc., Kaiser Aluminum Specialty Products, ''Field Characterization Report,'' April 18, 1995.
4. Kaiser Aluminum and Chemical Corporation, ''Additional Site Characterization Activities,'' November 2001.
5. NRC, Branch Technical Position, ''Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations,'' 1981.

III. Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared this EA related to the approval of Kaiser's DP. On the basis of this EA, NRC staff has concluded that there are no significant environmental impacts on the quality of the human environment. Accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

The licensee's request for the proposed action and other related documents to this proposed action are available for public inspection and copying for a fee at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents, along with most others referenced in the EA, are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.*

Any questions with respect to this action should be referred to John Buckley, Decommissioning Branch, Mailstop T–7F19, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 30th day of May, 2003.

For the Nuclear Regulatory Commission,

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–14397 Filed 6–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Meeting

The ACNW will hold a Planning and Procedures meeting on June 24, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 24, 2003—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: June 2, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–14399 Filed 6–6–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27683]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 2, 2003.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2003 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the

matter. After June 27, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp. et al. (70–10122)

FirstEnergy Corp. (''FirstEnergy''), a registered holding company, its utility subsidiaries: Ohio Edison Company (''Ohio Edison''), American Transmission Systems, Incorporated (''ATSI''), The Cleveland Electric Illuminating Company (''Cleveland Electric''), The Toledo Edison Company (''Toledo Edison''), Pennsylvania Power Company (''Penn Power''), Northeast Ohio Natural Gas Corp. (''NONGC''), Jersey Central Power & Light Company (''JCP&L''), Pennsylvania Electric Company (''Penelec''), Metropolitan Edison Company (''Met-Ed''), York Haven Power Company (''York Haven''), and Waverly Electric Power & Light Company (''Waverly Electric''), and their respective subsidiaries; and FirstEnergy's nonutility subsidiaries: FE Acquisition Corp. (''FE Acquisition''), FirstEnergy Properties, Inc. (''FE Properties''), FirstEnergy Facilities Services Group, LLC (''FEFSG''), FE Holdings, LLC (''FE Holdings''), FELHC, Inc. (''FELHC''), FirstEnergy Securities Transfer Company (''FirstEnergy Transfer''), FirstEnergy Nuclear Operating Company (''FENOC''), FirstEnergy Solutions Corp. (''FirstEnergy Solutions''), FirstEnergy Generation Corp. (''GenCo''), FirstEnergy Ventures Corp. (''FirstEnergy Ventures''), MARBEL Energy Corporation (''MARBEL''), Centerior Indemnity Trust (''CIT''), Centerior Service Company (''Centerior Service''), FirstEnergy Service Company (''ServeCo''), GPU Capital, Inc. (''GPU Capital''), GPU Electric, Inc. (''GPU Electric''), GPU Diversified Holdings, LLC (''GPUDH''), GPU EnerTech Holdings, Inc. (''GPU EnerTech''), GPU Power, Inc. (''GPU Power''), GPU Advanced Resources, Inc. (''GPUAR''), GPU Telcom Services, Inc. (''GPU Telcom''), GPU Nuclear, Inc. (''GPU Nuclear''), and MYR Group, Inc. (''MYR''), and their respective subsidiaries; all based at 76 South Main Street, Akron, Ohio, 44308; (collectively, ''Applicants''), have filed an application-declaration, as amended (''Application''), under sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act and rules 26(c), 42, 43, 45, 46, 53, 54, and 80–92 under the Act.

Applicants request authority to engage in various financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued in this proceeding and ending December 31, 2005 (''Authorization Period'').

I. Introduction

FirstEnergy is authorized under its Amended Articles of Incorporation to issue 375,000,000 shares of common stock, par value $.10 per share (''Common Stock''), of which 297,636,276 shares were issued and outstanding as of March 24, 2003. FirstEnergy is also authorized under its Amended Articles of Incorporation to issue 5,000,000 shares of preferred stock, par value $100 per share (''Preferred Stock''), of which none are currently issued and outstanding. In addition, at December 31, 2002, FirstEnergy had outstanding $4,300,000,000 principal amount of senior unsecured notes having various maturity dates through 2032, and $395 million of unsecured borrowings under a $500 million revolving credit facility that expires in November 2004.

FirstEnergy's senior unsecured debt is currently rated BBB-by Standard & Poor's Inc. (''S&P'') and Baa2 by Moody's Investor Service (''Moody's''). For the twelve months ended December 31, 2002, FirstEnergy had total operating revenues of $12,151,997,000, of which $9,165,805,000 (75.4%) were derived from electric utility operations and $2,986,192,000 (24.6%) from unregulated businesses. At December 31, 2002, FirstEnergy had total consolidated assets of $33,580,773,000, including net utility plant of $11,820,797,000.

FirstEnergy's electric and gas utility subsidiaries are referred to collectively as the ''Utility Subsidiaries.'' Ohio Edison, Cleveland Electric, Toledo Edison, JCP&L, Penelec, Penn Power and Met-Ed are sometimes referred to in the Application as the ''Primary Utility Subsidiaries.'' As used in this Application, the term ''Nonutility Subsidiaries'' includes the nonutility subsidiaries named above and their respective subsidiaries, as well as any other nonutility company later acquired or formed, directly or indirectly, by FirstEnergy under rule 58 or pursuant to an order of the Commission (including the order approving this Application). The Utility Subsidiaries and Nonutility Subsidiaries are referred to collectively as the ''Subsidiaries.'' FirstEnergy and the Subsidiaries are referred to collectively as the ''Applicants.''

II. Current and Requested Financing Authority

By order dated October 29, 2001, in File No. 70–9793 (Holding Co. Act Release No. 27459), as supplemented by supplemental orders dated November 8, 2001 (Holding Co. Act Release No. 27463) and December 23, 2002 (Holding Co. Act Release No. 27628) (as so supplemented, the ''Merger Order''), the Commission authorized the merger between FirstEnergy Corp. (''FirstEnergy''), and GPU, Inc. (''GPU''). The merger became effective on November 7, 2001, with FirstEnergy as the surviving entity, and FirstEnergy registered under the Act as a holding company on the same day. The Merger Order also authorized FirstEnergy and its subsidiaries to engage in a program of external financing, intrasystem financing, and other related transactions for the period through and including June 30, 2003.

In the Merger Order, the Commission authorized, through June 30, 2003, among other things:

(i) FirstEnergy to issue and sell common stock, preferred securities, long-term debt, short-term debt and other securities;

(ii) FirstEnergy to issue one purchase right (a ''Right'') together with each share of common stock issued in accordance with FirstEnergy's existing Rights Agreement (''Rights Agreement'');

(iii) FirstEnergy to issue shares of common stock under its dividend reinvestment and stock-based management incentive and employee benefit plans (''Stock Plans'');

(iv) FirstEnergy to enter into and perform interest rate hedging transactions (''Hedge Instruments'') to manage volatility of interest rates associated with its outstanding indebtedness and with respect to anticipated debt offerings (''Anticipatory Hedges'') (collectively, ''Hedging Transactions'');

(v) ATSI and NONGC to issue and sell additional debt or preferred securities on the same terms and conditions as FirstEnergy;

(vi) the Utility Subsidiaries to enter into Hedge Instruments and Anticipatory Hedges subject to the same limitations as FirstEnergy;

(vii) FirstEnergy to issue guarantees and provide other forms of credit support with respect to obligations of its Subsidiaries (''FirstEnergy Guarantees'') and Nonutility Subsidiaries (''Nonutility Subsidiary Guarantees'');

(viii) FirstEnergy to establish and fund a money pool (''Utility Money Pool'') for the Utility Subsidiaries and the Utility Subsidiaries to make borrowings and extend credit to each other through the Utility Money Pool;

(ix) FirstEnergy to establish and fund a separate money pool (''Nonutility Money Pool'') for the benefit of the Nonutility Subsidiaries;

(x) FirstEnergy and the Nonutility Subsidiaries to make loans to less than wholly-owned Nonutility Subsidiaries;

(xi) Applicants to acquire, directly or indirectly, the equity securities of one or more entities (''Financing Subsidiaries'') created specifically for the purpose of facilitating the financing of authorized and exempt activities of the Applicants and to provide guarantees and enter into expense agreements with respect to the securities or other obligations of Financing Subsidiaries;

(xii) Applicants to organize and acquire the securities of one or more first-tier subsidiary companies (''Nonutility Holding Companies'') to act as holding companies for nonutility investments and to engage in internal reorganization transactions involving transfers of nonutility assets and Nonutility Subsidiaries to Nonutility Holding Companies;

(xiii) Applicants to change the capitalization of FirstEnergy's 50% or more owned Subsidiaries;

(xiv) FirstEnergy and certain of the Utility Subsidiaries to declare and pay dividends out of capital and unearned surplus and the Nonutility Subsidiaries to declare and pay dividends out of capital and unearned surplus;

(xv) Applicants to acquire, directly or indirectly, the securities of one or more companies (''Intermediate Subsidiaries'') to acquire, hold and/or finance the acquisition of securities of or other interests in one or more exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs''), ''exempt telecommunications companies'' (''ETCs''), energy-related companies under rule 58 (''Rule 58 Subsidiaries''), and other Nonutility Subsidiaries, and such Intermediate Subsidiaries are authorized to engage in preliminary development activities and administrative activities;

(xvi) Certain Nonutility Subsidiaries (referred to as ''Energy Related Companies'') to engage in energy management and consulting activities anywhere outside the United States and energy marketing and related activities in Canada and Mexico;

(xvii) FE ServCo, GPU ServCo and the Nonutility Subsidiaries to sell goods and services to associate companies at market prices in certain specified circumstances; and

(xviii) FEFSG to provide maintenance and repair services to FirstEnergy's pre-merger Utility Subsidiaries (*i.e.*, Ohio Edison, Toledo Edison, Cleveland Electric, Penn Power, NONGC and ATSI) at market prices (the ''At-Market Service Arrangements'').

In addition, by orders dated May 21, 2001 (Holding Co. Act Release No. 27401), May 2, 2001 (Holding Co. Act Release No. 27391), December 15, 2000 (Holding Co. Act Release No. 27302), June 22, 1999 (Holding Co. Act Release No. 26544), December 22, 1997 (Holding Co. Act Release No. 26801) and July 17, 1996 (Holding Co. Act Release No. 26544) in File No. 70–7926 (collectively, the ''Prior GPU Order''), JCP&L, Met-Ed and Penelec are currently authorized to issue and sell from time to time through December 31, 2003, commercial paper and other forms of short-term indebtedness having maturities of not more than nine months, and to provide security for such indebtedness.

Applicants state that the authority sought in the Application will supersede and replace the current authorization of the Applicants under the Merger Order and Prior GPU Order to engage in the financing activities and related transaction described above.

IV. Financing Conditions

Applicants' effective cost of money on new long-term debt securities having maturities of one year or more up to fifty years (''Long-term Debt'') of any series will not exceed at the time of issuance the greater of: (1) 500 basis points over the yield to maturity of a U.S. Treasury Security having a remaining term approximately equal to the term of such series of Long-term Debt or; (2) a gross spread over a U.S. Treasury Security that is consistent with similar securities of comparable credit quality and maturities issued by other companies. Applicants' dividend or distribution rate on any series of Preferred Stock and other forms of preferred securities (including trust preferred securities) (collectively, ''Preferred Securities'') will not exceed at the time of issuance the greater of: (1) 500 basis points over the yield to maturity of a U.S. Treasury Security having a remaining term equal to the term of such series of Preferred Securities or; (2) a rate that is consistent with similar securities of comparable credit quality and maturities (or perpetual preferred stock) issued by other companies. The effective cost of money on commercial paper, promissory notes and other forms of short-term indebtedness having maturities of less than one year (''Short-term Debt'') will not exceed the greater of: (1) 500 basis points over the comparable term London Interbank Offered Rate (''LIBOR''); or (2) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. All debt issued by FirstEnergy will be unsecured. Debt issued by any Utility Subsidiary in accordance with the authorization sought in this Application may be secured or unsecured. The maturity of any series of Long-term Debt will not exceed 50 years. All series of Preferred Securities (other than Preferred Stock, which may be perpetual) will be redeemed no later than 50 years after their issuance. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security under the Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including financing, in part, of the capital expenditures of FirstEnergy and its Subsidiaries, financing of working capital requirements of FirstEnergy and its Subsidiaries, the acquisition, retirement or redemption under rule 42 of securities previously issued by FirstEnergy or its Subsidiaries, and other lawful purposes, including direct or indirect investments in EWGs, FUCOs, ETCs, Rule 58 Subsidiaries, Energy Related Companies or other businesses approved by the Commission.

In addition, financings by each Applicant will be subject to the following conditions: (1) FirstEnergy will maintain common equity as a percentage of consolidated capitalization (as reflected on the balance sheets contained in its most recent Form 10-K or Form 10-Q filed with the Commission pursuant to the Securities Exchange Act of 1934 (''1934 Act''), and including short-term debt and current maturities of long-term debt) at 30% or higher at all times during the Authorization Period; (2) each Primary Utility Subsidiary will maintain common equity as a percentage of consolidated capitalization (determined in the same manner specified above) at 30% or higher during the Authorization Period.

The consequence of failing to maintain common equity of at least 30% of consolidated capitalization when required is that FirstEnergy and its Subsidiaries (or if such failure were only by a Primary Utility Subsidiary, such company) would not be authorized to issue securities in a transaction subject to Commission approval except for securities which would result in an increase in such common equity percentage. FirstEnergy requests that the Commission reserve jurisdiction over the issuance of securities in those circumstances where FirstEnergy or a

Primary Utility Subsidiary does not comply with the 30% common equity criteria, pending completion of the record upon filing of a post-effective amendment.

Applicants further represent that, except for securities issued for the purpose of funding money pool operations, no guarantees or other securities, other than Common Stock, may be issued in reliance upon the authorization granted by the Commission pursuant to this Application, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of the top level registered holding company that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 1934 Act. Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

III. FirstEnergy External Financing

FirstEnergy requests authority to increase its capitalization by issuing and selling from time to time during the Authorization Period, directly or indirectly through one or more Financing Subsidiaries: (1) Additional Common Stock and/or options, warrants, equity-linked securities or stock purchase contracts convertible into or exercisable for Common Stock, (2) Preferred Stock (3) Long-term Debt, and (4) Short-term Debt in an aggregate amount not to exceed $4.5 billion (excluding securities issued for purposes of refunding or replacing other outstanding securities where FirstEnergy's capitalization is not increased as a result) (''External Financing Limit''), provided that the aggregate amount of Short-term Debt at any time outstanding shall not exceed $1.5 billion. All securities issued by FirstEnergy in accordance with the authorization requested herein, including, without limitation, securities issued for the purpose of refunding or retiring outstanding securities, will comply with the applicable financing parameters set forth above. In addition, FirstEnergy seeks the flexibility to enter into certain hedging transactions to manage interest rate risk associated with indebtedness.

A. Common Stock

FirstEnergy proposes to issue and sell Common Stock or options, warrants, equity-linked securities or other stock purchase rights exercisable for Common Stock. Common Stock financings may be effected in accord with underwriting agreements of a type generally standard in the industry. Public distributions may be made through private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such Common Stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

FirstEnergy may sell Common Stock covered by this Application in any one of the following ways: (1) Through underwriters or dealers; (2) through agents; (3) directly to a limited number of purchasers or a single purchaser; or (4) directly to employees (or to trusts established for their benefit), shareholders and others through Stock Plans.

Under rule 58 and sections 32, 33 and 34 of the Act, FirstEnergy is or will be authorized to acquire securities of companies engaged in functionally related businesses, Rule 58 Subsidiaries, EWGs, FUCOs, ETCs and, to the extent approved in this proceeding, Energy Related Companies. In connection with any of these transactions, FirstEnergy may conclude that it would be advantageous for tax or other reasons to issue shares of Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock as consideration for the equity securities or assets of other companies to be acquired, provided that the acquisition of any such equity securities or assets has been authorized in this proceeding or in a separate proceeding or is exempt under the Act or the rules under the Act.

Under the Merger Order, the Commission authorized FirstEnergy to implement the terms of a Rights Agreement, dated as of November 18, 1997, between FirstEnergy and The Bank of New York, as rights agent (''Rights Agreement''). Under the Rights Agreement, FirstEnergy assigned one Right for each outstanding share of Common Stock. The Rights expire on November 28, 2007. Each Right entitles the registered holder of the associated share of Common Stock to purchase from FirstEnergy one share of Common Stock at a price of $70 per share (the ''Purchase Price'') when the Rights become exercisable, subject to adjustment following certain specified takeover events such that a holder of a Right (other than any ''Acquiring Persons,'' as defined in the Rights Agreement) would have the right to receive, upon exercise thereof, shares of Common Stock having a current value equal to double the Purchase Price. FirstEnergy requests a continuation through the Authorization Period of its authority under the Merger Order to implement the Rights Agreement. Any shares of Common Stock issued upon exercise of the Rights will not be counted against the External Financing Limit.

B. Preferred Securities

Applicants request authorization during the Authorization Period to issue Preferred Stock or other types of Preferred Securities (including, without limitation, trust preferred securities or monthly income preferred securities) directly or indirectly through one or more special-purpose Financing Subsidiaries organized by FirstEnergy. Preferred Stock or other types of Preferred Securities may be issued in one or more series with such rights, preferences and priorities as may be designated in the instrument creating each such series, as determined by FirstEnergy's Board of Directors. Dividends or distributions on Preferred Securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred Securities may be convertible or exchangeable into shares of FirstEnergy Common Stock or indebtedness. Preferred Securities may be sold directly through underwriters or dealers in connection with an acquisition.

C. Long-Term Debt

Applicants request authority to issue Long-term Debt directly by FirstEnergy or indirectly through one or more Financing Subsidiaries organized by FirstEnergy in the form of bonds, notes, medium-term notes or debentures under one or more indentures (each, the ''FirstEnergy Indenture'') or long-term indebtedness under agreements with banks or other institutional lenders. Each series of Long-term Debt would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the

same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as FirstEnergy may determine at the time of issuance. Any Long-term Debt (a) may be convertible into any other securities of FirstEnergy, (b) will have maturities ranging from one to 50 years, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (d) may be entitled to mandatory or optional sinking fund provisions, (e) may provide for reset of the coupon under a remarketing arrangement, (f) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (g) may be called from existing investors by a third party and (h) may be entitled to the benefit of affirmative or negative financial or other covenants.

D. Short-Term Debt

FirstEnergy seeks authority to issue additional Short-term Debt in the form of commercial paper, promissory notes and/or other forms of short-term indebtedness in an aggregate principal amount at any time outstanding not to exceed $1.5 billion.

FirstEnergy proposes to establish from time to time new committed bank lines of credit, provided that only the principal amount of any borrowings outstanding under these new committed bank lines of credit will be counted against the proposed Short-term Debt limit. Credit lines may be set up for use by FirstEnergy for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. FirstEnergy will borrow and repay under these lines of credit, from time to time, as it is deemed appropriate or necessary. All borrowings under these credit lines will mature in less than one year. FirstEnergy may also engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

FirstEnergy may also sell commercial paper in established domestic or European commercial paper markets, from time to time, and this commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from FirstEnergy will reoffer such paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

E. Hedging Transactions

1. Interest Rate Hedges

FirstEnergy requests a continuation of its authority to enter into and perform Hedge Instruments in order to reduce or manage the volatility of interest rates on its or its Subsidiaries' outstanding indebtedness, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedge Instruments may also include issuance of structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or Agency (*e.g.,* FNMA) obligations or LIBOR-based swap instruments. The transactions would be for fixed periods and stated notional amounts. FirstEnergy would employ Hedge Instruments as a means of prudently managing the risk associated with any of its or its Subsidiaries' outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. In no case will the notional principal amount of any interest rate swap exceed the greater of the value of the underlying debt instrument or the present market value of the underlying debt instrument and related interest rate exposure. Each Hedge Instrument will be entered into for a fixed or determinable period. Thus, FirstEnergy will not engage in speculative transactions. FirstEnergy will only enter into agreements with counterparties (''Approved Counterparties'') whose senior debt ratings, as published by a national recognized rating agency, are greater than or equal to ''BBB,'' or an equivalent rating.

2. Anticipatory Hedges

In addition, FirstEnergy requests authorization to enter into and perform Anticipatory Hedges with respect to its or its Subsidiaries' anticipated debt offerings, subject to certain limitations and restrictions. These Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded Hedge Instruments (a ''Forward Sale''), (2) the purchase of put options on Hedge Instruments (a ''Put Options Purchase''), (3) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a ''Zero Cost Collar''), (4) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. FirstEnergy or the appropriate Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. FirstEnergy or the appropriate Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

FirstEnergy will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivative Instruments and Hedging Activities'') and SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or such other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Hedge Instruments and Anticipatory Hedges approved hereunder will qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date such Hedge Instruments or Anticipatory Hedges are entered into. FirstEnergy also requests authority to enter into Hedge Instruments and Anticipatory Hedges which do not qualify for hedge accounting treatment by the FASB, and requests that the Commission reserve jurisdiction on this request until the record is complete.

V. Utility Subsidiary Financing

JCP&L, Penn Power, Penelec, Met-Ed, ATSI and NONGC will rely on rule 52 for all securities issuances except for the issuance of short-term debt securities, which is exempt from approval in the applicable states and therefore is subject to Commission approval under the Act. As previously indicated, JCP&L, Penelec and Met-Ed are currently authorized under the Prior GPU Order to issue and sell short-term indebtedness from time to time through December 31, 2003.[1] In this proceeding, JCP&L, Penelec and Met-Ed are requesting authority to increase and extend their current authorization to issue short-term debt securities through the Authorization Period.

Specifically, JCP&L, Penn Power, Met-Ed, Penelec, ATSI and NONGC propose to issue and sell Short-term Debt in the form of commercial paper, promissory notes and/or other forms of short-term indebtedness in an aggregate principal amount at any time outstanding not to exceed (i) in the case of JCP&L and Penn Power, the limitation on short-term indebtedness contained in their respective charters ($428 million and $50 million, respectively, as of December 31, 2002), (ii) $250 million in the case of each of Penelec and Met-Ed, (iii) $500 million in the case of ATSI, and (iv) $20 million in the case of NONGC. Commercial paper may be sold to dealers in established domestic or European commercial paper markets from time to time in the manner described above. In addition, JCP&L, Penn Power, Penelec, Met-Ed, ATSI and NONGC may establish and renew from time to time committed bank lines of credit, and engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as they deem appropriate in light of their needs and market conditions at the time of borrowing. All Short-term Debt issued by JCP&L, Penn Power, Penelec, Met-Ed, ATSI and NONGC will comply with the parameters for Short-term Debt set forth above.

To the extent not exempt under rule 52, the Utility Subsidiaries request authority to enter into and perform Hedge Instruments and Anticipatory Hedges subject to the limitations and requirements applicable to FirstEnergy described above.

[1] York Haven and Waverly Electric will continue to obtain financing through intercompany borrowings from their parent corporations or otherwise through the Utility Money Pool and likely will not engage in third-party financing.

VI. Guarantees and Intrasystem Money Pools

A. Guarantees

FirstEnergy requests a continuation of its current authorization to provide FirstEnergy Guarantees with respect to the obligations of its Subsidiaries as may be appropriate or necessary to enable the Subsidiaries to carry on in the ordinary course of their respective businesses, including guarantees of non-affiliated third-party obligations in the ordinary course of FirstEnergy's business, in an aggregate amount that together with Nonutility Subsidiary Guarantees, shall not exceed $4.0 billion (''Guarantee Limit'') outstanding at any one time, including obligations exempt under rule 45 and guarantees and other forms of credit support provided by FirstEnergy or any Nonutility Subsidiary that are outstanding on the effective date of the order issued in this proceeding. FirstEnergy requests that the Commission reserve jurisdiction over the issuance of guarantees for the benefit of non-affiliated third parties.

In addition to guarantees that may be provided by FirstEnergy, the Nonutility Subsidiaries request authority during the Authorization Period to provide to other Nonutility Subsidiaries guarantees and other forms of credit support (''Nonutility Subsidiary Guarantees''). The Nonutility Subsidiary Guarantees, together with FirstEnergy Guarantees, will not exceed the Guarantee Limit outstanding at any one time. The Nonutility Subsidiary providing any such credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above. Any guarantees or other credit support arrangements outstanding at the end of the Authorization Period will remain in place and expire or terminate in accordance with their terms.

B. Money Pools

FirstEnergy and the Utility Subsidiaries request authorization to continue to maintain and fund the Utility Money Pool, and the Utility Subsidiaries, to the extent not exempt by rule 52, also request authorization to make unsecured short-term borrowings from the Utility Money Pool and to contribute surplus funds to the Utility Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. No loans through the Utility Money Pool may be made to, and no borrowings through the Utility Money Pool may be made by, FirstEnergy.

In addition, FirstEnergy and the remaining Subsidiaries, all of which are Nonutility Subsidiaries, request authorization to continue to maintain and fund the Nonutility Money Pool. Borrowings and extensions of credit under the Nonutility Money Pool by the Nonutility Subsidiaries are exempt from the prior approval requirements of the Act under rules 45(b) and 52. To the extent not exempt under rules 45(b) and 52, FirstEnergy is requesting authorization to contribute surplus funds and to lend and extend credit to (i) the Utility Subsidiaries through the Utility Money Pool and (ii) the Nonutility Subsidiaries through the Nonutility Money Pool.

Under the Utility Money Pool agreement, short-term funds are available from the following sources for short-term loans to the Utility Subsidiaries from time to time: (1) surplus funds in the treasuries of Utility Money Pool participants other than FirstEnergy; (2) surplus funds in the treasury of FirstEnergy (funds in clauses (1) and (2) being referred to as ''Internal Funds''); and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by FirstEnergy or the Utility Subsidiaries for loan to the Utility Money Pool (such funds being referred to as ''External Funds''). Utility Money Pool participants that borrow would borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (*e.g.*, if there are External Funds as well as Internal Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool. ATSI, NONGC, Waverly Electric and York Haven each requests authorization to borrow up to $50 million at any time outstanding under the Utility Money Pool.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by Utility Subsidiaries for all loans of such Internal Funds will be the greater of the 30-day LIBOR rate as quoted in *The Wall Street Journal* or the money market rate that a lending participant could have obtained if it placed its excess cash in such an investment.

If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of such External Funds would be equal to the lending company's cost for such External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for such External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such ''blended'' funds would be a composite rate equal to the weighted average of (a) the cost of all Internal Funds contributed by Utility Money Pool participants (as determined pursuant to the second-preceding paragraph above) and (b) the cost of all such External Funds (as determined pursuant to the immediately preceding paragraph above). In circumstances where Internal Funds and External Funds are available for loans through the Utility Money Pool, loans may be made exclusively from Internal Funds or External Funds, rather than from a ''blend'' of such funds, to the extent it is expected that such loans would result in a lower cost of borrowings.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than ''A'' by a nationally recognized rating agency; (iv) commercial paper rated not less than ''A–1'' or ''P–1'' or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; and (viii) such other investments as are permitted by section 9(c) of the Act and rule 40 under the Act.

The Nonutility Money Pool is operated on the same terms and conditions as the Utility Money Pool, except that FirstEnergy funds made available to the two money pools are made available to the Utility Money Pool first and thereafter to the Nonutility Money Pool. Under the Nonutility Money Pool agreement, no loans may be made to, and no borrowings may be made by, FirstEnergy. All contributions to, and borrowings from, the Nonutility Money Pool are exempt pursuant to the terms of rule 52 under the Act.

Under the Merger Order, all existing Nonutility Subsidiaries of FirstEnergy and GPU at the time of the merger were authorized to participate in the Nonutility Money Pool.

VII. Other Borrowings

In the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly owned by FirstEnergy, directly or indirectly, authority is requested under the Act for FirstEnergy or a Nonutility Subsidiary, as the case may be, to make such loans to such Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a less than wholly-owned Nonutility Subsidiary, such company will not sell any services to any associate Nonutility Subsidiary unless such purchasing company falls within one of the categories of companies to which goods and services may be sold on a basis other than ''at cost'' as described in the Application.

VIII. Other Transactions

A. Financing Subsidiaries

FirstEnergy and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries. Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of FirstEnergy and the Subsidiaries through the issuance of Long-term Debt or Preferred Securities, to third parties and the transfer of the proceeds of such financings to FirstEnergy or these Subsidiaries.

FirstEnergy and, to the extent not exempt under rule 52, Subsidiaries also request authorization to issue their subordinated unsecured notes (''Subordinated Notes'') to any Financing Subsidiary to evidence the loan of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on any such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary in respect of which the Subordinated Note is issued.

FirstEnergy or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of any such Financing Subsidiaries. Subsidiaries may also provide guarantees and enter into support or expense agreements, if required, on behalf of Financing Subsidiaries. The guarantees of securities issued by Financing Subsidiaries shall not be counted against the Guarantee Limit. The amount of securities issued by any Financing Subsidiary to third parties in accordance with the authorization requested in this Application will be included in the overall external financing limitation, if any, authorized for the immediate parent company of such Financing Subsidiary. However, the amount of Subordinated Notes issued by a parent company to its Financing Subsidiary will not be counted against such external financing limitation. Securities issued by any Financing Subsidiary to third parties shall be exempt under rule 52 (and therefore reportable on Form U–6B–2) only if such securities, if issued directly by the parent company of the Financing Subsidiary, would be exempt under rule 52.

B. Nonutility Subsidiary Reorganizations

FirstEnergy requests authority, to the extent needed, to sell or otherwise transfer (i) nonutility businesses, (ii) the securities of current Subsidiaries engaged in some or all of these nonutility businesses or (iii) investments which do not involve a Subsidiary (*i.e.*, less than 10% voting interest) to a Nonutility Holding Company or a Subsidiary of Nonutility Holding Company, and, to the extent approval is required, such Nonutility Holding Company or any such Subsidiary of a Nonutility Holding Company requests authority to acquire the assets of such businesses, securities or other investment interests. Alternatively, transfers of such securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of such securities or assets to the receiving entity.[2]

Following its direct or indirect acquisition of the securities of new Nonutility Subsidiaries, FirstEnergy may determine to transfer such

[2] The transactions proposed will not involve the sale or other disposition of any utility assets of the Utility Subsidiaries and will not involve any corporate reorganization involving the Utility Subsidiaries. The approval sought also does not extend to the acquisitions of any new businesses or activities.

securities or the assets of such Nonutility Subsidiaries and/or Nonutility Subsidiaries existing as of the date of the Merger, to other direct or indirect Nonutility Subsidiaries or to liquidate or merge Nonutility Subsidiaries. FirstEnergy requests authority to engage in these transactions, to the extent that they are not exempt under the Act, through the Authorization Period.

C. Changes in Capital Stock of Majority Owned Subsidiaries

Applicants state that proposed sales of capital securities (*i.e.*, common stock or Preferred Stock) may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. Therefore, Applicants request authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by FirstEnergy or other intermediate parent company; provided that the consents of all other shareholders have been obtained for the proposed change. This request for authorization is limited to FirstEnergy's 50% or more owned Subsidiaries and will not affect the aggregate limits or other conditions contained in this Application. A Subsidiary would be able to change the par value, or change between par value and no-par stock, or change the form of such equity from common stock to limited partnership or limited liability company interests or similar instruments, or from such instruments to common stock, without additional Commission approval. Any such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. FirstEnergy will be subject to all applicable laws regarding the fiduciary duty of fairness of a majority shareholder to minority shareholders in any such 50% or more owned Subsidiary and will undertake to ensure that any change implemented under this paragraph is consistent with such legal requirements.

D. Payment of Dividends

FirstEnergy also proposes, on behalf of every direct or indirect Nonutility Subsidiary, that such companies be permitted to pay dividends with respect to the securities of such companies and/or acquire, retire or redeem any securities of such companies that are held by an associate company or affiliate, from time to time, through the Authorization Period, out of capital or unearned surplus, to the extent permitted under applicable corporate law. Without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend and/or acquire, retire or redeem any security of such company held by any associate company or affiliate out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries.

E. EWGs and FUCOs

Under the Merger Order, FirstEnergy was authorized to utilize the proceeds of authorized financing to increase its ''aggregate investment'' in EWGs and FUCOs to $5 billion, which includes FirstEnergy's and GPU's investments in EWGs and FUCOs at the time of the merger (''Current Investment'') and amounts relating to certain facilities owned by Ohio Edison, Cleveland Electric, Toledo Edison, and Penn Power that may be transferred to EWGs (''GenCo Investments''). FirstEnergy committed that, during the authorization period under the Merger Order, new investments in EWGs and FUCOs would not exceed $1.5 billion and requested the Commission to reserve jurisdiction over an ''aggregate investment'' in EWGs and FUCOs, other than Current Investment and GenCo Investments, in an amount over $1.5 billion (''Other Investments''). FirstEnergy is requesting a continuation, without change, of these limitations through the Authorization Period as applied to utilization of proceeds of financing authorized in this proceeding. FirstEnergy requests that the Commission continue to reserve jurisdiction over Other Investments that exceed such $1.5 billion amount.

F. Stock and Incentive Plans

FirstEnergy proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or by some other method which complies with applicable law and Commission interpretations then in effect for the purpose of reissuance up to 30 million additional shares of Common Stock under the FirstEnergy Stock Investment Plan and other existing dividend reinvestment and stock-based management incentive and employee benefit plans (''Stock Plans'') described in the Application. Any newly issued shares of Common Stock will be counted against the External Financing Limit; shares of Common Stock purchased in the open market or otherwise acquired for the purpose of reissuance under Stock Plans will not be counted against the External Financing Limit.

G. Tax Allocation Agreement

In the Merger Order, the Commission reserved jurisdiction over, among other things, a proposed tax allocation agreement (''Tax Allocation Agreement'') that will allocate consolidated tax liability among FirstEnergy and its Subsidiaries.

FirstEnergy financed the cash portion of the consideration paid in connection with the merger with GPU, approximately $2.2 billion, with borrowings under a credit agreement with a group of banks (the ''Bank Bridge Loan''). Amounts outstanding under the Bank Bridge Loan were to be repaid by October 1, 2002 and carried an initial interest rate of LIBOR plus 1.25% per annum. Additional funds from the Bank Bridge Loan were used to repay approximately $1.5 billion of the short-term indebtedness of GPU and its subsidiaries outstanding immediately prior to the consummation of the Merger and to repay approximately $300 million of FirstEnergy's short-term indebtedness. Subsequently, on November 15, 2001, FirstEnergy issued $4 billion aggregate principal amount of unsecured notes (''Notes'') having maturities of 2006 through 2031, the proceeds of which were used to repay in full the amounts outstanding under the Bank Bridge Loan.

As used in the Application, the term ''Acquisition Debt'' includes that portion of the proceeds of the Notes used to repay the portions of the Bank Bridge Loan related to the $2.2 billion merger-related cash consideration and the $1.5 billion GPU-related short-term indebtedness. The term also includes indebtedness that may be incurred by FirstEnergy during the Authorization Period for the purposes of refinancing any of the foregoing indebtedness.

Applicants request that the Commission authorize FirstEnergy and its Subsidiaries to enter into and allocate consolidated income taxes in accordance with the Tax Allocation Agreement. Under the proposed Tax Allocation Agreement, the consolidated tax would be allocated among the members of the group in proportion to the separate return tax liability of each member, provided that the tax apportioned to any subsidiary company of FirstEnergy will not exceed the ''separate return tax'' liability of such subsidiary. The Tax Allocation Agreement further provides that FirstEnergy will retain the benefit (in the form of the reduction in

consolidated tax) that is attributable to the interest expense on the Acquisition Debt, rather than reallocate that tax savings to its subsidiary companies.

H. Investments in Nonutility Subsidiaries

First Energy seeks approvals to engage in certain activities described below relating to EWGs, FUCOs, ETCs (collectively, ''Exempt Subsidiaries''), Rule 58 Subsidiaries and Energy Related Companies and make additional investments in other Nonutility Subsidiaries approved by the Commission (collectively, ''Non-Exempt Subsidiaries''). Applicants state that to the extent any of these activities described in this Application constitute the providing of goods, services or construction from one associate company to another in the FirstEnergy system which would be subject to section 13 of the Act, these goods, services or construction will be provided at-cost as defined in rules 90 and 91 unless an exemption from the at cost requirement is available under rule 90(d) or otherwise approved in the Commission's order in this proceeding.

In the future, FirstEnergy proposes to make additional investments in Energy Related Companies (which, but for non-U.S. activities, would be Rule 58 Subsidiaries) in the form of purchases of common stock and other securities, capital contributions, loans or open account advances, guarantees, or any combination of the foregoing. It is also contemplated that Energy Related Companies may issue securities from time to time under the exemption provided in rule 52 to investors other than FirstEnergy for the purpose of financing their operations. Direct or indirect investments by FirstEnergy in Energy Related Companies would be subject to the limitations applicable to investments in Rule 58 Subsidiaries. However, to the extent approved by the Commission, Energy Related Companies will not be subject to the ''U.S. only'' restriction of rule 58.

In connection with existing and future nonutility businesses, FirstEnergy will engage directly or through Subsidiaries in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') associated with such investments. Development Activities will be limited to: due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies. FirstEnergy proposes to expend directly or through Nonutility Subsidiaries up to $300 million in the aggregate outstanding at any time during the Authorization Period on all such Development Activities. Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage Development Activities and investments in Subsidiaries.

FirstEnergy proposes to acquire directly or indirectly the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities (collectively, ''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more Exempt Subsidiaries, Rule 58 Subsidiaries, Energy Related Companies or other Non-Exempt Subsidiaries, provided that Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities. To the extent such transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, FirstEnergy requests authority for Intermediate Subsidiaries to engage in the activities described above. To the extent that FirstEnergy provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO, a Rule 58 Subsidiary or an Energy Related Company, the amount of such funds will be included in FirstEnergy's ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

I. Sale of Certain Goods and Services Outside the United States

FirstEnergy requests that the Commission authorize the Energy Related Companies to engage in sales of certain goods and services outside the United States. Specifically, Applicants request that the Commission: (i) Approve the sale of energy management services and consulting services anywhere outside the United States, (ii) approve the sale of energy marketing in Canada and Mexico and retain jurisdiction with respect to energy marketing elsewhere outside the United States, and (iii) retain jurisdiction over the sale of infrastructure services anywhere outside the United States. The descriptions of these activities and the terms of the requests for reservation of jurisdiction are the same as in the Merger Order.

In addition, FirstEnergy requests authority to provide through Subsidiaries other energy-related goods and services. These include incidental goods and services closely related to the consumption of energy and the maintenance of energy consuming property by customers. The need for these goods and services would arise as a result of, or evolve out of, the goods and services described above and do not differ materially from those goods and services. The proposed incidental goods and services would not involve the manufacture of energy consuming equipment but could be related to, among other things, the maintenance, financing, sale or installation of such equipment.

IX. Service Company Approvals

A. Transactions Involving Certain Categories of Nonutility Companies

The Applicants request authorization for FE ServCo, GPUS and the Nonutility Subsidiaries to enter into agreements to provide construction, goods or services to certain associate companies at fair market prices determined without regard to cost and therefore requests an exemption (to the extent that rule 90(d) of the Act does not apply) under section 13(b) from the cost standards of rules 90 and 91.

FirstEnergy requests relief, if the client company is: (1) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States; (2) an EWG that sells electricity at market-based rates which have been approved by FERC or an appropriate state public utility commission, provided that the purchaser of the EWG's electricity is not an affiliated public utility or an affiliate that re-sells such power to an affiliated public utility; (3) a QF that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, or

to an electric utility company other than an affiliated electric utility at the purchaser's ''avoided cost'' determined under PURPA; (4) an EWG or a QF that sells electricity at rates based upon its costs of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an affiliated public utility; or (5) a Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially owned, provided that the ultimate purchaser of goods or services is not a Utility Subsidiary, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Companies described in (1) through (4) above or (c) does not derive, directly or indirectly, any part of its income from sources within the United States and is not a public-utility company operating within the United States.

B. Continuation of Interim Exemption

Under the Merger Order, FEFSG is authorized to provide maintenance and repair services to FirstEnergy's pre-merger Utility Subsidiaries (namely, Ohio Edison, Toledo Edison, Cleveland Electric, Penn Power, NONGC and ATSI) under certain At-Market Service Arrangements. The Merger Order granted an interim exemption under section 13(b) of the Act permitting FEFSG to provide such services at market rates determined without regard to cost. This interim exemption will expire on June 30, 2003. Applicants note that several of the longer-term At-Market Service Arrangements are still in place. FEFSG therefore requests that the Commission extend such interim exemption from June 30, 2003 to December 31, 2003, and reserve jurisdiction over any further extension after December 31, 2003.

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CenterPoint Energy, Inc. (''CenterPoint''), a registered holding company and its three public-utility subsidiary companies Texas Genco, LP, (''Texas Genco''), CenterPoint Energy Houston Electric, LLC (''T&D Utility'') and CenterPoint Energy Resources Corp. (''GasCo''), CenterPoint's intermediate holding companies, Utility Holding, LLC, 200 West Ninth Street Plaza, Suite 411, Wilmington, Delaware 19801, Texas Genco Holdings, Inc., Texas Genco GP, LLC and CenterPoint's nonutility subsidiary companies: CenterPoint Energy Funding Company, CenterPoint Energy Transition Bond Company, LLC, Houston Industries FinanceCo GP, LLC, Houston Industries FinanceCo LP, Reliant Energy FinanceCo II GP, LLC, Reliant Energy FinanceCo II LP, Reliant Energy FinanceCo III GP, LLC, Reliant Energy FinanceCo III LP, Reliant Energy FinanceCo IV GP, LLC, Reliant Energy FinanceCo IV LP, CenterPoint Energy Investment Management, Inc., CenterPoint Energy Management Services, Inc., CenterPoint Energy District Cooling, LLC, CenterPoint Energy Thermal Systems (Delaware), Inc., CenterPoint Energy District Cooling, L.P., CenterPoint Energy Power Systems, Inc., CenterPoint Energy Products, Inc., CenterPoint Energy Properties, Inc., CenterPoint Energy Tegco, Inc., HL&P Capital Trust I, HL&P Capital Trust II, HL&P Receivables, Inc., Houston Industries Energy (UK), Inc., NorAm Energy Corp., REI Trust, Reliant Energy Water, Inc., Texas Genco LP, LLC, Utility Rail Services, Inc., UFI Services, Inc., ALG Gas Supply Company, Allied Materials Corporation, Arkansas Louisiana Finance Corporation, Arkla Industries Inc., Arkla Products Company, Blue Jay Gas Company, CenterPoint Energy Alternative Fuels, Inc., CenterPoint Energy Consumer Group, Inc., CenterPoint Energy Field Services, Inc., CenterPoint Energy Field Services Holdings, Inc., CenterPoint Energy Gas Processing, Inc., CenterPoint Energy Gas Marketing Company, CenterPoint Energy Gas Receivables, LLC, CenterPoint Energy Gas Resources Corp., CenterPoint Energy Gas Transmission Company, CenterPoint Energy Hub Services, Inc., CenterPoint Energy—Illinois Gas Transmission Company, CenterPoint Energy Intrastate Holdings, LLC, Pine Pipeline Acquisition Company, LLC, CenterPoint Energy Marketing, Inc., CenterPoint Energy Retail Interests, Inc., CenterPoint Energy—Mississippi River Transmission Corporation, CenterPoint Energy MRT Holdings, Inc., CenterPoint Energy MRT Services Company, CenterPoint Energy Pipeline Services, Inc., CenterPoint Energy OQ, LLC, OQ Partners, a general partnership, CenterPoint Energy Trading and Transportation Group, Inc., Entex Gas Marketing Company, Entex NGV, Inc., Entex Oil & Gas Company, Industrial Gas Supply Corporation, Intex, Inc., Louisiana Unit Gas Transmission Company, Minnesota Intrastate Pipeline Company, National Furnace Company, NorAm Financing, NorAm Utility Services, Inc., Reliant Energy Funds Management, Inc., Unit Gas Transmission Company, United Gas, Inc., CenterPoint Energy International, Inc., CenterPoint Energy International Holdings, LLC, Reliant Energy El Salvador, S.A. de C.V., CenterPoint Energy International II, Inc., HIE Ford Heights, Inc., HIE Fulton, Inc., Reliant Energy India, Inc., Reliant Energy Rain, Inc., Rain Calcining Limited, CenterPoint Energy International Services, Inc., CenterPoint Energy Light, Inc., HI Energy Holdings I B.V., Reliant Energy Brasil, Ltda., Reliant Energy Brazil Ltd., HIE Brasil Rio Sul Ltda., Reliant Energy International Brasil Ltda., Reliant Energy Brazil Tiete Ltd., Reliant Energy Colombia Ltda., Reliant Energy Outsource Ltd., Venus Generation El Salvador Worldwide Electric Holdings B.V., c/o CenterPoint Energy, Inc., 1111 Louisiana, Houston, TX 77002 (together, ''Applicants''), have filed an amended and restated application-declaration under sections 6(a), 7, 9(a), 10, 12 and 13 and rules 42, 43, 44, 45, 46, 52, 53, 54, 58, 62, 90 and 91 of the Act (''Application'').[3]

Applicants request authority to engage in a variety of financing transactions, credit support arrangements, and other related proposals, as more fully described below, commencing on the effective date of an order issued under this filing and ending June 30, 2005 (''Authorization Period'').

I. Background

By order dated July 5, 2002 (Holding Co. Act Release No. 27548) (the ''July Order''), the Commission authorized the formation of CenterPoint as a new registered holding company and the distribution (''Distribution'') to shareholders of the remaining stock of Reliant Resources, Inc. (''Reliant Resources''). The Distribution, which was made on September 30, 2002, completed the separation from CenterPoint of the merchant power generation and energy trading and marketing business of Reliant Resources.

While the Distribution was necessary and appropriate both from a business perspective and in view of the policies and provisions of the Act, it did have the effect of significantly reducing CenterPoint's common equity in the short term. As the Commission has noted, however, CenterPoint's capital

[3] Texas Genco, LP, T&D Utility and GasCo shall collectively be referred to as the ''Utility Subsidiaries.'' Utility Holding, LLC, Texas Genco Holdings, Inc. and Texas Genco GP, LLC, shall collectively be referred to as the ''Intermediate Holding Companies.'' All of CenterPoint's direct and indirect subsidiaries, other than the Utility Subsidiaries and the Intermediate Holding Companies, are referred to as the ''Nonutility Subsidiaries.'' The Utility Subsidiaries, Nonutility Subsidiaries and Intermediate Holding Companies are collectively referred to as the ''Subsidiaries.''

structure will be improved significantly with the sale of Texas Genco, LP and the securitization of any stranded investment in 2004 and 2005, as contemplated by Texas law. Pending the issuance of the securitization bonds, the CenterPoint system's financing transactions will be largely limited to refinancing, replacing or extending the term of existing obligations.

II. Financing Parameters

Financing by each Applicant will be subject to the following limitations (''Financing Parameters'').

A. Interest Rates

The effective cost of money on any long-term debt financings will not exceed the greater of (i) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of the subject debt, or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies, of reasonably comparable credit quality, as determined by competitive capital markets.

The effective cost of money on any short-term debt financings will not exceed the greater of (i) 700 basis points over the comparable-term London Interbank Offered Rate (''LIBOR'') rates, or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies of reasonably comparable credit quality as determined by the competitive capital markets.

The dividend rate on any series of preferred stock or preferred securities will not exceed the greater of (i) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of the series of preferred stock or preferred or equity-linked securities or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies, of reasonably comparable credit quality, as determined by competitive capital markets.

B. Maturity

The maturity of long-term debt will not exceed 50 years. All series of preferred stock, preferred securities and equity-linked securities (other than preferred stock, which may be perpetual) will be required to be redeemed no later than 50 years after the issuance thereof.

C. Issuance Expenses

The underwriting fees, commissions or other similar renumeration paid in connection with the non-competitive issue, sale or distribution of a security will not exceed 7% of the principal or total amount of the securities being issued;[4]

D. Use of Proceeds

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including: (i) the financing, in part, of the capital expenditures of the CenterPoint system; (ii) the financing of working capital requirements of the CenterPoint system; (iii) the refinancing or acquisition, retirement or redemption under rule 42 of securities previously issued by CenterPoint or its Subsidiaries or as otherwise authorized by the Commission; (iv) direct or indirect investment in companies authorized under the Act; (v) to meet unexpected contingencies, payment and timing differences, and cash requirements, and (vi) other lawful purposes.

E. Common Equity Ratio

At all times during the Authorization Period, each Utility Subsidiary will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt) as reflected in the most recent 10–K or 10–Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein.[5]

F. Investment Grade Ratings

Apart from securities issued for the purpose of funding money pool operations, no guarantees or other securities (other than common stock) may be issued in reliance on the authority requested herein unless: (i) the security to be issued, if rated, is rated investment grade by at least one nationally recognized statistical rating organization as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the 1934 Act (''NRSRO''); (ii) all outstanding rated securities of the issuer are rated investment grade by at least one NRSRO; and (iii) all outstanding rated securities of the top-level registered holding company are rated investment grade by at least one NRSRO. The Applicants ask the Commission to reserve jurisdiction over the issuance of securities subject to the Investment Grade Ratings criteria where one or more of the Investment Grade Ratings criteria are not met.

III. Proposed Financing Program

A. CenterPoint External Financing

CenterPoint requests authority to issue and sell securities, including common stock, preferred stock and preferred and equity-linked securities (either directly or through a subsidiary), long-term and short-term debt securities and convertible securities and derivative instruments with respect to any of these securities.[6] CenterPoint also requests authorization to enter into obligations with respect to tax-exempt debt issued on behalf of CenterPoint by governmental authorities. These obligations may relate to the refunding of outstanding tax-exempt debt or to the remarketing of tax-exempt debt. CenterPoint seeks authorization to enter into lease arrangements, and certain hedging transactions in connection with issuances of taxable or tax-exempt securities.

CenterPoint requests authority to sell securities covered by this Application in any one of the following ways: (i) through underwriters; (ii) to initial purchasers in transactions in reliance on Rule 144A under the Securities Act of 1933 or dealers; (iii) through agents; (iv) directly to a limited number of purchasers or a single purchaser; (v) in exchange for already outstanding securities; or (vi) directly to employees (or to trusts established for their benefit), shareholders and others. If underwriters are used in the sale of the securities, such securities may be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by CenterPoint) or directly by one or more underwriters acting alone. The securities may be sold directly by CenterPoint or through agents designated by CenterPoint from time to time. If common stock is being sold in an underwritten offering, CenterPoint may grant the underwriters a ''green shoe'' option permitting the

[4] Issuance Expenses will not count toward the effective cost of money discussed above.

[5] Upon the issuance of the securitization bonds described below, the T&D Utility may have common equity capitalization of less than 20% if the securitization debt is included. The Applicants request the Commission take into account the unique nature of securitization debt when it passes upon the request to form and capitalize special-purpose subsidiaries to issue securitization debt.

[6] Any convertible or equity-linked securities would be convertible into or linked to only securities that CenterPoint and its Subsidiaries are otherwise authorized to issue pursuant to rule or Commission order.

purchase from CenterPoint at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

1. Common Stock

CenterPoint requests authority to issue 200 million additional shares of common stock (including ''Rights'')[7] and to issue warrants, options and other rights to acquire an equivalent number of shares of common stock. In addition, CenterPoint proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or negotiated block purchases, shares of CenterPoint common stock for allocation under incentive compensation plans and other equity compensation and employee benefit plans, and for the Investor's Choice Plan.[8] These transactions would comply with applicable law and Commission interpretations then in effect. Any newly issued shares of common stock, including shares of common stock issued upon the conversion or exercise of warrants, convertible debt or other equity-linked securities, will be counted toward the overall limit on common stock; shares of common stock purchased in the open market or otherwise acquired for the purpose of reissuance under Stock Based Plans will also be counted toward this limit.

2. Preferred Stock and Preferred and Equity-Linked Securities

CenterPoint requests Commission authority during the Authorization Period to issue preferred stock and to issue directly or indirectly through one or more financing subsidiaries (''Financing Subsidiaries'') preferred stock, preferred securities (including trust preferred securities), and equity-linked securities (including, specifically, preferred securities that are convertible, either mandatorily or at the option of the holder, into common stock or forward purchase contracts for common stock).

CenterPoint requests authority to issue preferred stock and preferred and equity-linked securities in a net incremental amount of $250 million such that the total outstanding amount of CenterPoint preferred stock and preferred and equity-linked securities will not exceed $975 million at any one time outstanding during the Authorization Period.

Preferred stock and equity-linked securities may be sold directly or indirectly to or through underwriters, initial purchasers or dealers or pursuant to a method of distribution similar to those described for common stock above.

3. Long-Term Debt

CenterPoint requests authority to issue or sell external debt securities in a net incremental amount of $500 million (including long-term and short-term debt securities) (the ''CenterPoint Additional Debt Limit'') such that the total amount of CenterPoint debt securities will not exceed $5.847 billion at any one time outstanding during the Authorization Period (''CenterPoint Aggregate Debt Limit''). Long-term debt securities may be comprised of bonds, notes, medium-term notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders directly or indirectly and convertible debt. Long-term debt issued under the requested authority will be unsecured. Specific terms of any borrowings will be determined by CenterPoint at the time of issuance and will comply in all regards with the parameters on financing authorization set forth above.

4. Short-Term Debt

CenterPoint seeks authority to issue short-term debt subject to the CenterPoint Additional Debt Limit to provide financing for general corporate purposes, working capital requirements and temporary financing of Subsidiary capital expenditures. Short-term debt issued by CenterPoint will be unsecured.

Types of short-term debt securities may include borrowings under one or more revolving credit facilities or bank loans, commercial paper, short-term notes, bid notes, institutional borrowings and privately placed notes. Specific terms of any short-term borrowings will be determined by CenterPoint at the time of issuance and will comply in all regards with the parameters for financing authorization set forth above. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under generally accepted accounting principles (''GAAP'').

CenterPoint may sell commercial paper or privately placed notes (''commercial paper'') from time to time, in established domestic or European commercial paper markets. Commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company.

CenterPoint may, without counting against the limit on parent financing set forth above, maintain back-up lines of credit in connection with one or more commercial paper programs in an aggregate amount not to exceed the amount of authorized commercial paper.

CenterPoint may sell short-term notes through one or more private placements or public offerings primarily to traditional money market investors. CenterPoint may enter into individual agreements with one or more commercial banks that may or may not be lenders under CenterPoint credit facilities. These agreements would permit CenterPoint to negotiate with one or more banks on any given day for such lender, or any affiliate or subsidiary of such lender, to purchase promissory notes directly from CenterPoint.

5. Financing Risk Management Devices

CenterPoint requests authority to enter into hedging arrangements intended to reduce or manage the volatility of financial or other business risks to which CenterPoint is subject. These arrangements may include, but are not limited to, interest rate swaps, caps, floors, collars, forward agreements, issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index) or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental agency (*e.g.* Fannie Mae) obligations or LIBOR based swap instruments (collectively referred to as ''Hedging Instruments''). The transactions would be for fixed periods and stated notional amounts, as are generally accepted as prudent in the

[7] Each share of common stock includes one right (''Right'') to purchase from CenterPoint a unit consisting of one one-thousandth of a share of CenterPoint Series A Preferred Stock at a purchase price of $42.50 per unit, subject to adjustment. The Rights are issued pursuant to the Rights Agreement dated as of January 1, 2002 between CenterPoint and JPMorgan Chase Bank (the ''Rights Agreement'').

[8] These plans include the CenterPoint Energy, Inc. Investor's Choice Plan; existing stock-related employee plans: CenterPoint Energy, Inc. Savings Plan, CenterPoint Energy, Inc. Long-Term Incentive Compensation Plan, CenterPoint Energy, Inc. 1994 Long-Term Incentive Compensation Plan, Long-Term Incentive Plan of CenterPoint Energy, Inc., CenterPoint Energy, Inc. Business Unit Performance Share Plan, CenterPoint Energy, Inc. and Subsidiaries Common Stock Participation Plan for Designated New Employees and Non-Officer Employees, and the CenterPoint Energy, Inc. Stock Plan for Outside Directors (collectively, the ''Stock Based Plans''). The requested authority relating to benefit and compensation plans is intended to apply to these plans, as they may be amended or supplemented from time to time, and similar plans or arrangements that may be adopted in the future without any additional prior Commission order.

capital markets. In no case will the notional principal amount of any interest rate hedge exceed that of the underlying debt instrument. CenterPoint will not engage in speculative transactions as that term is described in Statement of Financial Accounting Standard 133, as amended (''SFAS 133''). Transaction fees, commissions and other amounts payable to brokers in connection with an interest rate hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

CenterPoint may employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed-rate debt; (ii) converting fixed-rate debt to variable rate debt; (iii) limiting the impact of changes in interest rates resulting from variable rate debt; and (iv) managing other risks that may attend outstanding securities. Transactions will be entered into for a fixed or determinable period. CenterPoint will only enter into agreements with counterparties having a senior debt rating at the time the transaction is executed of at least BBB-, or its equivalent, as published by a NRSRO (''Approved Counterparties'').

In addition, CenterPoint requests authorization to enter into hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to the limitations and restrictions expressed below. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the risk associated with any issuance of securities through appropriate means, including (i) a forward sale of exchange-traded Hedging Instruments (a ''Forward Sale''); (ii) the purchase of put options on Hedging Instruments (a ''Put Options Purchase''); (iii) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a ''Zero Cost Collar''); (iv) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges; and (v) other financial derivatives or other products including Treasury rate locks, swaps, forward starting swaps, and options on the foregoing. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade (''CBOT''), the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. CenterPoint or its applicable Subsidiary will determine the structure of each Anticipatory Hedge transaction at the time of execution. CenterPoint or a Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

Each Hedging Instrument and Anticipatory Hedge will be treated for accounting purposes as provided for under GAAP. CenterPoint and its Subsidiaries will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivatives Instruments and Hedging Activities'') and SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

B. Subsidiary Financing

To the extent not otherwise exempted,[9] the Utility Subsidiaries and the Intermediate Holding Companies request authority to issue and sell securities, including common equity, preferred shares and preferred securities (including trust preferred securities) (either directly or through a subsidiary), long-term and short-term debt securities, including convertible debt and derivative instruments with respect to any of the foregoing on the same terms and conditions as discussed above for CenterPoint, except that Utility Subsidiary and Intermediate Holding Company debt may be secured or unsecured.[10]

Texas Genco Holdings, Inc. and Texas Genco, LP (together, the ''Texas Genco Entities'') request authority to issue or sell external debt in an aggregate amount of $250 million at any one time outstanding during the Authorization Period.

CenterPoint Energy Houston Electric, LLC (the ''T&D Utility'') requests authority to issue and sell external debt securities in a net incremental amount of $500 million such that the amount of T&D Utility external debt will not exceed $3.603 billion at any one time outstanding during the Authorization Period. The T&D Utility requests authority to issue or sell preferred stock and preferred securities (including trust preferred securities) in an amount not to exceed $250 million at any one time outstanding during the Authorization Period.

CenterPoint Energy Resources Corp. (''GasCo'') requests authority to issue or sell external debt in a net incremental amount of $500 million such that the amount of external GasCo debt will not exceed $3.187 billion at any one time outstanding during the Authorization Period. GasCo requests authority to issue or sell preferred stock and preferred securities (including trust preferred securities) in an amount not to exceed $250 million during the Authorization Period such that the amount of preferred stock and preferred securities (including trust preferred securities) will not exceed $250.4 million at any one time outstanding during the Authorization Period.

The Utility Subsidiaries and Intermediate Holding Companies also request authorization to enter into obligations with respect to new tax-exempt debt issued on behalf of a Utility Subsidiary or an Intermediate Holding Company by governmental authorities as well as obligations entered into in connection with the refunding of outstanding tax-exempt debt assumed by CenterPoint in connection with the August 31, 2002 restructuring by which CenterPoint and Utility Holding, LLC became holding companies for the Utility Subsidiaries.

The Utility Subsidiaries also request authority to enter into hedging transactions to manage their risk in connection with the issuance of securities subject to the limitations and requirements applicable to CenterPoint, provided, that the Intermediate Holding Companies will not enter into such hedging transactions.

C. Guarantees and Intra-System Advances

1. Guarantees

CenterPoint requests authorization during the Authorization Period to enter into guarantees to third parties, obtain letters of credit, enter into support or expense agreements or liquidity support agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries, including performance guarantees, as may be appropriate to carry on in the ordinary course of CenterPoint or its Subsidiaries' duly-authorized utility and related businesses, and the Subsidiaries request authority to provide to their respective Subsidiaries guarantees and other forms of credit support in an aggregate amount not to

[9] The Nonutility Subsidiaries will rely on rules 45 and 52 under the Act for financings described in this section.

[10] To the extent that GasCo issues secured debt, such debt will be secured by a pledge of the stock of its nonutility subsidiary companies.

exceed $4 billion outstanding at any one time. Excluded from the CenterPoint Guarantee Limit are obligations exempt under rule 45 under the Act. Any guarantees shall also be subject to the limitations of rules 53 and 58, as applicable.

The guarantor may charge each Subsidiary a fee for any guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

Certain of the guarantees referred to above may be in support of obligations that are not capable of exact quantification. In these cases, CenterPoint will determine the exposure under the guarantee by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, these estimates will be made in accordance with GAAP and sound financial practices. Such estimation will be re-evaluated periodically.

2. Money Pool

CenterPoint and certain of its Subsidiaries (together, the ''Parties'') request authorization to continue to conduct the Money Pool as approved in the July Order, and the Subsidiaries, to the extent not exempted by rule 52 under the Act, also request authorization to make, from time to time, unsecured short-term borrowings from the Money Pool and to contribute surplus funds to the Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool.[11]

CenterPoint requests authorization to contribute surplus funds and to lend and extend credit to the Utility Subsidiaries through the Money Pool. CenterPoint will not be a borrower from the Money Pool.

Under the terms of the Money Pool, each Party determines each day the amount of funds each desires to contribute to the Money Pool, and contributes such funds to the Money Pool. The determination of whether a Party has funds to contribute (either from surplus funds or from external borrowings) and the determination whether a Party shall lend such funds to the Money Pool is made by such Party's treasurer, or by a designee thereof, in such Party's sole discretion. Each Party may withdraw any of its funds at any time upon notice to CenterPoint as administrative agent of the Money Pool.

Short-term funds will be available from the following sources: (1) surplus funds in the treasuries of the Parties, and (2) proceeds from external borrowings, including bank loans, the sale of notes and/or the sale of commercial paper by the Parties, in each case to the extent permitted by applicable laws and regulatory orders.

Each borrowing Party will borrow pro rata from each fund source in the same proportion that the amount of funds provided from that fund source bears to the total amount then loaned through the Money Pool. On a day when more than one source of funds is invested in the Money Pool with different rates of interest used to fund loans through the Money Pool, each borrower will borrow pro rata from each such funding source from the Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of funds invested into the Money Pool. If there are insufficient funds to meet all borrowing requests, the needs of the Utility Subsidiaries will be met before loans are made to any Nonutility Subsidiaries.

The determination of whether a Party has funds to lend to the Money Pool will be made by its Treasurer, or by a designee thereof. CenterPoint, as administrator of the Money Pool, will provide each Party with a report for each business day that includes, among other things, cash activity for the day and the balance of loans outstanding. All borrowings from the Money Pool shall be authorized by the borrowing Party's treasurer, or by a designee thereof. No Party shall be required to effect a borrowing through the Money Pool if such Party determines that it can (and is authorized to) effect such borrowing more advantageously directly from banks or through the sale of its own notes or commercial paper.

Funds which are loaned by Parties and are not utilized to satisfy borrowing needs of other Parties will be invested by CenterPoint on behalf of the lending Parties in one or more short term instruments, including (i) interest-bearing deposits with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies; (iii) commercial paper rated not less than A–1 by Standard & Poor's and P–1 by Moody's Investors Services, Inc.; (iv) money market funds; (v) bank certificates of deposit; (vi) Eurodollar funds; (vii) repurchase agreements collateralized by securities issued or guaranteed by the U.S. government; and (viii) such other investments as are permitted by section 9(c) of the Act and rule 40.

The interest rate applicable on any day to then outstanding loans through the Money Pool, whether or not evidenced by a promissory demand note, will be the composite weighted average daily effective cost incurred by CenterPoint for external borrowings outstanding on that date. The daily effective cost shall be inclusive of interest rate swaps related to such external funds. If there are no external borrowings outstanding on that date, then the rate will be the certificate of deposit yield equivalent of the 30-day Federal Reserve ''AA'' Non-Financial Commercial Paper Composite Rate or if no composite is established for that day, then the applicable rate will be the composite for the next preceding day for which a composite is established. If the composite shall cease to exist, then the rate will be the composite which then most closely resembles the Composite and/or most closely mirrors the pricing CenterPoint would expect if it had external borrowings.

Interest income related to external investments will be calculated daily and allocated back to lending Parties on the basis of their relative contribution to the Money Pool on that date.

Each Party receiving a loan from the Money Pool shall repay the principal amount of such loan, together with all interest accrued, on demand by the administrator and in any event not later than the expiration date of the Commission authorization for the operation of the Money Pool. All loans made through the Money Pool may be prepaid by the borrower without premium or penalty.

Borrowings by the Utility Subsidiaries from the Money Pool shall not exceed the following amounts at any one time outstanding during the Authorization Period: Texas Genco LP—$600 million; T&D Utility—$600 million; GasCo—$600 million.

3. Other Intra-System Financing

The Subsidiaries may also finance their capital needs through borrowings

[11] The Parties to the Money Pool will be CenterPoint, Texas Genco Holdings, Inc., Texas Genco GP, LLC, the Utility Subsidiaries, Houston Industries FinanceCo GP, LLC, Houston Industries FinanceCo LP, Reliant Energy FinanceCo II GP, LLC, Reliant Energy FinanceCo II LP, CenterPoint Energy Properties, Inc., CenterPoint Energy International, Inc., CenterPoint Energy Products, Inc., CenterPoint Energy Management Services, Inc. and CenterPoint Energy Funding Company. CenterPoint Energy International, Inc. and CenterPoint Energy Funding Company are entities through which CenterPoint funded or acquired foreign utility companies within the meaning of section 33 of the Act and so, these companies will be investors in but not borrowers from the Money Pool. No exempt wholesale generator or foreign utility company will be a borrower from the Money Pool.

from CenterPoint, directly or indirectly through one or more Intermediate Holding Companies. Any financings by Utility Subsidiaries pursuant to this request would be counted toward the Money Pool limits above.

Each of the Intermediate Holding Companies requests authority to issue and sell securities to its respective parent companies and to acquire securities from its subsidiary companies on the same terms and conditions as specified above.

D. Changes in Capital Stock of Majority Owned Nonutility Subsidiaries

Applicants request authority to change the terms of any 50% or more owned Nonutility Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by CenterPoint or other intermediate parent company, provided that no such action would be taken without the consents necessary under applicable law.

E. Payment of Dividends Out of Capital or Unearned Surplus

Each of the Nonutility Subsidiaries requests authority to declare and pay dividends out of capital or unearned surplus to the extent permitted by state law.

CenterPoint also requests authority to declare and pay dividends out of capital or unearned surplus in an amount up to $500 million through the Authorization Period. Such authority is required because of the accounting consequences of the Distribution. Accordingly, CenterPoint requests the Commission to reserve jurisdiction over this request. As of December 31, 2002, CenterPoint had negative retained earnings of approximately $1.1 billion. It is CenterPoint's intention to declare and pay dividends out of current earnings.

F. Financing Subsidiaries

CenterPoint and its Subsidiaries proposes to organize and acquire, directly or indirectly, the common stock or other equity interests of one or more financing subsidiaries (collectively, the ''Financing Subsidiary'') for the purpose of effecting various financing transactions from time to time through the Authorization Period.[12] Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purposes described in this Application. The amount of securities issued by the Financing Subsidiaries to third parties will count toward the respective financing limits of its immediate parent. Authorization is requested for the issuance of such securities by the Financing Subsidiaries and for the transfer of proceeds from such issuance to the respective parent companies.

CenterPoint and, to the extent such issuances are not exempt under rule 52, the Subsidiaries also request authorization to issue their subordinated unsecured notes (''Subordinated Notes'') to any Financing Subsidiary to evidence the loan of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary, in respect of which the Subordinated Note is issued. CenterPoint or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of such Financing Subsidiaries.

Any security issued to third parties under the requested authority will be appropriately disclosed in the system's financial statements. Applicants anticipate that the Financing Subsidiaries will be wholly-owned indirect subsidiaries of CenterPoint. No Financing Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act, without first obtaining any necessary approval.

The business of the Financing Subsidiary will be limited to effecting financing transactions that have been otherwise authorized for CenterPoint and its Subsidiaries. In connection with these transactions, CenterPoint or the Subsidiaries may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary.

Any Financing Subsidiary shall be organized only if, in management's opinion, the creation and utilization of the Financing Subsidiary will likely result in tax savings, increased access to capital markets and/or lower cost of capital for CenterPoint or its Subsidiaries.

Each of CenterPoint and the Subsidiaries also requests authorization to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the entity. Any amounts issued by the Financing Subsidiaries to third parties will be included in the additional external financing limitation for the immediate parent of the financing entity. However, the underlying intra-system mirror debt and parent guarantee will not be included. Applicants also seek authority for the Financing Subsidiaries to transfer the proceeds of any financing to their respective parent companies.

IV. Retention and Reorganization of Nonutility Interests

A. Retention of Nonutility Interests

In the July Order, the Commission reserved jurisdiction over the retention of CenterPoint Energy Investment Management, Inc., MRT Services Company and CenterPoint Energy Trading and Transportation Group, Inc. Applicants request that the Commission authorize the retention of these nonutility interests except with respect to the canal currently owned by MRT Services Company.

CenterPoint Energy Investment Management, Inc., a Delaware corporation that is a wholly-owned subsidiary of CenterPoint, holds shares of stock of AOL Time Warner that were received in connection with the 1995 sale of certain cable television businesses.

MRT Services Company provides marketing services in connection with CenterPoint's gas pipeline subsidiaries. It also is the lessor of real estate associated with telecommunications towers that are used to provide services to CenterPoint system. CenterPoint asks the Commission to grant it three years to divest the canal. CenterPoint further requests that any order of the Commission that requires CenterPoint to divest the canal pursuant to section 11(b)(1) of the Act make the necessary findings to enable CenterPoint to obtain the tax treatment provided by Section 1081 of the Internal Revenue Code, as amended, in connection with the ordered disposition.

CenterPoint Energy Trading and Transportation Group, Inc. provides administrative payroll services to associated pipeline companies at cost determined in accordance with rules 90 and 91. Applicants state that the subsidiary is not engaged in other businesses.

B. Authority to Restructure Nonutility Interests

CenterPoint proposes to restructure its nonutility interests from time to time as may be necessary or appropriate. CenterPoint will engage, directly or indirectly, only in businesses that are duly authorized, whether by order, rule or statute.

[12] This request is in addition to the request for authority in connection with the securitization of stranded costs *infra*. Applicants are requesting the Commission to reserve jurisdiction over that request, pending completion of the record.

V. Disposition of the Texas Genco Entities

CenterPoint intends to qualify Texas Genco, LP as an exempt wholesale generator (''EWG'') as expeditiously as possible. In the event that EWG status is not obtained in a timely fashion, CenterPoint seeks authority under section 12(d) to sell the stock and/or assets of the Texas Genco Entities to Reliant Resources.

As of December 31, 2002, Texas Genco, LP owned and operated 11 power generating stations (60 generating units) and had a 30.8% interest in the South Texas Project Electric Generating Station (''South Texas Project''), for a total net generating capacity of 14,175 MW. The South Texas Project is a nuclear generating station with two 1,250 MW nuclear generating units.

Texas Genco, LP sells electric generation capacity, energy and ancillary services in the Electric Reliability Council of Texas, Inc. (''ERCOT'') market, which is the largest power market in the State of Texas. Since January 1, 2002, Texas Genco, LP's generation business has been operated as an independent power producer, with output sold at market prices to a variety of purchasers. As authorized by this Commission under the July Order, on January 6, 2003, CenterPoint distributed to its shareholders approximately 19% of the common stock of Texas Genco Holdings, Inc.

Reliant Resources has an option that may be exercised between January 10, 2004 and January 24, 2004 to purchase all of the shares of Texas Genco Holdings, Inc. common stock then owned by CenterPoint. The exercise price under the option would equal:

- The average daily closing price per share of Texas Genco Holdings, Inc. common stock on the New York Stock Exchange for the 30 consecutive trading days with the highest average closing price for any 30-day trading period during the 120 trading days immediately preceding January 10, 2004, multiplied by the number of shares of Texas Genco Holdings, Inc. common stock then owned by CenterPoint, plus
- A control premium, up to a maximum of 10%, to the extent a control premium is included in the valuation determination made by the Texas Commission relating to the market value of Texas Genco Holdings, Inc.'s common stock equity.

The exercise price formula is based upon the generation asset valuation methodology in the Texas electric restructuring law that CenterPoint will use to calculate the market value of Texas Genco Holdings, Inc. The exercise price is also subject to adjustment based on the difference between the per share dividends Texas Genco Holdings, Inc. paid to CenterPoint during the period from the distribution date through the option closing date and Texas Genco Holdings, Inc.'s actual per share earnings during that period. To the extent Texas Genco Holdings, Inc.'s per share dividends are less than its actual per share earnings during that period, the per share option price would be increased. To the extent its per share dividends exceed its actual per share earnings, the per share option price would be reduced.

Reliant Resources has agreed that if it exercises its option, Reliant Resources would purchase from CenterPoint all notes and other payables owed by Texas Genco Holdings, Inc. to CenterPoint as of the option closing date, at their principal amount plus accrued interest. Similarly, if there are notes or payables owed to Texas Genco Holdings, Inc. by CenterPoint as of the option closing date, Reliant Resources would assume those obligations in exchange for a payment from CenterPoint of an amount equal to the principal plus accrued interest.

If Reliant Resources does not exercise the option, CenterPoint currently plans to sell or otherwise monetize its interest in the Texas Genco Entities.[13]

VI. Securitization of Stranded Costs

The Texas electric restructuring law provides for the use of special purpose entities to issue securitization bonds for the economic value of generation-related regulatory assets and stranded costs. These bonds would be amortized through non-bypassable charges to the T&D Utility's customers that are authorized by the Texas Commission. Any stranded costs not recovered through the securitization bonds would be recovered through a non-bypassable charge assessed to customers taking delivery service from the T&D Utility.

CenterPoint seeks authority to form and capitalize one or more special-purpose subsidiaries of the T&D Utility to issue in an amount of up to $6 billion, as determined by the Texas Commission, in securitization bonds in 2004 or 2005 to monetize and recover the balance of stranded costs relating to previously owned electric generation assets and other qualified costs as determined in a 2004 true-up proceeding, and, as may be required, for such subsidiaries to transfer the proceeds to the T&D Utility, Utility Holding, LLC and CenterPoint. The issuance will be done pursuant to a financing order issued by the Texas Commission. As with the debt of its existing transition bond company, the holders of the securitization bonds would not have recourse to any assets or revenues of CenterPoint or its subsidiary companies (other than those of the special purpose transition bond company), nor would the system's creditors have recourse to any assets or revenues of the entity issuing the securitization bonds (again other than those of the special purpose transition bond company). All or a portion of the proceeds from the issuance of bonds will be used to repay debt of CenterPoint and its subsidiary companies. Any issuance would be subject to the financing parameters described above. CenterPoint requests that the Commission reserve jurisdiction over this request, pending completion of the record.

[13] CenterPoint will seek such additional authority as may be required in this regard.

VII. Other Authority

In the July Order, the Commission authorized CenterPoint to provide a variety of services to its Subsidiaries in areas such as accounting, rates and regulation, internal auditing, strategic planning, external relations, legal services, risk management, marketing, financial services and information systems and technology. CenterPoint states that it intends to form a service company and is in the process of preparing the request for authorization. In the interim, CenterPoint seeks continuing authority to provide jurisdictional services and goods to its Subsidiaries through December 31, 2003. CenterPoint states that charges for all services will be on an at-cost basis, as determined under rules 90 and 91 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14367 Filed 6–6–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47960; File No. SR–Amex–2003–17]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to ''Market at 4 p.m.'' Orders for ETFs

June 2, 2003.

On March 17, 2003, the American Stock Exchange LLC (''Amex'' or

''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to institute ''Market at 4 p.m.'' (''MCC'') Orders for Exchange Traded Funds (''ETFs''). On April 17, 2003 the Amex amended the proposal.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on May 1, 2003.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[7] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Commission believes that the procedures proposed for executing MCC Orders are similar to those currently existing for ''Market at the Close'' (''MOC'') Orders for all Amex-listed stocks. The Commission also notes that the MOC Order procedures for Amex-listed stocks have been approved on a permanent basis since 1992.[8] The Commission also believes that the procedures for executing MCC Orders may potentially provide customers with additional flexibility in order execution by permitting transactions in ETFs near the close of the day at a price that is closely related to the closing price of the underlying components for those ETFs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2003–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14371 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice-President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 (''Amendment No. 1''). In Amendment No. 1, the Amex replaced in its entirety the original proposed rule change.

[4] *See* Securities Exchange Act Release No. 47725 (April 23, 2003), 68 FR 23337.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 31610 (December 16, 1992), 57 FR 61131 (December 23, 1992) (SR–Amex–92–34) (permanently approving procedures to execute MOC orders on every trading day).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47959; File No. SR–CBOE–2002–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1, 2, 3, and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 5 and 6 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of the CBOE Hybrid System

May 30, 2003.

I. Introduction

On January 18, 2002, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement the CBOE Hybrid System. The CBOE filed Amendments No. 1, 2, 3, and 4 to the proposed rule change on April 2, 2002, May 17, 2002, January 16, 2003, and April 7, 2003, respectively.[3] The proposed rule change and Amendments No. 1, 2, 3, and 4 were published for comment in the **Federal Register** on April 22, 2003.[4] The Commission received two comment letters on the proposal.[5] The Exchange filed Amendments No. 5 and 6 to the proposal on May 16, 2003[6] and May 30, 2003,[7] respectively. The CBOE also submitted a letter responding to the ISE Letter on May 16, 2003.[8] This order approves the proposed rule change and Amendments No. 1, 2, 3, and 4; grants accelerated approval to Amendments No. 5 and 6 to the proposed rule change; and solicits comments from interested persons on Amendments No. 5 and 6.

II. Description of the Proposal

The Exchange proposes to implement the CBOE Hybrid System (''Hybrid'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 4 supersedes the original filing and Amendments No. 1, 2, and 3 in their entirety.

[4] Securities Exchange Act Release No. 47676 (April 14, 2003), 68 FR 19865.

[5] Letters from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange (''ISE''), to Jonathan G. Katz, Secretary, Commission, dated May 13, 2003 (''ISE Letter''); and Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Exchange, Inc. (''PCX''), to Jonathan G. Katz, Secretary, Commission, dated May 21, 2003 (''PCX Letter'').

[6] Letter from Steve Youhn, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 15, 2003 (''Amendment No. 5''). Amendment No. 5 revises proposed CBOE Rule 6.13(b)(iii) to clarify that if a marketable balance remains after a split price execution, it would be booked automatically only if the order is eligible for book entry. Otherwise, the balance would route either to PAR or BART, or, at the order entry firms' discretion, to the order entry firm's booth printer. Amendment No. 5 also revises proposed CBOE Rule 7.4(a) to require electronic submission of orders or quotes for entry into the electronic book, and to require such orders and quotes to comply with format requirements prescribed by the Exchange. Finally, Amendment No. 5 moves the sentence, ''Orders not eligible for automatic execution instead will route to PAR, BART, or, at the order entry firm's discretion, to the order entry firm's booth printer'' from proposed CBOE Rule 6.13(b)(i)(B)(ii) to proposed CBOE 6.13(b)(i)(B), and renumbers subsection (B) as subsection (C).

[7] Letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated May 30, 2003 (''Amendment No. 6''). First, Amendment No. 6 amends proposed CBOE Rule 6.45A(a)(i) to clarify that only in-crowd DPMs can be considered to be ''market participants.'' Second, Amendment No. 6 amends proposed CBOE Rule 6.45A(c), regarding interaction of market participant's quotes and/or orders with orders in electronic book, to clarify that a trade occurs when a market participant's quote or order interacts with the order in the book; and that the CBOE would disseminate a last sale report at this point and decrement the disseminated quote to reflect the execution. Third, Amendment No. 6 describes in greater detail the ability of market makers to submit two-sided and one-sided quotes (referred to as orders). Fourth, Amendment No. 6 clarifies that the FPC generally has the discretion to determine whether to route orders through PAR or BART, and clarifies how the FPC would use that discretion. Fifth, Amendment No. 6 clarifies the routing process for orders that would be eligible for automatic execution when the CBOE is not at the NBBO. Sixth, Amendment No. 6 amends proposed CBOE Rule 6.45A(c) to clarify that customer orders would be the only type of order represented by floor brokers that would be eligible to participate in the N-second group.

[8] Letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated May 15, 2003 (''CBOE Response Letter'').

''Hybrid System''), an options trading platform that would combine the features of electronic and open outcry, auction market principles, while, at the same time, providing market makers the ability to electronically stream their own quotes. Today, CBOE's disseminated quote represents, for the most part, only the DPM's automatically generated quotations. Market makers are able to affect changes to that quote only in open outcry (or by putting up manual quotes). Hybrid would offer in-crowd market makers and in-crowd DPMs [9] the opportunity to submit their own firm disseminated market quotes that represent their own trading interest.[10] In addition, in-crowd floor brokers would be permitted to enter orders on behalf of their customers for display in the CBOE's best bid or offer (''BBO''). Market makers would have the ability to stream quotes that reflect their individual trading interest.

Incoming electronic orders from public customers and non-market maker broker-dealers that automatically execute against market participants' quotes would be allocated to the best quoters pursuant to a new trading algorithm. This ''Ultimate Matching Algorithm'' (''UMA'' or the ''allocation algorithm'') retains public customer priority and rewards market participants for quoting at the best price and for providing liquidity at the best price.

Hybrid also retains features of a floor-based, open outcry exchange. Order entry firms would continue to have the option of sending floor brokers into a trading crowd to request markets on behalf of their customers. Trading crowds, as is the case today, would continue to have the opportunity to offer price improvement to orders that are exposed to the open outcry, auction market environment.

Under Hybrid, non-market maker broker-dealers would have the same access to the automatic execution feature of Hybrid as public customers.[11] In this regard, non-market maker broker-dealers orders would be permitted to automatically execute against quotes and resting limit orders on the book, whether those orders are public customer orders or broker-dealer orders. Additionally, at the discretion of the Floor Procedure Committee (''FPC''), broker-dealer orders would be eligible for placement into the electronic book, where they may be executed electronically.[12]

To implement Hybrid, the Exchange proposes to adopt several new rules (most notably, CBOE Rules 6.13 and 6.45A) and to amend several existing rules. New CBOE Rule 6.13 would replace the Exchange's RAES Rule 6.8 for those classes in which Hybrid is operational and would govern the automatic execution of incoming electronic orders. Proposed CBOE Rule 6.45A would be the new priority and allocation rule and would codify UMA. A more complete description of the proposal is provided in Section IV, below.

This proposal would apply only to equity options. The Exchange proposes a rollout schedule to begin trading of equity option classes on Hybrid by May 30, 2003. New equity option classes would continue to be rolled out gradually as the Exchange and its membership become more familiar with the operation of the system. The determination of which classes to roll out, and when to roll them out, would be made by the Equity FPC. The Exchange plans to expand the rollout to the Top 200 classes by January 2004 and, by the fourth quarter of 2004, to expand the rollout to the 500 most active equity options. The Exchange intends to implement Hybrid floor-wide in all classes by the fourth quarter of 2006.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 5 and 6 to the proposed rule change, including whether Amendments No. 5 and 6 are 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, would be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing would also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–05 and should be submitted by June 30, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[13] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act [14] in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

A. Automatic Executions

CBOE Hybrid would permit the automatic execution of incoming electronic customer and non-market maker broker-dealer orders in classes designated for trading on Hybrid. Pursuant to proposed CBOE Rule 6.13(b)(i)(C), two categories of orders would be eligible, for the same number of contracts, for automatic execution: orders from non-broker-dealer public customers and orders from non-market maker broker-dealers. The appropriate FPC would be permitted to determine that orders from market makers and specialists would also be eligible for automatic execution.[15] Orders not eligible for automatic execution instead would route to PAR, BART, or, at the order entry firm's discretion, to the order entry firm's booth printer.[16]

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[9] *See* Amendment No. 6, *supra* note 7.

[10] In-crowd floor brokers may represent *orders* on behalf of members, broker-dealers, public customers, and the firm's proprietary account. Pursuant to CBOE Rule 6.75, floor brokers generally may not execute any orders for which they have been vested with the discretion to choose: the class of options to buy/sell, the number of contracts to buy/sell, or whether the transaction would be one to buy or sell. Unlike market makers and the DPM, floor brokers may not stream quotes.

[11] *See* proposed CBOE Rule 6.13(b)(i)(B)(1).

[12] *See* proposed CBOE Rule 7.4(a).

[13] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] CBOE market makers who are physically present in the trading crowd would be permitted to submit one-sided quotes (also referred to as an order) or two-sided quotes. See Amendment No. 6, supra note 7.

[16] BART is the Booth Automated Routing Terminal that enables firms to maintain orders in electronic format. Orders routed to the firm's booth, as opposed to BART, would print at the booth and must be handled by the firm manually. As is the case today, the FPC would have the discretion, on a class by class basis, to route orders to PAR or

In addition, the appropriate FPC would determine, on a class-by-class basis, the maximum size of orders entitled to receive automatic execution through Hybrid. If the appropriate FPC determines to allow market makers and specialists to access the automatic execution feature of Hybrid, proposed CBOE Rule 6.13(b)(i)(C) would permit the FPC to establish the maximum order size eligibility for such orders at a level lower than the maximum order size eligibility for non-broker-dealer public customers and non-market-maker broker-dealers.

Under proposed CBOE Rule 6.13(b)(iii), eligible orders for a size greater than the disseminated size would be automatically executed up to the disseminated size. The balance of the order, if marketable, would be executed automatically at the revised disseminated price up to the revised disseminated size. If not marketable, the balance of the order would book electronically, if the order were eligible for book entry. Otherwise, the balance would route either to PAR or BART, or, at the order entry firms' discretion, to the order entry firm's booth printer.[17]

Pursuant to proposed CBOE Rule 6.13(b)(iv), when the CBOE quotation is inferior to the NBBO, eligible orders would not automatically execute and instead, would route to the DPM's PAR terminal or, at the order entry firm's discretion, to BART, for non-automated handling.[18] Eligible orders received while the CBOE market is locked would be eligible for automatic execution on CBOE at the disseminated quote, provided that CBOE's disseminated quote is not inferior to the NBBO, in which case the order would route to the DPM's PAR terminal or, at the order entry firm's discretion, to BART, for non-automated handling.

In its comment letter, the ISE questions why ''an FPC would establish a size limit for orders eligible for automatic execution under proposed Rule 6.13 when the size of market maker quotes is displayed and firm for certain incoming orders.''[19] The ISE's comment suggested that, in its view, the requirements of the Quote Rule[20] and an exchange's automatic execution system parameters must necessarily be the same. The Quote Rule, however, does not require an automatic execution. For this reason, the Commission has previously approved exchange rules that establish automatic execution sizes that are different from the sizes for which responsible brokers or dealers are obligated under the Quote Rule.[21]

The ISE also argues that the size restrictions on orders eligible for automatic execution, together with ''the requirement that broker-dealer orders and/or competing market maker orders must be represented in the trading crowd * * * raise best execution concerns not only for the orders represented in the trading crowd, but also for incoming electronic orders and orders on the electronic limit order book that may receive automatic executions at inferior prices.''[22] In response to this comment, CBOE notes that proposed CBOE Rule 6.13(b)(iv) expressly prohibits the automatic execution of orders at prices inferior to the NBBO and that orders do not lose this protection merely because they are executed manually instead of electronically.[23] The CBOE also notes that orders executed in open outcry actually have the potential opportunity to be executed at better prices than they would receive if executed electronically.[24] The Commission believes that the proposed rules are consistent with the Act. Brokers continue to have best execution obligations to their customers and must consider all facts and circumstances in determining where to route customers' orders.

Finally, CBOE notes that the ISE is incorrect in its statement that orders for competing market makers that are not eligible for automatic execution must be routed to a floor broker in the firm's booth.[25] Pursuant to Proposed CBOE Rule 6.13(b)(i)(B), absent specific instructions by the order entry firm to the contrary, orders that are not eligible for automatic execution may route only to PAR or BART.

B. Priority and Allocation

1. Allocation of Incoming Electronic Orders

Under proposed CBOE Rule 6.45A, incoming electronic orders would be allocated to a market participant who is quoting or representing an order at the CBOE BBO using UMA for up to the size of its quote.[26] Public customer orders in the electronic book and at the BBO would always have priority. Multiple public customer orders in the electronic book at the same price would be ranked based on time priority.[27]

A market participant quoting alone at the BBO would have priority and would be entitled to receive incoming electronic order(s) up to the size of its quote. When more than one market participant is quoting at the BBO, inbound electronic orders would be allocated pursuant to UMA. UMA allocates orders based on two separate components: parity (*i.e.*, multiple participants quoting at the best price) and depth of liquidity (*i.e.*, relative size of each market participant's quote).[28] Component A of the UMA is the parity component, which would treat as equal all market participants quoting at the relevant best bid or best offer. Accordingly, the percentage used for Component A is an equal percentage, derived by dividing 100 by the number of market participants quoting at the best price. Component B of the UMA is the size pro-rata component designed to reward and incent market participants to quote with size. The percentage used

BART. If market maker orders are not eligible for automatic execution, they would all route to PAR or they would all route to BART. The FPC could not determine to route, for example, orders for CBOE market makers that are not in the crowd to PAR, and competing market maker orders to BART. The CBOE represents that routing decisions would be changed infrequently. See Amendment No. 6, *supra* note 7.

[17] *See* Amendment No. 5, *supra* note 6.

[18] In these instances, the order would route to PAR, unless the order entry firm decides that these orders should route to BART, because routing to PAR would allow the DPM either to send an order through the options intermarket linkage or to execute the order at the better price. *See* Amendment No. 6, *supra* note 7.

[19] *See* ISE Letter, *supra* note.

[20] 11Ac1–1 under the Act (''Quote Rule''), 17 CFR 240.11Ac1–1.

[21] *See, e.g.*, CBOE Rule 6.8(c)(v), which states that ''[t]he appropriate FPC shall determine the size of orders eligible for entry into RAES.'' *See also* PCX Rule 6.76, which states that ''[t]he maximum size of an inbound order that may be eligible for execution on PCX Plus . . . will initially be established by the LMM in the issue, subject to the approval of the Options Floor Trading Committee. Any request by the LMM for changes to the Maximum Order Size . . . must be approved by two Floor Officials, whose approval must be further ratified by the Options Floor Trading Committee.''

[22] *See* ISE Letter, *supra* note 6.

[23] *See* CBOE Response Letter, *supra* note .

[24] *Id.*

[25] *Id.*

[26] If, pursuant to CBOE Rule 7.4(a), the appropriate FPC determines to allow broker-dealer orders to be placed in the electronic book, then, for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price would be deemed one ''market participant,'' regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a ''market participant'' would be distributed among each broker-dealer order comprising the ''market participant'' based on UMA. *See* proposed CBOE Rule 6.45A(a)(i)(A)(2).

[27] If a public customer order in the electronic book matches, or is matched by, a market participant's quote, the public customer order would have priority and, the balance of the electronic order, if any, would be allocated based on UMA.

[28] UMA operates electronically and, as such, only market participants that are represented in the disseminated quote would participate in the allocation of incoming electronic orders. Multiple incoming orders would execute in accordance with CBOE Rule 8.51, Firm Disseminated Market Quotes.

for Component B is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote. The final relative weighting of Components A and B would be determined by the appropriate FPC,[29] but initially, would be equal. The assigned weightings of Components A and B would be multiplied by the percentages derived for Components A and B, respectively, and then would be multiplied by the size of the incoming order.

In its comment letter, the ISE argues that the proposal ''will allow an FPC to change the allocation algorithm in many different ways * * * '' and that ''[s]uch a broad range of allocation possibilities cannot be equally fair and equally provide the best incentives for competition.'' [30] In response to ISE's comment, the CBOE represents that changes to these weightings would be made very infrequently and would apply floorwide in all classes within that FPC's jurisdiction.[31] The CBOE further notes that the proposal requires that changes to these weightings must be announced to Exchange members in advance of implementation. Thus, the CBOE concludes that there is no possibility of ''gaming'' the formulas to disproportionately benefit certain trading crowds.

As stated above, the proposed allocation algorithm consists of the weighting of two components: the parity component, which treats as equal all market participants quoting at the relevant best bid or best offer, and the size pro-rata component, which provides greater allocations to market participants with larger quotes. The Commission must consider whether each component and all possible combinations of each component are consistent with the Act. The Commission has previously approved allocation algorithms that provide an equal allocation to participants quoting at the best price, as well as algorithms that provide for size pro rata allocations.[32] The Commission also believes that any combination of these two algorithms would be consistent with the Act. In addition, the Commission believes that the proposed Hybrid System, including the proposed allocation algorithm, should substantially enhance incentives to quote competitively by providing market participants with the ability to independently submit their quotes and then rewarding market participants that quote at the best price with an allocation of the resulting trade.[33]

Finally, although it is not unlawful for a market maker to take the prices offered by its competitors into account when setting its own prices, or to follow or copy prices of its competitors, such a decision must be a unilateral business judgment not intended to harass or punish a competitor for improving prices or otherwise acting competitively and not the result of collusive agreement. Accordingly, the Commission expects that the CBOE will surveil its market to ensure that market makers are not coordinating quotes in the Hybrid System or engaging in other anticompetitive conduct.

2. Allocation of Orders Represented in the Trading Crowd by Floor Brokers

Orders represented in the trading crowd would first be executed against public customer orders in the electronic book. Multiple public customer orders in the electronic book at the same price would be ranked based on time priority.[34]

After public customer orders on the book at the best price are exhausted, the method for allocating the remainder of orders that are represented in the trading crowd by floor brokers would depend upon whether there were any book market participants (''BMP'') [35] quoting at the prevailing price. If there were no BMP present at the prevailing price, open outcry orders would be allocated pursuant to existing CBOE Rule 6.45(a) and (b). If there were a BMP quoting at the prevailing price, open outcry orders would be allocated as follows: If two or more bids (offers) represent the best price, priority would continue to be afforded in the sequence in which the bids (offers) were made, subject to the restriction that the first market participant to verbally respond would be entitled to 70% of the order. The second market participant to verbally respond (if ascertainable) would be entitled to 70% of the remainder of the order (*i.e.*, 70% of 30%). The balance of the order would be apportioned equally among the remaining market participants verbally bidding (offering) at the same price and the BMP. The portion allocated to the BMP would be distributed among each book market participant pursuant to the UMA.

If, at any point, the sequence in which market participants verbally respond is not ascertainable, any remaining balance of an incoming order would be apportioned equally among the remaining market participants bidding (offering) at the same price and, if applicable, the BMP. If a market participant declines to accept any portion of the available contracts, any remaining contracts would be apportioned equally among the other participants who bid (offered) at the best price (including the book market participant, if applicable) at the time the market was established, until all contracts have been apportioned.

The Commission believes that the proposed rules governing allocation of orders represented in the trading crowd are consistent with the Act.

3. Interaction of Market Participant's Quotes/Orders with Orders in the Book

Under proposed CBOE Rule 6.45A(c), market participants would be permitted to submit orders or quotes electronically to trade with orders in the electronic book. However, for purposes of proposed CBOE Rule 6.45A(c), a floor broker market participant would be permitted only to represent as agent customer orders.[36] When a market participant's quote or order interacts with the order in the book, a trade occurs, and CBOE would disseminate a last sale report, and the size of the order would be decremented to reflect the execution.[37] If only one market participant submits an electronic order or quote to trade with an order in the electronic book, that market participant would be entitled to receive an allocation of that order in the electronic book up to the size of the market participant's quote or order. If, however, more than one market participant submits a quote or order to trade with the book within a period of time not to exceed 5-seconds [38] of the first market

[29] *See* CBOE Response Letter, supra note 8 .

[30] *See* ISE Letter, *supra* note 5.

[31] *See* CBOE Response Letter, *supra* note 8.

[32] *See* PCX Rule 6.75(c); CBOE Rule 6.45(a)(ii)(2); and PCX Rule 6.76(a)(4).

[33] The Exchange has submitted the proposed rule change pursuant to subparagraph IV.B.h.(i)(aa) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which required the CBOE (as well as other floor-based option market exchanges) to adopt new, or amend existing rules to substantially enhance incentives to quote competitively and substantially reduce disincentives to act competitively.

[34] *See* proposed CBOE Rule 6.45A(b)(i)(A).

[35] If, pursuant to CBOE Rule 7.4(a), the appropriate FPC determines to allow broker-dealer orders to be placed in the electronic book, then, for purposes of proposed CBOE Rule 6.45A(b), the cumulative number of broker-dealer orders in the electronic book at the best price would be deemed one BMP, regardless of the number of broker-dealer orders in the book.

[36] *See* Amendment No. 6, *supra* note 7.

[37] *Id.*

[38] This N-second period is configurable by the appropriate FPC but would never exceed 5-seconds. Any reduction of this N-second period (or subsequent increase) would be announced to the membership in advance of implementation via

participant to submit an order (''N-second group''), each member of the N-second group would be entitled to share in the trade with the electronic book pursuant to the allocation algorithm described below.[39]

Component A of the proposed allocation algorithm is an equal percentage based on the number of market participants in the N-second group. Component B of the proposed allocation algorithm is that percentage that the order or quote of each market participant in the N-second group represents relative to the total number of contracts of such orders or quotes. The final relative weighting of Components A and B would be determined by the appropriate FPC,[40] but initially, would be equal. The assigned weightings of Components A and B would be multiplied by the percentages derived for Components A and B, respectively, and then would be multiplied by the size of the incoming order.

If a DPM were eligible for an allocation by virtue of being a member of the N-second group, the DPM would be entitled to receive an allocation equal to the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder), discussed below. The DPM's entitlement percentage is expressed as a percentage of the remaining quantity after all public customer orders in the electronic book have been executed.

In its comment letter, ISE raises several concerns about the proposed N-second period.[41] First, ISE questions whether a marketable public customer order that is received during the N-second period would receive an automatic execution against orders in the limit order book during the N-second period. The ISE also questions whether, if the incoming order trades against orders in the limit order book and the best price moves, the interest in the N-second group would be automatically cancelled.[42]

The Commission believes that ISE's questions are answered by CBOE's amendment clarifying when a trade occurs in the context of an N-second group transaction.[43] Specifically, as amended, proposed CBOE Rule 6.45A(c) indicates that a trade would occur when a market participant's quote or order interacts with the order in the book. At this point, CBOE would disseminate a trade report and decrement its disseminated quote to reflect the execution. The N-second group is relevant only to determining the appropriate allocation of the trade among market participants. According to the CBOE, the N-second period prevents millisecond priority by giving a form of parity to market participant orders submitted at virtually the same time. Moreover, because the N-second group is relevant only to the allocation of the trade, members of the N-second group would not have an opportunity to cancel trades.[44]

In addition, ISE questions how a participant in the N-second group representing a customer order would be treated.[45] CBOE's amendment also clarifies that if a floor broker agent submits a customer order to buy (sell) the book, and that order is first in time (*i.e.*, ahead of all other market participants), it would have priority.[46] CBOE's amendment further clarifies that a floor broker submitting a customer order after a market participant would become part of the N-second group.[47] Floor broker handheld quoting/order entry terminals provide floor brokers with the ability to designate orders as customer orders.[48]

Finally, the ISE questions the discretion given the FPC with respect to the length of the N-second interval. The Commission notes that the FPC may only shorten the length of this interval and, as represented by CBOE, any changes to the N-second interval would be announced to the membership in advance of implementation and would apply uniformly across all classes under the FPC's jurisdiction.

Accordingly, the Commission believes that this proposed algorithm is consistent with the Act and should ensure that additional market participants have an opportunity to interact with orders resting on the Exchange's electronic book.

4. Quotes Interacting with Quotes

Because Hybrid allows the simultaneous entry of quotes by multiple market makers, there may be instances where quotes become locked. If an in-crowd market maker's (including the DPM) disseminated quote were to interact with the disseminated quote(s) of another in-crowd market maker (including the DPM), resulting in the dissemination of a ''locked'' quote, the following would occur:

(A) The Exchange would disseminate the locked market and both quotes would be deemed ''firm'' disseminated market quotes.

(B) The market makers whose quotes are locked would receive a quote update notification advising that their quotes are locked.

(C) A ''counting period'' would begin during which market makers whose quotes are locked may eliminate the locked market.[49] Provided, however, that in accordance with subparagraph (A) above, a market maker would be obligated to execute customer and broker-dealer orders eligible for automatic execution pursuant to proposed CBOE Rule 6.13 at his disseminated quote in accordance with CBOE Rule 8.51. During the ''counting period,'' market makers would continue to be obligated for one contract in open outcry to other market makers, in accordance with CBOE Rules 8.51 and 6.48. If, at the end of the counting

Regulatory Circular. Furthermore, this time-period would apply uniformly among all classes under the FPC's jurisdiction. *See* CBOE Response Letter, *supra* note 8.

[39] *See* Amendment No. 6, *supra* note . The trade occurs when the first market participant's quote or order interacts with the order in the book, not at the expiration of the N-second period.

[40] As stated above, CBOE represents that these weightings would be changed very infrequently. *See* CBOE Response Letter, *supra* note 8.

[41] *See ISE* Letter, *supra* note 5.

[42] *Id.*

[43] *See* Amendment No. 6, *supra* note 7.

[44] *See* CBOE Response Letter, *supra* note 8.

[45] *Id.*

[46] *See* Amendment No. 6, *supra* note 7.

[47] *Id.* The Hybrid System, at least temporarily, would not recognize in-crowd orders from floor broker handheld devices for purposes of allowing these orders to participate in the N-second group. To address this systems limitation, the Exchange proposes to designate in each trading crowd ''Temporary Order Access Terminals'' (''T–OATs'') that would allow floor brokers to enter customer orders that would be eligible to participate in the N-second group. The CBOE represents that these terminals would provide to floor brokers the same functionality in terms of order entry that in-crowd market makers currently have. The CBOE also represents that these T–OATs would be reserved exclusively for the use of floor brokers holding customer orders and would be conveniently located in the trading pit such that they are readily available and easily accessible. The CBOE commits to place at least one T–OAT in each trading pit in which Hybrid is operational and further commits to provide as many T–OATs as are necessary to accommodate demand. The CBOE will provide these T–OATs for floor brokers' use until the above-mentioned Hybrid System limitation is resolved in such a manner that floor brokers have direct order entry access via floor broker workstations. The Exchange will continue to provide T–OATs until either November 28, 2003 or until the Hybrid System is capable of accepting orders from floor broker workstations, whichever occurs first. *See* proposed CBOE Rule 6.45A(c)(iv).

[48] *Id.*

[49] For the first 60 days after a class begins trading on the Hybrid System, the length of the ''counting period'' for that particular class would not exceed ten seconds. For the next 60 days thereafter (*i.e.*, days 61–120) the length of the ''counting period'' would not exceed seven seconds in that class. Commencing on the 121st day after a class begins trading on the Hybrid System, the length of the ''counting period'' would not exceed four seconds in that class. Beginning April 1, 2004, all classes trading on Hybrid would be subject to a counting period not to exceed four seconds. The appropriate FPC may shorten the duration of the ''counting period.''

period, the quotes remain locked, the locked quotes would automatically execute against each other in accordance with the allocation algorithm described above in proposed CBOE Rule 6.45A(a).

The Hybrid System would not disseminate an internally crossed market (*i.e.*, the CBOE bid is higher than the CBOE offer). If a market maker were to submit an incoming quote that would cross an existing quote, the Exchange would automatically alter the incoming quote such that it locks the existing quote, at which point the locked quotes would be treated in accordance with the procedures described above. The Exchange would notify the second market maker that its quote has been changed.[50] The Commission believes that the proposed provisions are consistent with the Quote Rule. Market makers would continue to be required to honor their quotes and, thus, would be obligated to execute incoming orders pursuant to proposed CBOE Rule 6.13. The Commission notes that the market makers whose quotes are locked would continue to be obligated under the Quote Rule for at least one contract to each other during the counting period. At the end of the counting period, assuming neither market maker has changed its quotes, the market makers' quotes would execute against each other in all series.

PCX argues [51] that these proposed rules are inconsistent with the Options Intermarket Linkage Plan (''Linkage Plan'').[52] The Commission notes that the Linkage Plan's admonition to avoid the dissemination of locked and crossed markets [53] would apply to CBOE Hybrid. The Commission believes that the proposed ''counting period'' provides a reasonable method for market makers that lock or cross a market to unlock or uncross the market, as required by the Linkage Plan.[54] Importantly, during the ''counting period,'' the market makers whose quotes are locked would remain obligated to execute customer and broker-dealer orders eligible for automatic execution at the locked price.[55]

PCX also argues that the proposal would ''exacerbate the occurrence of * * * non-disclosed crossed markets to the detriment of public investors.''[56] The Linkage Plan requires the CBOE and the other options exchanges to avoid the *dissemination* of locked or crossed markets. If a market maker were to submit an incoming quote that would cross an existing quote, the Exchange proposed to automatically alter the incoming quote such that it locks the existing quote, thus avoiding the dissemination of a crossed market. The Commission believes the proposed rules regarding crossed markets provide a reasonable method of avoiding the dissemination of inverted markets.

5. DPM's Participation Entitlement

Under proposed CBOE Rule 6.45(a)(i)(C), if a DPM is eligible for an allocation pursuant to the operation of the UMA described above, the appropriate FPC would determine whether a DPM's allocation would be:[57]

(A) the greater of the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder)[58] or the amount it would otherwise receive pursuant to the operation of the proposed allocation algorithm described above; or

(B) the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).[59]

In either case, the DPM's entitlement cannot exceed the size of the DPM's quote.

ISE expressed its concern that ''the ability to * * * decide between alternative DPM entitlement formulas might be used to protect the DPM or maximize its participation based upon the level of competition it faces.'' [60] In response, the CBOE states that the Hybrid filing does not propose to change the level of the participation right guaranteed to DPMs and that changes to the DPM participation right are governed by CBOE Rule 8.87 and are subject to Board review. The Commission also notes that any changes to the DPM's participation rights must be filed with the Commission as a proposed rule change pursuant to Section 19(b) of the Act.

In addition, CBOE notes that the decision by the FPC regarding the allocation a DPM would receive under proposed CBOE Rule 6.45A(i)(C) would be in effect floorwide in all classes under the FPC's jurisdiction and would be announced to the membership in advance of implementation. CBOE believes this would preclude switching between the two allocation alternatives on a class basis based upon the level of competition faced by a DPM.

The Commission recognizes that a large guaranteed participation right would erode the incentive of other market makers to make competitive markets. Thus, the Commission must weigh whether a proposed participation right adequately balances the aim of rewarding the specialist or lead market maker with the aim of leaving a sizeable enough portion of the incoming order for the other market makers quoting at the same price.[61] The Commission has previously taken the position that a trade participation right that does not exceed 40%, including any guaranteed percentage of the trade to be accorded to any other trade participant, is not inconsistent with the Act.[62] The

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[50] During the lock period, if the first quote is cancelled or changed, the second quote would be restored to its original value. For example, assume MM A quotes 1.00–1.20 (which is the CBOE's disseminated quote) and MM B submits a 1.25–1.40 quote. Because MM B's quote would invert MM A's disseminated quote, MM B's quote would be changed to 1.20–1.40 and the disseminated quote would be 1.20–1.20. If during the lock period, MM A cancels its quote, MM B's quote (which is currently 1.20–1.40) would revert to 1.25–1.40.

[51] *See* PCX Letter, supra note 5.

[52] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Linkage Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange, Inc.); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (order approving the PCX as participant in Options Intermarket Linkage Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Philadelphia Stock Exchange, Inc. as participant in the Linkage Plan).

[53] *See* Section 7(a)(i)(C) of the Linkage Plan.

[54] *Id.*

[55] *See* proposed CBOE Rule 6.45A(d).

[56] *See* PCX Letter, *supra* note 5.

[57] *See* proposed CBOE Rule 6.45A(a)(i)(C). Each pronouncement regarding which allocation alternative to be used would be made via Regulatory Circular.

[58] CBOE Rule 8.87 states that ''[s]ubject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.'' Any changes to this formula are required to be filed as a proposed rule change pursuant to Section 19(b) of the Act. Currently, a DPM's participation entitlement is 40% when there are two market makers at parity with the DPM and 30% when there are three or more market makers at parity with the DPM. *See* Securities Exchange Act Release No. 43750 (December 20, 2000), 65 FR 82420 (December 28, 2000) (SR–CBOE–00–52).

[59] Due to a systems limitation, the Exchange initially would use method two and set the DPM's allocation at the amount it would be entitled to pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).

[60] *See* ISE Letter, *supra* note 5.

[61] *See* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778, 48787–90 (August 9, 2000) (''Phlx 80/20 Proposal'') (Commission requested comment on whether the proposal by the Phlx to establish an 80% specialist guarantee would be consistent with the Act).

[62] *See, e.g.*, Securities Exchange Act Release No. 45936 (May 15, 2002), 67 FR 36279, 26280 (May 23, 2002) (SR–CBOE–2002–10) (approving participation entitlements that range from 34 percent to 40 percent for the DPM providing the primary quote feed, depending on the total number of appointed market makers in the option); Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683, 35685–66 (June 5, 2000) (SR–CBOE–99–10) (approving DPM guarantee for crossed orders that, when combined with the percentage crossed by the

Commission notes that under the proposed rules, the most to which the DPM would be entitled would be either the guarantee, which is capped at 40%, or the amount to which it would be entitled pursuant to the proposed allocation algorithm, discussed above. This approach is consistent with rules previously approved by the Commission.[63]

C. Orders on the Book

The Exchange proposes to amend CBOE Rule 7.4(a) to expand the types of orders eligible for entry into the electronic book.[64] Market participants would be permitted to place orders in the book (in those classes in which Hybrid is operational.) Proposed paragraph (a)(1) to CBOE Rule 7.4 would enable the FPC to allow all broker-dealer orders to be book eligible or, to allow orders from those broker-dealers that are not market makers or specialists to enter the book. This proposed rule also would require members submitting orders or quotes for entry into the electronic book to do so electronically and require them to comply with such format requirements as may be prescribed by the Exchange.[65]

ISE contends that the proposal allows ''an FPC to distinguish between broker-dealer orders and competing market maker orders on a class basis, and to decide whether one or both categories of orders may be permitted on the book and/or be eligible for automatic execution.'' [66] In its response, CBOE states that the Hybrid proposal does not discriminate against competing market maker orders because they are treated the same way that orders for CBOE market makers who are not physically present in the trading crowd are treated.[67] In this regard, a CBOE market maker that is not physically present in the trading crowd would be eligible to receive automatic executions in that class only if all other market makers (including competing market makers) were also eligible.[68]

However, a market maker who is physically present in the trading crowd would be permitted to submit one-sided quotes (also referred to as an order) or two-sided quotes.[69] These one and two-sided quotes would be treated in the same manner by the Hybrid System.[70] Such quotes would route directly to the CBOEdirect platform; would have the same participation entitlements in UMA; would be eligible to participate in the N-second group as described in proposed CBOE Rule 6.45A(c); and would be subject to proposed CBOE Rule 6.45A(d) if they locked the quote of another market maker.[71] Furthermore, an in-crowd market maker would be required to be firm pursuant to the Quote Rule for a one-sided quote to the same extent he or she would be for a two-sided quote.[72]

The Commission believes that the proposal does not unfairly discriminate against competing market makers and may enhance access to the book.

D. Firm Quotations

The Exchange proposes to amend CBOE Rule 8.51(a)(1) to clarify that in Hybrid classes, the market participant who submits a quote that is disseminated would be the responsible broker or dealer for that quote for purposes of the Exchange's rule and the Quote Rule. Proposed subparagraph (c)(1)(a)(i) to CBOE Rule 8.51 states that the firm quote requirement for customer orders would be the size disseminated to vendors. In subparagraph (a)(ii), the Exchange proposes to clarify that the firm quote requirement for broker-dealer orders would be the lesser of the size it disseminates to vendors or periodically publishes in a different manner. This proposed rule is almost identical to the CBOE's current rule, except that it provides flexibility to allow the Exchange to disseminate its broker-dealer firm quote size (rather than to periodically publish it).

In addition, CBOE proposes a change to Interpretation .10 to CBOE Rule 8.51 to clarify the timing of when an order has been presented to a responsible broker or dealer. Currently, because the trading crowd as a whole is the responsible broker or dealer, an order is considered to be presented to the responsible broker or dealer at the time it is received on a PAR station. This interpretation would remain the same for non-Hybrid classes. For Hybrid classes, an order received on a PAR station is presented to a responsible broker or dealer that is not the DPM when the order is announced to the trading crowd.[73] However, an order is considered presented to the DPM at the time of receipt of the order on PAR. Thus when an order is received on PAR when the disseminated quote represents the DPM and other market makers, there would be two separate times when the order has been presented for Quote Rule purposes: the order would be presented to the DPM at the time the order is received on PAR, while the order would be presented to another responsible broker or dealer when the order is announced to the crowd.

ISE argues that ''the proposal changes the point at which firm quote obligations attached to orders represented by floor brokers to the time they are presented to the crowd so there is greater potential for the quote to have changed from the time the order was received at the CBOE to the time it is walked into the crowd.'' The Quote Rule, among other things, requires a responsible broker or dealer to execute orders presented to it by another broker-dealer, at a price at least as favorable as the responsible broker or dealer's published bid or offer. The Commission believes that CBOE's proposed rule amendment is consistent with the Quote Rule because a responsible broker or dealer in the trading crowd would not be ''presented'' with an order until it is announced to the crowd.

The Commission, nonetheless, has concerns about the potential for responsible brokers or dealers to improperly avoid their Quote Rule obligations. The Commission expects the CBOE to surveil not only for violations of the Quote Rule by the DPM and/or other responsible brokers or dealers, but also, for the DPM's handling

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floor broker, cannot exceed 40% of the original order (after relevant public customer orders have been satisfied)); and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11398 (March 2, 2000) (approving International Securities Exchange's application for registration as a national securities exchange, which contains a 40% participation right for facilitating EAMs); *See also* Phlx 80/20 Proposal, *supra* note 61.

[63] *See* Supplementary Material .01(b) to ISE Rule 713, which states that ''[i]f the Primary Market Maker is quoting at the best price, it has participation rights equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Non-Customer Order or market maker quotation at the best price, forty percent (40%) if there are two (2) other Non-Customer Orders and/or market maker quotes at the best price, and thirty percent (30%) if there are more than two (2) other Non-Customer Orders and/or market maker quotes at the best price.'' *See also* PCX Rule 6.76(a)(2)(C)(iii), which states that the ''LMM will be allocated a number of contracts equal to the greater of their guaranteed participation or their 'size pro rata' allocation * * *.''

[64] Currently, only public customer orders are eligible for entry in the book.

[65] *See* Amendment No. 5, *supra* note 6.

[66] *See* ISE Letter, *supra* note 5.

[67] *See* CBOE Response Letter, *supra* note 8.

[68] *Id.*

[69] *See* Amendment No. 6, *supra* note 7.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] In Amendment No. 4, the Exchange noted that market makers in the crowd have no control over PAR and no access to PAR and would be unaware that an order resides on PAR until that order is announced to them. Currently, even though a market maker may be unaware of the receipt of an order on PAR, because the disseminated quote represents the entire trading crowd, the entire crowd is deemed to receive the order upon receipt of the order on PAR. In Hybrid, each market maker has its own quote. *See* Amendment No. 4, *supra* note 3.

of orders received by it for presentation to responsible brokers or dealers. The Commission intends to monitor closely the CBOE's efforts in this regard.

E. Obligations of Market Makers

CBOE Rule 8.7 governs market maker obligations. Market makers on the CBOE Hybrid System would continue to be subject to the obligations imposed by this rule, as amended. The proposed change to Section (b)(ii) of CBOE Rule 8.7 clarifies that market makers would be obligated to honor their quotes for up to their disseminated size, in accordance with the Quote Rule. In addition, market makers would be deemed the ''responsible broker or dealer'' for quotes they cause to be disseminated.

Under Hybrid, market makers would be able to quote verbally in open outcry in response to a request for a market, or to quote electronically (or submit orders electronically) by use of an exchange-approved quoting device. CBOE Rule 8.7 also would clarify that market makers must be physically present in the trading crowd to quote and submit orders. Market maker quotes would be required to be for ten contracts or more. This size obligation would apply only to a market maker's initial undecremented quote.

In addition, the Exchange proposes new paragraph (d) to CBOE Rule 8.7, which would establish additional obligations for market makers trading Hybrid classes.[74] Specifically, if a market maker on the CBOE Hybrid System transacts more than 20% of its contract volume electronically in an appointed Hybrid class during any calendar quarter, the market maker would be required to maintain continuous, two-sided quotes for at least ten contracts in a designated percentage of series within the class, depending on the percentage of the market maker's contract volume transacted electronically.[75] The following schedule would apply:

% of Overall Class Volume Transacted on CBOE During the Previous Quarter that was Transacted Electronically	Electronic Quoting % Requirement (Percentage of series)
50 or Below	20
51–75	40
Above 75	60

Such market makers also would be required to provide a two-sided market for a minimum of ten contracts in response to any request for quote by a floor broker or DPM representing an order as agent. Finally, such market makers would be required to comply with the quote-width requirements contained in CBOE Rule 8.7(b)(iv).

Market makers that transact 20% or less of their contract volume electronically would be required to provide a two-sided market for a minimum of ten contracts in response to any request for quote by a floor broker or DPM representing an order as agent. Such verbal quotes would be required to comply with the quote-width requirements in CBOE Rule 8.7(b)(iv). These market makers' electronic quotes, however, would not be required to comply with the quote-width requirements of CBOE Rule 8.7(b)(iv). Although these market makers would not be obligated to quote electronically in any designated percentage of series within that class, any volume transacted electronically by such market maker would not count towards their in-person requirement in CBOE Rule 8.7.03(B).[76]

Market makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange.[77] The Commission believes that a market maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment. In this regard, by excluding electronic transactions from satisfying a market maker's in-person requirements where the market maker transacts only 20% or less of its contract volume electronically and is not required to continuously quote or comply with quote-width requirements, the Commission believes that CBOE's rules impose such affirmative obligations on CBOE Hybrid market makers.

V. Accelerated Approval of Amendments No. 5 and 6

The Commission finds good cause for approving Amendments No. 5 and 6 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[78] Amendments No. 5 and 6 merely make clarifications to the proposed rule text in response to comments made in the ISE Letter and by Commission staff. Therefore, the Commission believes that accelerated approval of Amendments No. 5 and 6 is appropriate.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.[79]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[80] that the proposed rule change (SR–CBOE–2002–05) and Amendments No. 1, 2, 3, and 4 are approved, and that Amendments No. 5 and 6 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[81]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14368 Filed 6–6–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47951; File No. SR–CHX–2003–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Extend a Pilot Rule Interpretation Relating To Trading of Nasdaq/NM Securities in Subpenny Increments

May 30, 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 May 28, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is

[74, 75] The proposed obligations in paragraph (d) would be applicable on a per class basis and would apply only to market makers trading on the CBOE Hybrid System and only in those Hybrid classes.

[76] All market makers electronically quoting in a Hybrid classs would be required to post an initial undecremented bid or offer of at least ten contracts.

[77] *See* 12 CFR 221.5(c)(6).

[78] 15 U.S.C. 78s(b)(2).

[79] 15 U.S.C. 78f(b)(5).

[80] 15 U.S.C. 78s(b)(2).

[81] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

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 proposes to extend through December 1, 2003, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot is due to expire on May 31, 2003. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. The text of the proposal is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 ''Trading in Nasdaq/NM Securities in Subpenny Increments'') [5] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer (''NBBO'') by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot has been extended six times and is now due to expire on May 31, 2003.[6] The CHX now proposes to extend the pilot through December 1, 2003. The CHX proposes no other changes to the pilot, other than extending it through December 1, 2003.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[7] In particular, the CHX believes the proposal is consistent with section 6(b)(5) of the Act [8] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 CHX. All submissions should refer to file number SR–CHX–2003–13 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14372 Filed 6–6–03; 8:45 am]

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[5] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001)(SR–CHX–2001–07).

[6] *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending the pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending the pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); and 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47969; File No. SR–MSRB–2003–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board To Require Dealers To Establish Anti-Money Laundering Compliance Programs

June 3, 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 May 22, 2003, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change (File No. SR–MSRB–2003–04) (the ''proposed rule change'') described in Items I, II, and III below, which Items have been prepared by the Board. 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 MSRB filed a proposed rule change, Rule G–41, on anti-money laundering compliance. As further discussed below, section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA PATRIOT Act'')[3] required financial institutions, including broker/dealers, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act (''BSA''),[4] and the regulations promulgated thereunder, by April 24, 2002. The MSRB has proposed new Rule G–41 to ensure that all brokers, dealers and municipal securities dealers (''dealers'')[5] that effect transactions in municipal securities, and in particular those that only effect transactions in municipal securities (''sole municipal dealers''), are aware of, and in compliance with, anti-money laundering program requirements. Thus, proposed Rule G–41 requires that all dealers establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator governing the establishment and maintenance of anti-money laundering programs. The adoption of MSRB Rule G–41 will provide clarity to dealers and examiners concerning the rules and regulations that dealers who effect transactions in municipal securities must comply with concerning the development of anti-money laundering compliance programs, it will not impose any new or different obligations upon such dealers. Below is the full text of the proposed rule change.

Rule G–41: Anti-Money Laundering Compliance Program

No broker, dealer or municipal securities dealer shall be qualified for purposes of Rule G–2 unless such broker, dealer or municipal securities dealer has met the anti-money laundering compliance program rules set forth by either the registered securities association of which the dealer is a member (e.g., NASD Rule 3011), or the rules set forth by the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer (e.g., 12 CFR 21.21 (OCC); 12 CFR 208.63 (FRB); 12 CFR 326.8 (FDIC); and 12 CFR 563.177 (OTS)), to the same extent as if such rules were applicable to such broker, dealer or municipal securities dealer.

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 Board 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 Board has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to ensure that all dealers establish minimum standards for the anti-money laundering compliance programs that dealers are required to develop and implement under section 352 of the USA PATRIOT Act. The USA PATRIOT Act, which was signed into law by President Bush on October 26, 2001, is designed to deter and punish terrorists in the United States and abroad and to enhance law enforcement investigating tools by prescribing, among other things, new surveillance procedures, new immigration laws, and new and more stringent anti-money laundering laws.

Title III of the USA PATRIOT Act, referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''AML Act''), imposes certain obligations on dealers through new anti-money laundering provisions and amendments to the BSA. Section 352 of the AML Act requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer with responsibility for a firm's anti-money laundering program; (iii) an ongoing employee training program; and (iv) an independent audit function to test the effectiveness of the anti-money laundering compliance program. Section 352 of the AML Act also required dealers to develop and implement a written anti-money laundering compliance program by April 24, 2002.[6]

Pursuant to pre-existing bank regulations, bank municipal securities dealers already were required to have anti-money laundering programs in place.[7] Because the bank regulations contain the same elements that are required by section 352, BSA regulation 31 CFR 103.120(b) provides that a financial institution that is subject to regulation by a Federal functional regulator[8] (including bank municipal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107–56, 115 Stat. 272 (2001).

[4] 31 U.S.C. 5311, *et seq.*

[5] The term ''dealer'' is used herein as shorthand for ''broker,'' ''dealer'' or ''municipal securities dealer,'' as those terms are defined in the Act. The use of the term does not imply that the entity is necessarily taking a principal position in a municipal security.

[6] *See* 31 U.S.C. § 5318(h) (amended by section 352 of the AML Act).

[7] *See* 12 CFR 21.21; 12 CFR 208.63; 12 CFR 326.8; and 12 CFR 563.177.

[8] These are defined in reference to section 509 of the Gramm-Leach-Biley Act (Public Law 106–102) to include the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (''OCC''), the Board of Directors of the Federal Deposit Insurance Corporation

securities dealers) will be deemed in compliance with the requirements of section 352 if it complies with the regulations of its regulator governing the establishment and maintenance of anti-money laundering programs.[9] The adoption of MSRB Rule G–41, on anti-money laundering compliance programs, will not impose any new or different obligations upon bank dealers; it will articulate that a bank municipal securities dealer has to comply with the regulations of its banking regulator in connection with anti-money laundering compliance programs in order to be qualified under MSRB Rule G–2, on standards of professional qualification. Examination of these financial institutions by their Federal functional regulators will continue to ensure compliance with those regulations.

For securities dealers that were not previously subject to AML compliance programs, the Department of Treasury and the Financial Crimes Enforcement Network (''FinCEN'') believed that it was appropriate to implement section 352 through industry self-regulatory organizations (''SROs'').[10] After passage of the USA PATRIOT Act, the SEC met with representatives from the NASD and the New York Stock Exchange(''NYSE'') to coordinate the filing of a rule proposal to prescribe the minimum standards required for each securities firm's anti-money laundering compliance program. The rules that were ultimately enacted became effective by April 24, 2002, the statutory deadline.[11] BSA regulation 31 CFR 103.120(c) provides that a financial institution regulated by an SRO shall be deemed to satisfy the requirements of section 352 if the financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its SRO governing such programs.[12]

NASD Rule 3011, which incorporates the requirements of section 352, is designed to allow dealers to be in compliance with section 352 by virtue of being in compliance with the rules of the dealers' SRO, the NASD. NASD also has provided significant guidance to assist its member firms in developing anti-money laundering compliance programs that fit their business model and needs.[13] However, in the case of municipal securities dealers who are members of both the NASD and MSRB, the rules that govern the dealers' conduct in connection with municipal securities activities are the rules of the MSRB, not the NASD. Therefore, for securities dealers that only conduct municipal securities transactions with the public, there currently is no SRO rule that provides guidance concerning the development and implementation of an anti-money laundering compliance program.[14] For this reason, the MSRB adopted MSRB Rule G–41, on anti-money laundering compliance programs, to ensure that all dealers, including sole municipal securities dealers, know where to look for guidance concerning the development and implementation of anti-money laundering compliance programs.

The provisions of the USA PATRIOT Act are provisions of federal law and consequently all MSRB members should already be in compliance with section 352 of the AML Act. The MSRB is proposing new Rule G–41 to ensure that all brokers, dealers and municipal securities dealers who effect transactions in municipal securities, especially sole municipal securities dealers, are aware of their obligations under section 352 and know where to look for guidance concerning appropriate anti-money laundering programs. Moreover, the adoption of MSRB Rule G–41 will facilitate compliance with and enforcement of anti-money laundering compliance program rules by identifying for both bank and NASD examiners the rules and regulations that each dealer must comply with. By adopting a new rule that requires all dealers that effect transactions in municipal securities to establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator, the MSRB provides clarity to dealers and examiners about dealers' anti-money laundering program obligations and avoids promulgating duplicative or inconsistent anti-money laundering program regulation.

(2) Basis

The Board proposed the rule change pursuant to section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change is consistent with the Act in that it will facilitate dealer compliance with anti-money laundering compliance program regulation. These programs are designed to help identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board 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, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments 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 proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

(''FDIC''), the Office of Thrift Supervision (''OTS''), the National Credit Union Administration (''NCUA''), and SEC, and, pursuant to section 321(c) of the Act, the Commodity Futures Trading Commission (''CFTC'').

[9] *See* 31 CFR 103.120(b).

[10] *See* FinCen; Anti-Money Laundering Programs for Financial Institutions (Interim Final Rules announcement) 31 CFR part 103 (April 23, 2002), 67 FR 21110 (April 29, 2002).

[11] *See* Release No. 34–45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (SR–NASD–2002–24 and SR–NYSE–2002–10) (approval order); Release No. 34–46258 (July 25, 2002), 67 FR 49714 (July 31, 2002) (SR–Amex–2002–52) (approval order).

[12] *See* 31 CFR 103.120(c).

[13] *See http://www.nasdr.com/money.asp* (NASD Regulation Web Page provides information about anti-money laundering rules, regulations, and compliance).

[14] The MSRB believes that, nonetheless, sole municipal securities dealers are currently complying with NASD Rule 3011.

Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2003–04 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–14423 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47964; File No. SR–NASD–2003–89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

June 2, 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 May 29, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to extend through December 1, 2003, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Interpretation''). Without such an extension these standards would terminate on May 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on May 31, 2003. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until December 1, 2003. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3 (b)(6).

system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if, consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 Nasdaq. All submissions should refer to file number SR–NASD–2003–89 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14424 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47961; File No. SR–NYSE–2002–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Addition of Interpretive Material to Several Exchange Rules

June 2, 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 August 12, 2002, the New York Stock Exchange, Inc. (''NYSE'' 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 NYSE. On March 11, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 21, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change, as amended, consists of the addition of long-standing interpretive material to several NYSE rules.

The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.[5]

Rule 72 Priority and Precedence of Bids and Offers

I. Bids.—Where bids are made at the same price, the priority and precedence shall be determined as follows:

Priority of First Bid

(a) Except as provided in paragraph (b) below, when a bid is clearly established as the first made at a particular price, the maker shall be entitled to priority and shall have precedence on the next sale at that price, up to the number of shares of stock or principal amount of bonds specified in the bid, irrespective of the number of shares of stock or principal amount of bonds specified in such bid.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 10, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 20, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange corrected a typographical omission to the version of NYSE Rule 72(b) provided in Amendment No. 1. The Exchange also amended NYSE Rule 75 in order to reflect that Senior Floor Officials and Executive Floor Officials would be permitted to sit on panels to resolve disputes among members under certain circumstances. In addition, the Exchange amended NYSE Rule 91.10 to clarify that a member may reject a trade as soon as practicable under the prevailing circumstances after receiving an execution report that the member acted as principal. The Exchange also amended NYSE Rule 91.10 to clarify that disputes between members as to whether there was sufficient time to reject a trade would be resolved under NYSE Rule 75. In addition, NYSE Rule 91.50 was amended to make clear that a Floor Official's review of a pattern of a member's rejections does not compromise the unconditional right of the specialist to reject any trade where the specialist trades as principal.

[5] The rule text provided herein includes corrections of typographical errors from the rule text that the NYSE submitted in Amendment No. 2 of the proposed rule change. Telephone conversation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 22, 2003.

Priority of Agency Cross Transactions

(b) When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 25,000 shares or more and are for the accounts of persons who are not members or member organizations, the member may ''cross'' those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. *Following a transaction at the improved price, the member with the agency cross transaction shall follow the crossing procedures of Rule 76 and complete the balance of the cross.* No member may break up the proposed cross transaction, in whole or in part, at the cross price. No specialist may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this paragraph. A transaction effected at the cross price in reliance on this paragraph shall be printed as ''stopped stock''.

When a member effects a transaction under the provisions of this paragraph, the member shall, as soon as practicable after the trade is completed, complete such documentation of the trade as the Exchange may from time to time require.

* * * * *

III. Sale "Clears the Floor"

Following a sale, all bids and offers previously entered are deemed to be re-entered and are on parity with each other. For example, assume that the market in XYZ is 0.20 bid for 5000 shares, with 5000 shares offered at 0.25. On the bid side of the market, Broker A is bidding for 1000 shares and has priority. Brokers B, C, D, and E are each bidding for 1000 shares, with B being ahead of C, C being ahead of D, and D being ahead of E. On the offer side of the market, Broker F is offering 1000 shares and has priority. Brokers G, H, I, and J are each offering 1000 shares, with G being ahead of H, H being ahead of I, and I being ahead of J. Broker K enters the Crowd and sells 1000 shares to Broker A's bid of 0.20. The market then becomes 0.20 bid for 4000 shares, with 5000 offered at 0.25. Brokers B, C, D, and E are now on parity on the bid side of the market, and Brokers F, G, H, I, and J are now on parity on the offer side of the market.

* * * * *

Rule 75 Disputes as to Bids and Offers

Disputes arising on bids or offers, if not settled by agreement between the members interested, shall be settled by a Floor Official. In rendering a decision as to disputes regarding the amount traded, the Floor Official shall give primary weight to statements by any member who was not a party to the transaction and shall also take into account the size of orders held by parties to the disputed transaction, and such other facts as he deems relevant. *If both parties to a dispute agree, and the dispute involves either a monetary difference of $10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, whose decision shall be binding on the parties. As an alternative to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, members may also proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange's Constitution and Rules.*

* * * * *

Rule 91 Taking or Supplying Securities Named in Order

* * * * *

• • • Supplementary Material

.10 Confirmation of transactions.—When a member or member organization is notified to send a [representative] *member* to a *specialist's* post for the purpose of confirming a transaction with another member who has elected to take or supply for his own account the securities named in an order entrusted to him, the member or member organization so notified or a member representing the notified party must respond [promptly] *as soon as practicable under the prevailing circumstances following notification to the member or member organization of the report of execution of the transaction.* The transaction must then be either confirmed or rejected with a member and not with a clerk. [The representative] *Transactions which are not then confirmed in accordance with the procedures above are deemed to have been accepted. If the specialist took or supplied the securities, the member so notified* must initial the memorandum record of the specialist which shows the details of the trade and return it to the specialist. The specialist must keep such memoranda records for a period of three years.

Any disagreement as to whether a member or member organization has taken timely action pursuant to this paragraph shall be resolved in accordance with the principles of Rule 75.

.20 Principal transactions against orders in specialists' possession.—A specialist occasionally may effect a transaction as principal against an order which had been entered for an account carried by the specialist's organization or serviced by someone at his organization. In such cases, [it is desirable that] all specialists *must* follow a uniform procedure. The customer for whom the order had been entered [should] *must* be contacted promptly. The fact that the stock has been taken or supplied as principal against his order [should] *must* be explained to him so that he may then accept or reject the transaction.

* * * * *

.50 Rejection of specialist's principal transactions—If there is a continued pattern of rejections of a specialist's principal transactions, a Floor Official may be called upon and require the broker to review his or her actions. It should be noted, however, that if a customer gives instructions to his or her broker to reject trades with the specialist's name on the other side, this would be a conditional order and should not be entrusted to the specialist for execution.

The foregoing does not compromise the unconditional right of a broker to reject any trade where the specialist trades as principal. In addition, no disciplinary process would be triggered against the broker for exercising his right to reject the trade.

Rule 95 Discretionary Transactions

(a) No member while on the Floor shall execute or cause to be executed on the Exchange, or through ITS or any other Application of the System, any transaction for the purchase or sale of any stock with respect to which transaction such member is vested with discretion as to (1) the choice of security to be bought or sold, (2) the total amount of any security to be bought or sold, or (3) whether any such transaction shall be one of purchase or sale. *The member must receive all material terms of an order, as referenced in (1), (2), and (3), from the member's customer off the Floor, and may not*

simply rely on a general understanding of the customer's intentions and thereby create an order or a material term of an order on the Floor. For example, a member who has purchased stock pursuant to a customer's off-Floor order may not simply rely on an understanding of the customer's strategy to sell the stock if it becomes profitable to do so, but must first obtain a new order to sell entered by the customer from off the Floor. See also Rule 90 and the supplementary material thereto.

* * * * *

Rule 115A Orders at Opening or in Unusual Situations

* * * * *

• • • Supplementary Material

.20 Arranging an opening or price.—

* * * * *

''Pair-offs.''—A specialist who, as provided in (1) above, holds a market order of another member or gives up his own name instead of holding the order, may, in arranging the opening, ''pair-off'' such an order against any order held by the specialist or by another member.

The member who leaves such an order with the specialist should, as promptly as possible after the opening of the stock, return to the Post. The specialist must retain the order slip and must advise the member as to the broker and the name given up on the opposite side of the transaction. The member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side.

Failure to comply with the time periods specified in the paragraph ''Responsibility for Losses'' below shall relieve the specialist from responsibility for any loss that may result.

In the event that the specialist has given up his own name instead of holding a member's order, and, based upon such order, the specialist has effected a ''pair-off'' against an order of another member, the specialist should notify the member to whom he originally gave his own name of the broker and the name given up on the opposite side of the transaction. Such member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side. If the specialist has effected the ''pair-off'' against an order which he handled as a broker, he should send a give-up notice to the member to whom he originally gave his own name.

''Stopping.''—When a specialist has been unable to ''pair-off'' a market order which has been left with him, as provided in (1) above, he may, after opening of the Exchange but before the opening of the stock, ''stop'' at the offer price any such market order to buy, or at the bid price any such market order to sell. In such cases, the specialist should notify the broker who left the order with him that the order is ''stopped'' and inform him of the price at which it is ''stopped.'' In the event that the specialist is unable to execute the order at a better price, he should send for the broker who left such order with him, and allow the broker to consummate the transaction.

Establishing a fair price.—A specialist or other member who holds orders in order to assist in establishing a fair price, as provided in (2) above, should, after the establishment of such price, send for the members whose orders were held for that purpose. Such members should proceed as promptly as possible to confirm the transactions with the brokers on the opposite side.

Responsibility for losses.—A specialist or other member who makes an error in arranging an opening or establishing a fair price shall not be responsible for any loss involved if the member whose order has been held or represented neglects to endeavor to confirm the transaction.

In the event that a member endeavors to confirm a transaction resulting from an order left with the specialist as provided in (1) above, but is unable to do so because of an error made by the specialist in arranging an opening, the specialist shall be responsible for any loss which may be involved, except when:

(1) The broker who left such order fails to return to the Post within 30 minutes after the opening sale; or

(2) The broker who left such order returns to the Post within 30 minutes after the opening sale, but neglects to endeavor to confirm the transaction with the broker on the opposite side within 30 minutes after returning to the Post.

* * * * *

Rule 116 ''Stop'' Constitutes Guarantee

An agreement by a member to ''stop'' securities at a specified price shall constitute a guarantee of the purchase or sale by him of the securities at that price or its equivalent.

If an order is executed at a less favorable price than that agreed upon, the member who agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

• • • Supplementary Material

.10 Reporting ''stops''.—Members and member organizations should report to their customers that securities have been stopped with another member only if the stop is unconditional and the other member had definitely agreed thereto.

.20 ''Stopping'' stock.—The privilege of stopping stock, other than rights, shall not be granted or accepted by a [member] *Floor broker* [in cases where the spread in the quotation is only the minimum variation of trading in the particular stock], except that*, in a minimum variation market,* a [member] *Floor broker* who holds simultaneously an order to buy at the market and an order to sell the same stock at the market may stop such purchase and selling orders against each other and pair them off at prices and in amounts corresponding to those of the subsequent sales in the stock as they occur in the market. This exception will also apply when two [members] Floor brokers, one holding an order to buy at the market and the other holding an order to sell the same stock at the market, arrive in the Crowd at the same time.

For the purpose of the exceptions provided herein, a limited order to buy which is possible of execution at the prevailing offer price or a limited order to sell which is possible of execution at the prevailing bid price may be regarded as a market order.

.30 Restrictions on ''stopping'' stock.—No specialist may stop stock against the book or for his own account at a price at which he holds an order capable of execution at this price except that he may stop stock:

(1) in connection with an opening or reopening;

(2) when there is a broker in the Crowd representing another order at the stop price; or

(3) when a member acting on behalf of either a public customer's account or an account in which such member or another member has an interest makes an unsolicited request that a specialist grant him a stop if:

(a) (i) the spread in the quotation is not less than twice the minimum variation of trading in the stock; or, (ii) where the spread in the quotation is the minimum variation of trading in the stock[,] *and an imbalance in the quotation suggests the likelihood of price improvement for the stopped order,* the size of any order as to which a stop is granted does not exceed 2,000 shares, and the aggregate number of shares as to which stops are in effect does not exceed 5,000 shares, unless a

Floor Official has approved, as appropriate under prevailing market conditions, the granting of a stop for an order or orders of a larger specified size, or the granting of stops as to a larger specified aggregate number of shares as to which stops may be in effect;

(b) after the granting of the stop the spread between the bid and offer is reduced, in any case where, prior to the granting of the stop, the spread in the quotations was not less than twice the minimum variation of trading in the stock;

(c) the specialist does not reduce the size of the market following the stop; and

(d) on the election of the stop the order or orders on the specialist's book entitled to priority will be executed against the stopped stock.

.40 ''Stopping'' stock on market-at-the-close orders.—Notwithstanding any provisions of this Rule or of any other Exchange Rule to the contrary, a member shall execute market-at-the-close orders in a stock as provided below, where the member is holding simultaneously both buy and sell market-at-the-close orders.

(A) Where there is an imbalance between the buy and sell market-at-the-close orders, the member shall, at the close of trading on the Exchange in that stock on that day, execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then stop the remaining buy and sell orders against each other and pair them off at the price of the immediately preceding sale described above. The ''pair off'' transaction shall be reported to the consolidated last sale reporting system as ''stopped stock''.

(B) Where the aggregate size of the buy market-at-the-close orders equals the aggregate size of the sell market-at-the-close orders, the buy orders and sell orders shall be stopped against each other and paired-off at the price of the last sale of the Exchange just prior to the close of trading in that stock on that day. The transaction shall be reported to the consolidated last sale reporting system as ''stopped stock''. *See Rule 123C for discussion of procedures applicable to market-at-the-close and limit-at-the close 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, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add explanatory or clarifying material to several NYSE rules. The proposed rule change, as amended, does not constitute a substantive change to any NYSE rule or policy, and is responsive to recommendations made by an Independent Consultant retained by the Exchange.[6]

NYSE Rule 72. The Exchange is proposing to add a sentence to NYSE Rule 72(b) making it clear that a broker must ''recross'' a proposed clean agency cross pursuant to Exchange auction procedures following a transaction which provides price improvement to one side of the cross. The Exchange represents that this is consistent with NYSE auction procedures that require exposure of bids and offers by brokers effecting a cross before a transaction may be completed.

The Exchange is also proposing to specify in the Rule its long standing interpretation of its auction rules that a transaction ''clears the Floor,'' meaning bids and offers not satisfied in the transaction are deemed to be simultaneously re-entered and on parity with each other. This is a fundamental concept that has long been deemed essential to the efficient functioning of the auction market.

NYSE Rule 75. The Exchange is proposing to codify formally in NYSE Rule 75 its long-standing practice that Floor disputes involving $10,000 or more, or questioned trades, can be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof if the parties to the dispute so agree.[7] The decision of the panel is then binding on the parties. This practice, which is essentially a form of expedited arbitration, has proven to be a very efficient means of ensuring timely resolution of Floor disputes.

As an alternative to a panel of three Floor Governors, Executive Floor Officials, and/or Senior Floor Officials (as stated above), members may also proceed to resolve a dispute through long-standing arbitration procedures established under the NYSE's Constitution and Rules.

NYSE Rule 91. The Exchange is proposing to clarify NYSE Rule 91.10 to make clear in the Rule that only a member may confirm a transaction in the situations covered by the Rule. The Exchange is also proposing to add a sentence to the Rule to clarify that transactions which are not confirmed are deemed to have been accepted. The NYSE represents that both of these changes described above reflect consistent Exchange interpretations of NYSE Rule 91.10.

In addition, the Exchange is proposing to replace the term ''promptly'' with the phrase ''as soon as practicable under the prevailing circumstances.'' Specifically, the Exchange proposes to amend NYSE Rule 91.10 to provide that a member receiving a report of execution of a transaction where another member[8] acted as principal triggers the member's unconditional right to reject the trade as soon as practicable, given the prevailing circumstances. In addition, the Exchange is amending NYSE Rule 91.10 to clarify that disputes as to whether there was sufficient time to reject the trade would be resolved under NYSE Rule 75, either through a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, or through arbitration procedures established under the Exchange's Constitution and Rules.[9]

The Exchange represents that the proposed changes, deeming transactions

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[6] *See In the Matter of New York Stock Exchange, Inc.,* 70 S.E.C. Docket 106, Securities Exchange Act Release No. 41574 (June 29, 1999), Administrative Proceeding File No. 3–9925.

[7] *See* Amendment No. 2. According to the NYSE, Executive Floor Officials and Senior Floor Officials perform many of the same functions performed by Floor Governors. Executive Floor Officials are former Floor Governors and are empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor. Floor officials entering their fifth or sixth year of service as a Floor Official are eligible for appointment as Senior Floor Officials. They are also empowered with the authority of a Floor Governor. *See* Securities Exchange Act Release No. 44673 (August 9, 2001), 66 FR 43279 (August 17, 2001) (SR–NYSE–2001–16).

[8] The Exchange clarified that NYSE Rule 91.10, except the provision dealing with the memorandum record of the specialist, applies to transactions when any member elects to take or supply for his own account the securities named in an order entrusted to him. Telephone conservation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 28, 2003.

[9] *See* Amendment No. 2.

which are not confirmed or rejected as accepted and replacing ''promptly'' with ''as soon as practicable under the prevailing circumstances,'' aim to maintain a degree of flexibility in the Rule to accommodate various situations occurring during the trading day. Given today's enormous volume of trading on the Floor (over 1 billion shares daily), the NYSE believes that it is not practical to impose an affirmative obligation on members to confirm each and every transaction where another member acted as principal, nor does the Exchange believe that it is practical for members to have to obtain the confirmations. Thus, if no action is taken by a member to confirm a transaction, the transaction would be deemed confirmed under the proposed Rule.[10]

In NYSE Rule 91.20, the Exchange is proposing to replace the term ''should'' with ''must,'' to reflect the mandatory nature of the procedures outlined.

NYSE Rule 91.50 is proposed to be added to explain the rejection of specialist's principal transactions. The proposed language states that if there is a continued pattern of rejections of a specialist's principal transactions, a Floor Official may be called upon to require the broker to review his actions. However, if a customer gives instructions to his broker to reject trades with the specialist's name on the other side, this would be a conditional order and should not be entrusted to the specialist for execution.

The Exchange states that a Floor Official's reviewing a pattern of rejections of a specialist's principal transactions and requiring a broker to review his or her actions do not compromise the unconditional right of a broker to reject any trade where the specialist trades as principal. If a customer gives a continued pattern of rejection instructions to a Floor broker to reject any trade where the specialist acted as principal, a Floor Official would be able to review the appropriateness of the continued pattern of rejections by the broker, to make sure he is representing his customer as fiduciary and not giving the specialist, in effect, a kind of conditional order that is not recognized under Exchange rules. If a continued pattern of rejections does occur because the customer will not accept executions with the specialist as contra party, the Floor broker should represent the order himself or herself to ensure appropriate representation of the order in accordance with the broker's fiduciary responsibility to the customer. Because the right to reject a trade pursuant to NYSE Rule 91 is unconditional, no disciplinary process would be triggered by the broker exercising his or her right to reject a trade.[11]

NYSE Rule 95. Under NYSE Rule 95, an Exchange Floor broker cannot effect a transaction if that broker has discretion regarding the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction shall be a purchase or a sale. The Exchange is proposing to add material to NYSE Rule 95(a) making clear that members may not create an order or a material term of an order, but must receive an order from off the Floor, regardless of how familiar they are with a customer's strategy. This is a long-standing interpretation of NYSE Rule 95 and the Exchange believes is reasonably and fairly implied by the text of the existing Rule.

NYSE Rule 115A. NYSE Rule 115A, among other matters, provides procedures for members to confirm transactions on openings. The Rule provides in one place that members should confirm transactions as promptly as possible, and in another place states that a specialist shall not be responsible for losses if the broker does not return to the specialist's post within 30 minutes after the opening sale. The Exchange is proposing to add to the Rule a cross reference to make clear that while a broker should confirm a transaction as promptly as possible, the specialist is not responsible for losses thirty minutes after the opening. This is a simple cross-referencing point that the Exchange believes is reasonably and fairly implied by the text of the current Rule.

NYSE Rule 116. The Exchange is proposing three changes to NYSE Rule 116. Exchange Rule 116.20 would be revised to directly state a prohibition against a Floor broker ''stopping'' stock. This is not a new prohibition, as section 11(a) of the Act[12] and NYSE rules regulating on-Floor trading would have the effect of prohibiting a broker from effecting an on-Floor proprietary trade to execute the order at the ''stop'' price if other market interest traded with the bid or offer against which the broker's order was stopped and the broker was thus obligated to effect a proprietary trade to fulfill the ''stop.'' The Exchange has consistently interpreted NYSE Rule 116.20 in this manner.

The Exchange is also proposing to amend NYSE Rule 116.30(3)(a) to make clear in the Rule that a specialist should ''stop'' an order in a minimum variation market only when there is an imbalance in the quotation suggesting the likelihood of price improvement for the ''stopped'' order. This proposed rule change to NYSE Rule 116.30(3)(a) has been the Exchange's consistent interpretive position. In addition, the Exchange is proposing to add to NYSE Rule 116.40 a cross reference to new NYSE Rule 123C,[13] which codifies in detail the Exchange's policies regarding execution of market-on-close and limit-on-close orders.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and further the objectives of Section 6(b)(5),[15] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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, as amended, 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 NYSE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78k(a).

[13] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–32 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14369 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47955; File No. SR–Phlx–2003–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. for a Six-Month Extension of its Pilot Systems Change to its Automatic Execution Feature (AUTO–X)

May 30, 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 April 18, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Item I below, which was prepared by the Phlx. On May 5, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, on an accelerated basis, as amended, for an additional six-month period, to expire on November 30, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a system change to the Exchange's Automated Options Market (''AUTOM'') System,[5] whereby AUTO-X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given option meets the specified disengagement size for the option (the ''pilot''). As explained further below, the Exchange also proposes to amend the pilot by replacing the phrase ''AUTO–X guarantee'' with the phrase ''specified disengagement size.'' [6] The text of the proposed rule change, as amended, is as follows:

Proposed new language is *italicized*; proposed deletions are in [brackets].

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080

(a)–(b) No change.

(c) (i)–(iii) No change.

(iv) (A)–(H) No change.

(I) When the number of contracts automatically executed within a 15 second period in an option (subject to a pilot program until [May] *November* 30, 200[2]*3*) exceeds the [AUTO–X guarantee] *specified disengagement size*, a 30 second period ensues during which subsequent orders are handled manually.

(v) No change.

(d)—(j) No change.

* * * Commentary:

.01—.05 No change.

.06 RESERVED

.07 The specified disengagement size set forth in Rule 1080(c)(iv)(I) is subject to the approval of the Options Committee and shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option. The specified disengagement size for each option shall be posted on the Exchange's Web site.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, PHLX, to Marc McKayle, Special Counsel, Division of Market Regulation (''Division''), Commission, dated May 2, 2003. (''Amendment No. 1''). In Amendment No. 1 the Exchange, among other things, clarifies that it proposes to replace the phrase ''AUTO–X guarantee'' with the phrase ''specified disengagement size.'' The Exchange also represents that, if the quotation in the option series that exhausts the specified disengagement size is revised (either by Auto-Quote or manually by the specialist) prior to the expiration of the 30-second period during which AUTO–X is disengaged, AUTO–X will be re-engaged for that option upon such revision. If the quotation in such an option series is not revised during the 30 second period during which AUTO–X is disengaged, the responsible broker or dealer is firm for the disseminated price, up to the disseminated size, pursuant to Exchange Rule 1082. In such a circumstance, AUTO–X is reengaged automatically after 30 seconds. The Exchange currently engages in surveillance for occurrences in which responsible brokers or dealers do not comply with the Firm Quotation requirements of Exchange Rule 1082, including during the 30-second AUTO–X disengagement period that is the subject of this proposed rule change.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, PHLX, to Marc McKayle, Special Counsel, Division, Commission, dated May 29, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange adds Commentary .07 to Phlx Rule 1080 to clarify that ''[t]he specified disengagement size set forth in Rule 1080(c)(iv)(I) is subject to the approval of the Options Committee and shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option.'' Further, Commentary .07 states that ''[t]he specified disengagement size for each option shall be posted on the Exchange's web site.''

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] *See* Amendment No. 1, note 3 *supra*.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot for an additional six-month period. The pilot was originally approved on a six-month basis for a limited number of eligible options[7] and extended for an additional six-month period.[8] Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.[9] In December 2001, the pilot was extended again for an additional six-month period;[10] and extended again in May 2002.[11] The current pilot was extended in November 2002, and is scheduled to expire on May 31, 2003.[12]

The pilot currently includes the following features:

• Once an automatic execution occurs via AUTO–X in an option, the system begins a ''counting'' program, which counts the number of contracts executed automatically for that option up to a certain size,[13] which causes AUTO–X to become disengaged for that option.

• When the number of contracts executed automatically for that option exhausts the maximum guaranteed AUTO–X size for the specific option within a 15 second time frame, the system ceases to automatically execute for that option, and drops all AUTO–X eligible orders in that option for manual handling by the specialist for a period of 30 seconds in order to enable the specialist to refresh quotes in that option.

• Upon the expiration of 30 seconds, automatic executions resume, the ''counting'' program is set to zero and it begins counting the number of contracts executed automatically within a 15 second time frame again, up to the specified disengagement size.

• Again, when the number of contracts automatically exceeds the specified disengagement size within a 15 second time frame, the system drops all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of 30 seconds. The system then continues to reset the ''counting'' program and drop to manual, etc.

Since the most recent extension of the pilot, the Exchange has undertaken to provide automatic executions for eligible inbound orders (for the account(s) of both customers and broker-dealers) at the Exchange's disseminated price, up to the disseminated size, subject to a maximum guaranteed AUTO–X size of 250 contracts.[14] Thus, the current AUTO–X guarantee for eligible orders on the Exchange is the disseminated size for the given series, instead of a pre-determined ''maximum guaranteed AUTO–X size'' for the given option. The ''maximum guaranteed AUTO–X size'' is no longer the appropriate term, because the Exchange's current guaranteed AUTO–X size for eligible orders is equal to the disseminated size, which may be for a different number of contracts each time the quote in a given series is revised; there is no longer a pre-determined ''maximum guaranteed AUTO–X size'' (other than the Exchange's maximum allowable AUTO–X size of 250 contracts for all options other than options on the Nasdaq-100 Index Tracking Stock (''QQQ''SM),[15] which have a maximum guaranteed AUTO–X size of 2,000 contracts in the first two near term expiration months, and 1,000 contracts for all other expiration months).[16]

Accordingly, the Exchange has filed this proposed rule change to accommodate intervening changes in the function of AUTO–X; the pilot has not been changed, only the terminology used to describe the number of contracts executed within 15 seconds that would result in the temporary disengagement of AUTO–X.

In order to account for the recent changes to the AUTO–X function (*i.e.*, automatic executions up to the Exchange's disseminated size, rather than up to a pre-set maximum guaranteed size determined by the specialist), the instant pilot renewal includes the term ''specified disengagement size.''[17] The specified disengagement size shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option.[18]

One significant purpose of the pilot is to enable the Exchange to continue to move towards the dissemination of options quotations with actual size.[19] As discussed above, the ''counting'' feature of the pilot functions to disengage AUTO–X for a period of 30 seconds in

[7] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96).

[8] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56

[9] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[10] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[11] *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR–Phlx–2002–22).

[12] *See* Securities Exchange Act Release No. 46840 (November 15, 2002), 67 FR 70473 (November 22, 2002) (SR–Phlx–2002–59) (''Previous Pilot Extension'').

[13] Currently, the rule refers to this size as the ''AUTO–X guarantee.'' Under this proposal, the size would be referred to as the ''specified disengagement size.'' In November 2002, the Commission approved amendments to Exchange Rule 1080(c) to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum AUTO–X eligible size range, on an issue-by-issue basis. *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39). That proposal provided that the maximum guaranteed AUTO–X size may be for a different number of contracts for customer orders than for broker-dealer orders. The previous pilot extension set forth that when the maximum guaranteed AUTO–X size in an option is for a different number of contracts for customer orders than for broker-dealer orders, AUTO–X would be disengaged when the larger of the two maximum guaranteed AUTO–X sizes for the particular option is exhausted.

[14] *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[15] The Nasdaq-1008®, Nasdaq–100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq–100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the ''Index'' is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq–100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[16] *See* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (SR–Phlx–2002–47).

[17] *See* Amendment No. 2, note 4 *supra.*

[18] *Id.*

[19] In August 2002, the Commission approved amendments to the Exchange's definition of ''disseminated size'' to mean, with respect to the disseminated price for any quoted options series: (a) respecting options subject to the Auto-Quote technology operating as of May, 2002 (''current Auto-Quote'') and scheduled to be phased-out by September 2002, the AUTO–X guarantee for the quoted option, except that the disseminated size of limit orders on the book shall be ten (10) contracts; or (b) respecting options subject to the Auto-Quote technology implemented after the effective date of this provision (''new Auto-Quote'') and options subject to a proprietary quoting system provided for in Rule 1080.02 (''Specialized Quote Feed''), at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders. *See* Securities Exchange Act Release No. 463425 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15) (Order approving amendments to Exchange Rule 1082(a)(ii) and Option Floor Procedure Advice F–7). The ''current Auto-Quote'' described in that Order has been phased out as of the time of the instant proposal. The ''new Auto-Quote'' is currently fully deployed. The Exchange recently filed a proposed rule change amending the rule to (i) reflect the full deployment of the ''new Auto-Quote'' and (ii) to add the specialist's size to the sum of the size of limit orders at the disseminated price to the Exchange's definition of ''disseminated size'' in Exchange Rule 1082. *See* SR–Phlx–2003–23. The Exchange expects to continue to amend its definition of ''disseminated size'' to reflect actual size as supporting systems become available.

a given option once the number of contracts automatically executed exhausts the specified disengagement size for that option within a 15-second time frame.

The Exchange believes that this has enabled specialists in such options to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

Finally, the Exchange represents that,[20] if the quotation in the option series that exhausts the specified disengagement size is revised (either by Auto-Quote or manually by the specialist) prior to the expiration of the 30-second period during which AUTO–X is disengaged, AUTO–X will automatically re-engage for that option upon such revision. If the quotation in such an option series is not revised during the 30 second period during which AUTO–X is disengaged, the responsible broker or dealer is firm for the disseminated price, up to the disseminated size, pursuant to Exchange Rule 1082. In such a circumstance, AUTO–X is reengaged automatically after 30 seconds. The Exchange currently engages in surveillance for occurrences in which responsible brokers or dealers do not comply with the Firm Quotation requirements of Exchange Rule 1082, including during the 30-second AUTO–X disengagement period that is the subject of this proposed rule change.[21]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling the Exchange to prepare for the dissemination of option quotes with actual size, and by enabling Exchange specialists.

[20] *See* Amendment No. 1, note 3 *supra.*

[21] The Commission notes that the Exchange has represented that it will issue a circular to its members, member organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO–X system will not be available for customer orders. Telephone conversation between Richard S. Rudolph, Counsel, Phlx and Marc McKayle, Special Counsel, Division, Commission, on May 13, 2003.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–29 and should be submitted by June 30, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[25]

[24] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

The Commission believes that the extension of the pilot should assist specialists in maintaining fair and orderly markets during periods of peak market activity. In this regard, the Commission notes that since the previous extension of the pilot, in response to Commission concerns, the Exchange has automated the re-engaging of AUTO–X for a particular option issue prior to thirty seconds, if the specialist has revised the quote before that time period. The Commission believes that an extension of the pilot program for an additional six months should allow the Exchange to continue its efforts to deploy its new Auto-Quote system to prepare for the dissemination of quotes with actual size.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[26] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that, according to the Phlx, no complaints from customers, floor traders, or member firms have been received during the entire period of the pilot program. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Phlx–2003–29), as amended, is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on November 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14370 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78s(b)(2).

[27] *Id.*

[28] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3500]

State of Alabama; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is

hereby amended to establish the incidence period for this disaster as beginning on May 5, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 11, 2003, and for economic injury the deadline is February 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14441 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3497]

State of Missouri; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incidence period for this disaster as beginning on May 4, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14391 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3499]

State of Oklahoma; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incidence period for this disaster as beginning on May 8, 2003 and continuing through May 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 9, 2003, and for economic injury the deadline is February 10, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14440 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3498]

State of Tennessee; Amendment #4

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 30, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on May 4, 2003, and continuing through May 30, 2003. This declaration is also amended to include Anderson, Cumberland, Knox, Loudon and Roane Counties in the State of Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing through May 30, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Campbell, Grainger, Jefferson, Sevier and Union in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–14392 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice Inviting Application for Funding Under the 7(j) Management and Technical Assistance Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of invitation for proposals for 7(j) management and technical assistance awards in FY 2003.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. MTA–03–01, to solicit proposals from public or private organizations, to provide business development assistance and training for nationwide 7(j) eligible client executives. The authorizing legislation for this training is section 7(j) of the Small Business Act, U.S.C. 636(j). SBA will select successful proposals using a competitive process.

Awardees will have responsibility for project oversight, design, marketing, management, execution, monitoring and reporting for the training program. Proposals are being solicited from organizations that have experience in Executive Education or similar Programs and have successfully provided executive level training to small business entrepreneurs on at least 3 occasions during the past five (5) years. Colleges and universities that respond to this solicitation, must have American Assembly for Collegiate Schools of Business (AACSB) accreditation or be a member of the American Indian Higher Education consortium (AIHEC). The applicant must have the qualified faculty, support staff, training and technical materials, equipment and facilities, or access to facilities, as well as an internal financial management system, to provide Executive Education Program (EEP) training services to 7(j) eligible client executives in a classroom environment.

The EEP proposal should present training that will develop and improve the management and business decision skills of the 7(j) eligible clients. The enhancement of these skills should ensure the continued viability and growth of the small business owners in the 21st century. The EEP training curriculum must include the following three core subject matters for small business owners: strategic planning, financial analysis and, e-commerce. Additional subject matters should include some of the following: internal management systems, business alliances, government contracting, information technology, market research, financial reporting, product lines, quality assurance services, human resources, insurance, taxation, legal issues, investments, international business opportunities and etc.

SBA plans to award approximately $700,000.00, subject to the availability of funds, under this notice. This amount would fund several awards which would provide EEP training to approximately 175 7(j) eligible executives. SBA reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in

response to this notice. Awards will have a project period of three (3) years–an initial 12-month budget period with up to two (2) options years. Award amounts may vary, depending on the number of 7(j) eligible clients that an applicant is able to train (and performance for option years). However, no single awardee may receive more than $400,000.00 in a single fiscal year. All proposals must provide training sessions for at least 30 eligible executives per class.

The selection criteria to be used for this competition will be provided in the application package.

DATES: The closing date for applications will be July 9, 2003.

ADDRESSEES: To obtain a copy of the complete application package call Adrienne Dinkins at (202) 205–7140, or go to SBA's Web site at *http://www.sba.gov.*

FOR APPLICATIONS AND FURTHER INFORMATION: Questions concerning the technical aspects of this notice should be directed to Jacqueline Fleming at (202) 205–6177. Questions about budget or funding matters should be directed to Adrienne Dinkins at (202) 205–7140.

Program Authority: 15 U.S.C. 636(j).

Luz Hopewell,

Associate Administrator, Business Development.

[FR Doc. 03–14390 Filed 6–6–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative (''USTR'') in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (''HTS'') as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: Slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (''HTS'') (''safeguard measures'') for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., e.s.t., on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, August 30, 2002, and March 31, 2003, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221, 67 FR 56182, and 68 FR 15494.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, 2002, November 14, 2002, February 11, 2003 and March 31, 2003, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182, 67 FR 69065, 68 FR 6982, 68 FR 15494 respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions, chemical composition, or mechanical characteristics of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

Peter F. Allgeier,

Deputy United States Trade Representative.

BILLING CODE 3190–01–P

ANNEX

Subchapter III of chapter 99 of the Harmonized Tariff Schedule (HTS) is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS, with the new subheadings being inserted by this notice set forth in columnar format and the material inserted in the HTS columns entitled "Heading/ Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively. The corrections to the text of individual subdivisions of U.S. note 11 to such subchapter III set forth herein, and to their associated subheadings, shall be effective with respect to covered goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST on the date that each such subdivision of U.S. note 11 to subchapter III became effective, or in the case of corrections to text previously modified the effective date of such previous modification to such subdivision as appropriate.

Section I. Effective March 31, 2003, the notice published at 68 FR 15494-15544 is modified by deleting part 1(C) of section I from the annex.

Section II. Unless otherwise specified in a subdivision herein, the following modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on or after the effective date of the inclusion in, or of the previous correction of, the individual HTS provision or text being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) the phrase ", as in effect on March 20, 2002" is inserted after the second occurrence of "inclusive" in subdivision (a)(i);

(B) in subdivision (b)(xx)(C), "maximum" is inserted after "sulfur 0.025";

(C) in subdivision (c)(cii)(A)(II), "9.5249 mm (plus 0, minus 0.22097 mm) or" is inserted before "12.7 mm";

(D) in subdivision (c)(xxvii), "1670 +/- 100 N/mm^2 (42 to 46 HRC)" is deleted and "1670 +/- 100 N/mm^2" is inserted in lieu thereof; "maximum 0.8 on 3 m" is deleted and "maximum 0.8 mm on 3 m" is inserted in lieu thereof; "sulfur" is deleted and "sulfur not over" is inserted in lieu thereof;

(E) in subdivision (c)(cli), "300 t" is deleted and "500 t" is inserted in lieu thereof;

(F) subdivision (c)(ccxiv) is deleted;

(G) in subdivision (c)(ccxxvi), "RMS6 or better" is deleted and "RMS7 or less" is inserted in lieu thereof;

(H) in subdivision (c)(ccxxxi), "whether or not" is inserted before "in coils";

(I) in subdivision (c)(ccxli), the first occurrence of "yield strength 590 N/mm^2 or more but not over 730 N/mm^2; and elongation 13 percent or more but not over 20 percent;" is deleted;

(J) in subdivision (c)(cclvi), "6.2 mm +/- 0.2mm" is deleted and "46.2 mm +/- 0.2 mm" is inserted in lieu thereof;

(K) in subdivision (c)(cclxxxii), "91.3" is deleted and "9 to 13" is inserted in lieu thereof;

(L) in subdivision (c)(cclxxxvi), the text beginning with "chemical composition" and ending with "titanium 0.05 to 0.07" is deleted and "chemical composition (percent by weight): carbon 0.020 to 0.070, silicon 0.0025 to 0.0500, manganese 0.20 to 0.45, phosphorous 0.0015 to 0.0400, sulfur 0.002 to 0.050 and titanium 0.05 to 0.07" is inserted in lieu thereof;

(M) in subdivision (c)(ccxcvi), "not to exceed" is inserted after "thickness tolerances" and before "0.05 mm";

(N) in subdivision (c)(cccxxii), "nickel not over 0.020" is deleted and "nickel not over 0.20" is inserted in lieu thereof;

(O) in subdivision (c)(cccxxxi), "steel grade ASTM A752"is deleted and "steel grade ASTM A572" is inserted in lieu thereof;

(P) in subdivision (c)(cccxxxviii) "sulfur 0.20 to 0.35" is deleted and "sulfur 0.020 to 0.035" is inserted in lieu thereof; "aluminum 0.20 to 0.50" is deleted and "aluminum 0.020 to 0.050" is inserted in lieu thereof; "American Standards for Testing Materials method A112 (ASTM A112)" is deleted and "American Standards for Testing Materials method E112 (ASTM E112)" is inserted in lieu thereof;

(Q) subdivision (c)(cccxlvii) is deleted;

(R) in subdivision (c)(ccclvi) "manganese 0.050 to 0.085" is deleted and "manganese 0.50 to 0.85" is inserted in lieu thereof;

(S) in subdivision (c)(cccxcviii), "in a black cold-finished condition" is deleted and "in a black or cold finished condition" is inserted in lieu thereof;

(T) in subdivision (c)(cccxcix), "to allow passage of gas through the steel" is deleted and "which allows passage of gas through the entire surface of the steel" is inserted in lieu thereof; ", all of which are compressed in a cold isostatic press, sintered in a vacuum atmosphere, and then held in nitrogen gas or ammonia gas at a temperature of 900 to 1050°C to impart porous quality over the entire surface" is deleted; "kilocalories m^{-2} h^{-1} $°C^{-1}$" is deleted and "kilocalories per square meter per hour per degree Celsius" is inserted in lieu thereof; and "12 x 10^{-6} to 12.5 x 10^{-6} $°C^{-1}$" is deleted and "12 x 10^{-6} per degree Celsius to 12.5 x 10^{-6} per degree Celsius" is inserted in lieu thereof;

(U) in subdivision (c)(cdv), "ASTM A120 (E-H)" is deleted and "ASTM A53" is inserted in lieu thereof; "2,962 mm to 3,063 mm in length" is deleted and "6,071 mm to 6,135 mm in length" is inserted in lieu thereof; "AISI C1012" is deleted; "carbon 0.25, manganese 0.99; phosphorus 0.035, sulfur 0.035" is deleted and "carbon not over 0.25, manganese not over 0.95; phosphorus not over 0.05, sulfur not over 0.045" is inserted in lieu thereof; "zinc coating 0.50 to 0.99 and aluminum 0.01 to 0.10;" is deleted;

(V) in subdivision (c)(cdvii), "welded single wall" is deleted and "brazed double wall" is inserted in lieu thereof;

(W) in subdivision (c)(cdxxiv), "1,000 t" is deleted and "500 t" is inserted in lieu thereof;

(X) in subdivision (c)(cdxxv), "guaranteed to a flatness tolerance of 3 mm per mm or better" is deleted and "guaranteed to a flatness tolerance of 3 mm per meter or better;" is inserted in lieu thereof;

(Y) in subdivision (c)(cdxxvi), "flatness less than or equal to 3 mm per mm;" is deleted and "flatness less than or equal to 3 mm per m;" is inserted in lieu thereof;

(Z) In subdivision (c)(ccxv)(ii), "minimum yield point" is deleted and "maximum yield point" is inserted in lieu thereof;

(AA) in subdivision (c) (cciv), "C2" is deleted and "C22" is inserted in lieu thereof;

(BB) in subdivision (c) (clvii), "45 HRB" is deleted and "40 to 50 HRB" is inserted in lieu thereof;

(CC) in subdivision (c) (clvii)(A), "0.533 mm," is inserted after "0.483 mm,"

(DD) in subdivision (c) (clvii)(B), "1.02 mm," is inserted after "0.762 mm,"

(EE) in subdivision (c) (ccxcvii), "450 MPa" is deleted and "350 MPa" is inserted in lieu

thereof;

2. The following subheadings of such subchapter III are each modified as follows:

(A) in subheading 9903.77.86 "(including goods of this subheading and of subheading 9903.82.18)" is inserted after "quantity";

(B) in subheading 9903.78.30, "1,000 t" is deleted and "500 t" is inserted in lieu thereof;

(C) subheading 9903.80.81 is deleted;

(D) subheading 9903.81.13 is deleted;

(E) in subheading 9903.81.03, ", and entered in an aggregate quantity during a time period specified in such note not to exceed 835 t" should be inserted after "subchapter";

3. The following new subheadings are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the new material being inserted in the columns entitled "Heading/Subheading", "Article Description", "Rate of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively:

	[Goods...:]			
"9903.78.33	Enumerated in U.S. note 11(b)(xvii) to this subchapter . . . . .: No change	No change	No change	
9903.82.18	Enumerated in U.S. note 11(c)(cxciii) to this subchapter and entered in an aggregate quantity (including goods of this subheading and of subheading 9903.77.86) not to exceed 500 t during a time period specified in such note	No change	No change	No change"

CONFORMING CHANGES:

Subheading 9903.72.57 is modified by deleting "9903.78.32" and by inserting in lieu thereof "9903.78.33";

Subheading 9903.74.01 is modified by deleting "9903.82.17" and by inserting in lieu thereof "9903.82.18";

[FR Doc. 03–14478 Filed 6–6–03; 8:45 am]

BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–03–C–00–RAP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rapid City Regional Airport, Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rapid City Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 9, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Bismarck Airports District

Office, 2301 University Drive, Building 23B, Bismarck, North Dakota.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ken Simmons, Assistant Director of the City of Rapid City—Rapid City Regional Airport at the following address: 300 Sixth Street, Rapid City, South Dakota 57701.

Air carries and foreign air carriers may submit copies of written comments previously provided to the City of Rapid City under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas T. Schauer, Program Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504, (701) 323–7380. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at the Rapid City Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On May 22, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Rapid City was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no late than August 21, 2003.

The following is brief overview of the application.

Proposed charge effective date: August 1, 2003.

Proposed charge expiration date: July 31, 2006.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $1,591,925.

Brief description of proposed project: General Aviation Ramp Rehabilitation, Runway Safety Area (RSA) Preliminary Design, Wildlife Assessment, Cargo/Carrier Ramp Expansion, Terminal Apron Lighting, Runway 14/32 RSA Correction Projects, Airport Layout Plan Update, Terminal Building Master Plan, Taxiway A Realignment Feasibility Study, Aircraft Rescue and Fire Fighting Station Sprinkler, Continuous Friction Measuring Equipment, Replace Terminal Revolving Doors, Pavement Surface Condition Sensor, Terminal Roof Rehabilitation, Security System Upgrade, Runway 5/23 Rehabilitation, Taxiway B Rehabilitation, Passenger Loading Bridge, Covered Passenger Walkway to Terminal, Terminal Building Heating Ventilation Air conditioning and Sidewalk Rehabilitation, Covered Boarding Walkway.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at he FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rapid City.

Issued in Des Plaines, Illinois on June 2, 2003.

Robert A. Huber,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–14428 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–113–016]

Guidance for the Certification of Honeywell Primus Epic® Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that clarifies current FAA policy with respect to certification of Honeywell Primus Epic® Systems.

DATES: This final policy was issued by the Transport Airplane Directorate on May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2796; fax (425) 227–1320; e-mail: *connie.beane@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on August 30, 2002 (67 FR 55913). One (1) commenter responded to the request for comments.

Background

In the past several years, new aircraft designs have introduced new technologies. These technologies are being combined and used in novel ways and may represent significant challenges with respect to the acceptability of the flightcrew interfaces and aircraft airworthiness.

Honeywell Primus Epic® Systems are an avionics suite consisting of single or multiple racks/cabinets with circuit cards or modules that plug into the cabinets. Each rack/cabinet is configurable in that the number of modules can vary in each cabinet; the functions loaded into the cards can vary considerably, and there can be multiple racks/cabinets per aircraft. The functionality of the system is determined by the software loaded into the circuit cards. All the software on these circuit cards can be field-loaded, that is, loaded into the Honeywell Primus Epic® modules without removing the equipment from the aircraft.

The final policy establishes guidance for the certification of Honeywell Primus Epic® Systems.

The final policy, as well as the disposition of public comments received, is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on May 30, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–14426 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8410]

Younger Commercial Driver Pilot Training Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial of petition to initiate a pilot program.

SUMMARY: The FMCSA denies the petition of the Truckload Carriers Association (TCA) asking the agency to conduct a pilot program that would enable certain drivers between the ages of 18 and 21 (younger drivers) to operate commercial motor vehicles (CMVs) in interstate commerce. The pilot program proposed by TCA would screen

candidate drivers, train them extensively at approved truck-driving schools, and provide an apprenticeship with an approved motor carrier until age 21. The FMCSA is denying the petition because the agency does not have sufficient information at this time to make a determination that the safety measures in the pilot program are designed to achieve a level of safety equivalent to, or greater than, the level of safety provided by complying with the minimum 21-year age requirement to operate a CMV.

DATES: The denial of this petition is effective June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, (202) 366–4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all notices and comments submitted to the Docket Clerk concerning this subject by using the universal resource locator (URL): *http://dms.dot.gov.* The FMCSA docket number is FMCSA–2000–8410. It is available 24 hours a day, year round. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users can reach the Office of the Federal Register's home page at *http://www.archives.gov/federal_register* and the Government Printing Office's Web site at *http://www.access.gpo.gov/nara.*

Background

A pilot program is a study in which a person or class of persons subject to the Federal Motor Carrier Safety Regulations (FMCSRs) may receive temporary relief from one or more of the regulations. A person, or class of persons, that intend to engage in a regulated activity may also receive temporary relief during the activity. The FMCSA's regulations governing pilot programs are set forth in title 49, Code of Federal Regulations (CFR) part 381, subpart D. During the program, participants are given an exemption from one or more of the following parts of title 49: 382, 383, 391, 392, 393, 395, 396 (except § 396.25, Qualifications of Brake Inspectors), and 399.

Pilot programs can be initiated by the agency in several ways. The FMCSA may initiate a pilot program when it determines that there may be an effective alternative to one or more of the FMCSRs, but is lacking sufficient research data or information to support a change in its rules. Or, an individual or class of persons may submit a written petition asking the agency to initiate the pilot program. (49 CFR 381.405)

A pilot program must include a program plan outlining oversight procedures designed to protect the health and safety of study participants and the general public. The plan must explain how the agency will ensure that participants comply with the terms and conditions of the pilot. In addition, the number of the participants in the pilot program must be large enough to ensure statistically valid findings. When the FMCSA has determined that the program plan is sound, there is one additional requirement that must be satisfied before the agency can grant an exemption from the FMCSRs and initiate a pilot program. The agency must ensure that the safety measures in the pilot program are ''designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by compliance with the regulations.'' 49 CFR 381.505(a).

TCA Petition

On October 2, 2000, the TCA petitioned the FMCSA to allow the association to conduct a pilot program that would permit drivers between the ages of 18 and 21 to operate CMVs in interstate commerce. FMCSA regulations require drivers of CMVs to be at least 21 years of age (49 CFR 391.11(b)(1)). The petitioner asked the FMCSA to grant an exemption from the minimum 21-year age requirement for drivers admitted to the three-year pilot program. No driver under the age of 18 would be eligible to participate in the pilot. A copy of the TCA petition is located in the FMCSA docket (Docket No. FMCSA–2000–8410; *see* ''Electronic Access'' above).

The goal of the TCA pilot program is to explore a performance-based alternative to the blanket prohibition against the operation of CMVs in interstate commerce by drivers under the age of 21. The TCA petition states, ''the right student with the right training, and working for the right employer [could] * * * be a safe driver'' (TCA Petition, page 9). In addition, the petitioner feels that lowering of the 21-year minimum age of drivers would address the shortage of drivers in the trucking industry, and allow the industry to appeal more readily to individuals as they leave high school and select a career.

The petition calls for careful screening of candidate drivers. Applicants would be required to be between 18 and 21 years of age, have at least a year of prior driving experience, and be able to demonstrate an exemplary driving record. A qualified third party expert would determine that the applicant-driver possesses the attitude and aptitude for successfully operating a CMV. Applicants would also have to convince a motor carrier to ''sponsor'' their participation in the pilot; a written contract of employment between the applicant and a sponsoring motor carrier for the full term of the pilot would be required. The sponsoring motor carrier would also have to obtain liability insurance on the pilot driver. Once selected, pilot drivers would be granted an exemption from the current FMCSA rule requiring drivers to be at least 21 years of age to operate a CMV in interstate commerce. The pilot drivers would be required to undertake 22 weeks of classroom and hands-on driving instruction at a certified truck-driving school. An 8-week ''finishing program'' and an additional 18 weeks of ''team driving'' with an experienced licensed driver would follow this. This would be followed by full-time employment as an interstate CMV driver, but in a structured environment provided by the sponsoring motor carrier in accordance with the terms of the pilot. In addition, the sponsoring motor carrier would provide a current licensed driver to serve as mentor to the pilot driver and to be responsible for closely monitoring the safety performance of the pilot driver. Also, the CMV operated by the pilot driver would be equipped with a governor to limit the speed of the vehicle. These conditions would apply until the pilot driver turned 21 years of age.

On February 20, 2001, the FMCSA published a notice advising the public of the TCA petition and requesting public comment on it (66 FR 10935). This notice was titled, ''Younger Commercial Driver Pilot Training Program.'' The notice included six ''Questions for Comment'' designed to elicit input from the public to assist the agency in deciding whether to initiate the proposed pilot program for younger drivers of CMVs.

Discussion of Comments

The agency received 1,634 comments in response to the proposal. Over 90 percent of the commenters were opposed to the pilot program. The following table provides a summary of

the docket comments categorized by the type of commenter.

SUMMARY OF THE COMMENTS

Total Comments	1,634
In Support—	85
Opposition—	1,511
No Strong Preference—	38
Comments from Individual Truck Drivers	314
In Support—	29
Opposition—	275
No Strong Preference—	10
Comments from Individuals Other Than Truck Drivers	1233
In Support—	28
Opposition—	1,188
No Strong Preference—	17
Comments from Motor Carriers	21
In Support—	3
Opposition—	18
No Srong Preference—	0
Comments from Motor Carrier Associations	10
In Support—	6
Opposition—	2
No Strong Preference—	2
Comments from Insurance Companies	3
In Support—	1
Opposition—	2
No Strong Preference—	0
Comments from Insurance Associations	3
In Support—	0
Opposition—	3
No Strong Preference—	0
Comments from State Agencies	19
In Support—	7
Opposition—	7
No Strong Preference—	5
Comments from Driving Schools	4
In Support—	3
Opposition—	1
No Strong Preference—	0
Comments from Other Organizations	27
In Support—	8
Opposition—	15
No Strong Preference—	4

The most common reason given by those opposed to the younger commercial driver pilot training program was that younger drivers do not have the level of maturity or the driving experience necessary to operate a commercial motor vehicle in interstate commerce. Many of the commenters believed that individuals between the ages of 18 and 21, as a group, exercise poor judgment too frequently. To a lesser degree, those opposed to the pilot commented that the modern CMV was too complex for an individual under the age of 21 to operate. Several commenters referred to the difficulty employers of pilot drivers could expect in locating insurance companies willing to underwrite the liability insurance for these young CMV drivers.

Most of the commenters (whether in favor or in opposition to the proposal) did not offer data in support of their position. Frequently, commenters' positions or arguments were based on media coverage (radio, television, or magazine) of the younger commercial driver pilot training program proposal, and did not discuss any specific terms of the pilot outlined in the agency's notice of February 20, 2001. Comments, such as, ''I saw this program described on the news last night,'' or ''I read about this pilot program in a '' [trade] magazine,'' were common. Many commenters did not discuss specific aspects of the TCA proposal designed to minimize the risks of the pilot program, such as, the screening of applicant-drivers, the extensive training, and the oversight and mentoring of pilot drivers by sponsoring motor carriers. Very few commenters answered any of the six questions that the agency posed in the notice. Many commenters simply stated their belief that it was unsafe to permit any individual under the age of 21 to operate a CMV under any conditions.

The comments that were supported by data came from a variety of sources, including insurance associations, safety organizations, trucking associations, trucking companies, truck driving schools, and State agencies concerned with highway safety. Most of the insurance industry organizations that responded to the notice were opposed to the pilot. Opposition in this group centered upon studies indicating that drivers under age 25 have a markedly higher crash risk than older drivers, and upon the contention that ''driver training'' has been shown to have little effect in reducing the crash risk. The Insurance Institute for Highway Safety stated, ''[t]here is much research and it unequivocally shows that young truck drivers have markedly higher crash risks than older truck drivers.''

Three safety advocacy organizations commented, and all believed that the pilot program was not designed to ensure that the requisite level of safety would be maintained if younger drivers were permitted to operate CMVs in interstate commerce. The Advocates for Highway and Automobile Safety commented:

> [The proposed program] defies prevailing research findings of long standing. No studies assessing the value of young [CMV] driver training programs has demonstrated a sustained beneficial effect in the area of crash or accident rates among young drivers. In fact, the opposite can be demonstrated—higher crash and accident rates among trained youth, who may become overconfident and more likely to take risks.

Most of the national trade or trucking associations that commented were in favor of conducting a pilot program. They believed that the level of safety required by statute for the pilot program could be maintained, and that the pilot would help with the shortage of truck drivers in the industry. The American Trucking Associations (ATA) noted that the pilot program provided preparation and training that far exceeded that which beginning CMV drivers receive today. The ATA believes that the pilot ''should enhance the * * * end product, a qualified driver.'' The joint statement of the American Automobile Association, the American Association of Motor Vehicle Administrators, the Commercial Vehicle Safety Alliance, and the National Association of Governor's Highway Safety Representatives advised caution, but stated that ''the high crash rates of younger [CMV] drivers can be overcome by effective training, real-world driving experience, and mentoring.''

Most of the State trucking associations that commented were also in favor of conducting a pilot program. These commenters emphasized the fact that 48 States currently allow drivers under the age of 21 to operate CMVs in intrastate commerce, and many of these allow individuals as young as 18 years of age to operate commercial motor vehicles. Several of the State trucking associations indicated that the State accident history of CMV operators under age 21 was no worse than that of older operators of CMVs.

Motor carriers who commented favorably concerning the younger driver pilot program had a favorable experience in hiring younger drivers for intrastate operations, and they were confident that the pilot safeguards were adequate to ensure highway safety. Most of the motor carriers opposed to the pilot believed that it is too risky to permit individuals under the age of 21 to operate CMVs in interstate commerce because they lack the maturity necessary to safely operate CMVs.

Among the comments received from educational institutions engaged in training truck drivers, three commenters supported the concept of a pilot program as proposed by TCA, and one opposed the program. The Commercial Vehicle Training Association, a trade group whose membership includes 34 training schools for commercial motor vehicle drivers, favored adoption of the pilot, indicating that it thought that ''the standards for selection, training, and driver finishing were much more stringent than those currently in place in the industry.''

Most of the State agencies that responded indicated that their States allow individuals under the age of 21 to operate CMVs in intrastate commerce.

Six (6) States discussed their safety experience with intrastate CMV drivers under the age of 21. The data was conflicting: Agencies from the States of Montana, Illinois, Vermont, and Virginia indicated that their statistics show that CMV drivers under age 21 pose no greater crash risk than other age groups; agencies from the States of California and Iowa stated that their statistics show that CMV drivers under age 21 have a higher crash rate than that of older truck drivers.

FMCSA Response

The FMCSA believes that the commenters have presented compelling arguments both in support of, and in opposition to, the TCA petition to initiate a pilot program. However, for reasons set forth below, the agency believes there is insufficient information at this time to make a preliminary determination as to whether the terms and conditions of the pilot program that TCA requested would achieve a level of safety equivalent to, or greater than, that provided by the current prohibition against drivers under the age of 21.

The agency does not believe that all drivers between the ages of 18 and 21 should be viewed as a safety risk while at the controls of a CMV, regardless of the requirements that would be imposed upon them. However, there is little information currently available to support the contention that young CMV drivers selected through a rigorous screening process, and groomed through an intensive training and mentoring program, would have safety performance records comparable to CMV drivers 21 years of age or older. The comments to the docket provide a clear indication to the agency that the potential safety impacts of a pilot program cannot be determined with any degree of certainty at this time. Therefore, we believe that it would be inappropriate to pursue a pilot program until there is additional information and data on which to base a preliminary determination about the potential safety impacts of allowing younger drivers to operate in interstate commerce.

While commenters offered ample evidence that individuals aged 18 to 21, as a group, are more prone to risk-taking behavior, we do not believe that this information, in and of itself, suggests that this universe of drivers are all unfit to operate a CMV in interstate commerce. Highway safety statistics concerning the over-representation of younger drivers in accidents of all types of motor vehicles provides a vivid, but indiscriminate, picture of safety problems with these drivers. This information represents the cumulative safety performance record of all young adults operating all types of motor vehicles on the Nation's highways, most of whom may never have expressed an interest in becoming a professional CMV driver. We do not believe, however, that such information should be considered as the determining factor in deciding whether young adults committed to exploring a career driving commercial motor vehicles could do so safely.

With regard to the terms and conditions spelled out in TCA's proposal, the FMCSA believes that a program comprised of screening, training, and mentoring is likely to bring about a higher level of safety performance for a given group of drivers than they would otherwise have experienced. Yet, because of the limited information and data about young CMV drivers (between the ages of 18 and 21), the agency is unable to conclude that the baseline safety performance of these younger drivers is sufficiently close to that of older drivers of CMVs, such that screening, training, and mentoring would improve their performance and enable them to achieve safety performance levels equivalent to or greater than older drivers. Denial of the TCA petition should not be construed as a rejection of the argument that screening, training, and mentoring could improve the safety performance of younger CMV drivers. But, the TCA petition, as submitted, does not demonstrate that a pilot program for younger CMV drivers is warranted at this time.

FMCSA's Decision

For the reasons given above, the FMCSA is denying the petition of the Truckload Carriers Association to establish a pilot program for CMV drivers between the ages of 18 and 21. We believe that proper screening, training, and mentoring are likely to improve the safety performance of any given group of drivers. However, based on the information provided by the petitioner and commenters, the agency is unable to determine that the safety measures in this proposed pilot project are designed to achieve a level of safety equivalent to, or greater than, the level obtained by complying with the safety regulations.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: June 4, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–14445 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Federal Railroad Administration

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. RSPA–2003–14982, Notice No. 03–7]

Hazardous Materials: Transportation of Explosives by Rail

AGENCY: Research and Special Programs Administration and Federal Railroad Administration, Department of Transportation; and Transportation Security Administration, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration, the Federal Railroad Administration, and the Transportation Security Administration are publishing this document to describe the application of Federal laws to the transportation of explosives by rail. In particular, this document explains that, in light of the extensive regulation of the rail transportation of hazardous materials, including explosives, by the Department of Transportation, the protections inherent in railroad operations against improper use of those materials by railroad employees, and the security safeguards taken by the railroads, the transportation of explosives via rail by certain persons described under the Safe Explosives Act does not pose a sufficient security risk warranting further regulation at this time. Based on the determinations made by the Transportation Security Administration and the Department of Transportation that are detailed in this document, certain federal criminal provisions described below do not apply to persons while they are engaged in the commercial transportation of explosives by rail.

DATES: Effective Date: June 4, 2003.

ADDRESSES: You may review the public docket containing this document in person at the Department of Transportation Dockets Management System office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Management System office is on the plaza level of the NASSIF Building at the Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Also, you

may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Machado, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 366–4440; facsimile (202) 366–7041; e-mail *Nancy.Machado@rspa.dot.gov*. David Kasminoff, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC, 20590–0001; telephone: (202) 493–6043; *David.Kasminoff@fra.dot.gov*. Christine Beyer, Office of Chief Counsel, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (571) 227–2657; e-mail *Christine.Beyer@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*;

(3) Visiting the RSPA web page at *http:// hazmat.dot.gov;* or

(4) Visiting the TSA Laws and Policy web page at *http://www.tsa.dot.gov/public/index.jsp.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this document.

Abbreviations and Terms Used in This Document

ATF—Bureau of Alcohol, Tobacco, Firearms, and Explosives
ATSA—Aviation and Transportation Security Act
CHRC—Criminal History Records Check
DHS—Department of Homeland Security
DOJ—Department of Justice
DOT—Department of Transportation
FAA—Federal Aviation Administration
Federal hazmat law—Federal Hazardous Materials Transportation Law (48 U.S.C. 5101 *et seq.*)
FMCSA—Federal Motor Carrier Safety Administration
FRA—Federal Railroad Administration
GAO—General Accounting Office
Hazmat—Hazardous materials
HMR—Hazardous Material Regulations (49 CFR Parts 171–180)
RSPA—Research and Special Programs Administration
SEA—The Safe Explosives Act
TSA—Transportation Security Administration
USCG—U.S. Coast Guard

I. Background

The Research and Special Programs Administration (RSPA) and the Federal Railroad Administration (FRA), agencies within the Department of Transportation (DOT), and the Transportation Security Administration (TSA), an agency within the Department of Homeland Security (DHS), have determined that in light of the extensive regulation of the rail transportation of hazardous materials, including explosives, by DOT, the protections inherent in railroad operations against improper use of those materials by railroad employees, and the security safeguards taken by the railroads, the transportation of explosives by rail by persons described under section 842(i) does not present a sufficient security risk warranting further regulation at this time. In view of the foregoing conclusion, no additional security regulations addressing this aspect of the transportation of explosives are immediately necessary. Accordingly, under 18 U.S.C. 845(a)(1), discussed in greater detail below, persons engaged in the commercial transportation of explosives by rail are excepted from the application of 18 U.S.C. 842(i).

As a threshold matter, it is important to discuss the role that Federal agencies play in the transportation of explosives by rail. In accordance with Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), RSPA regulates the safe and secure transportation of hazardous materials (hazmat), including explosives, in all modes of transportation. The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) include packaging, identification, handling, and security requirements. Modal administrations within DOT—the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), and FRA—enforce these regulations in their respective areas of authority. FRA pursues its enforcement responsibilities with a particular emphasis on the transportation or shipment of hazardous materials by rail, including the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of containers that are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad. In addition, FRA issues and enforces a variety of rail safety regulations that address track and roadbed conditions; signal systems; locomotive, freight car and passenger equipment safety; emergency preparedness; hours of service of railroad employees; operating practices and procedures; qualification standards for certain employees; and alcohol and drug testing of railroad employees in safety-sensitive service.

TSA was created following the terrorist attacks of September 11, 2001, as an agency within DOT. TSA was transferred to the DHS on March 1, 2003, and has statutory authority to set standards for security and make determinations regarding the adequacy of security in all modes of transportation. DOT agencies consult with TSA on transportation security matters. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is an agency within the Department of Justice (DOJ), and has statutory authority to address, among other things, the manufacture, purchase, possession and use of explosives.

Representatives of RSPA, FRA, TSA, and DOJ consulted extensively with each other to ensure that this document accurately reflects the security considerations relevant to those persons responsible for transportation of explosives in commerce by rail.

II. Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.[1] Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully ''ship or transport any explosive in or affecting interstate or foreign commerce'' or ''receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.'' Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal

[1] Pub. L. 107–296, November 25, 2002, 116 Stat. 2280

prosecution.[2] These incidents are investigated by ATF and referred, as appropriate, to the United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety.'' DOJ has interpreted this provision to exempt persons from application of § 842(i) when (1) DOT has actually regulated a relevant aspect of the transportation of explosives, and (2) those regulations cover the particular aspect of the safe transportation of explosives that prompted Congress to enact the criminal statute from which exemption is sought. For purposes of § 845(a)(1), if it is determined that persons engaged in certain aspects of the transportation of explosives do not pose a security threat and do not warrant regulation, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce.

As discussed in greater detail throughout this document, this notice addresses all of the categories of individuals who are prohibited from transporting explosives in commerce via railroad under § 842(i), as amended by the SEA, and thus 18 U.S.C. 845(a)(1) excepts those categories of individuals from prosecution under § 842(i) for activities occurring during and incident to the transportation of explosives by rail in commerce.

III. Hazardous Material Regulations

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. Hazardous materials are essential to the economy of the United States and the well being of its people. Hazardous materials fuel cars and trucks, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications and in manufacturing, mining, and other industrial processes. These materials are transported in quantities ranging from several ounces to many thousands of gallons. DOT estimates that one and one-half billion tons of hazmat are transported each year. The majority of hazardous materials move by truck (56%), while rail shipments account for only six percent of the tonnage. The vast majority of hazardous materials shipments arrive safely at their destinations. Most incidents that do occur involve small releases of material and present no serious threat to life or property.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Under the HMR, which are based on the internationally recognized United Nations system for classification, identification, and ranking of hazardous materials, hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I, to a low hazard, Packing Group III, material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, all hazardous materials are divided into nine general classes according to their physical, chemical, and nuclear properties as follows:

Class 1—Explosives
Class 2—Compressed, flammable, nonflammable, and poison gases
Class 3—Flammable liquids
Class 4—Flammable solids
Class 5—Oxidizers and organic peroxides
Class 6—Toxic and infectious materials
Class 7—Radioactive materials
Class 8—Corrosive materials
Class 9—Miscellaneous dangerous substances and articles

Within Classes 1, 2, 4, 5, and 6, there are more specifically defined divisions, and within Class 1 there are Compatibility Group subdivisions as well. The hazard classes and divisions are not mutually exclusive. Certain hazardous materials have multiple dangerous properties, each of which must be addressed according to its relative potential to do harm. In these cases, the UN system and the HMR allow identification and communication of both the primary and subsidiary threats.

DOT's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The HMR are designed to achieve two goals: (1) To ensure that hazardous materials are packaged and handled safely during transportation, thus minimizing the possibility of their release should an incident occur, and (2) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the materials being transported. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR include design, performance, and inspection standards for packaging, which also include operational requirements applicable to each mode of transportation.

With particular regard to explosives, subpart C of 49 CFR part 173 sets forth substantial and comprehensive requirements concerning the definition, classification, and packaging of explosives. Other rules cover the required marking labeling, and placarding of explosives shipments. *See* §§ 172.320, 411, and 522–525. The HMR also contain specific operational requirements for handling explosives, including requirements that specifically address rail operations (subpart E of 49 CFR part 174) and the disposition of explosive shipments at their rail destinations. See 49 CFR 174.16(b)(1).

In the wake of the terrorist attacks of September 11, 2001, and subsequent threats related to biological and other hazardous materials, DOT undertook a broad review of government and industry hazardous materials transportation safety and security programs. As part of this review, DOT established the Hazardous Materials Direct Action Group (Hazmat DAG). The Hazmat DAG met with representatives of the hazardous materials industry, emergency response community, and state governments to discuss transportation security issues and continuing terrorist threats. In addition,

[2] The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to $250,000.

DOT created a DOT Intermodal Hazardous Materials Transportation Security Task Force, which considered attack or sabotage vulnerabilities, existing security measures, and potential ways to reduce vulnerabilities. The Task Force included representatives from FRA, FMCSA, FAA, U.S. Coast Guard (USCG), and Office of the Secretary.

Based in part on discussions in the Hazmat DAG and on the results of the Task Force review, on February 14, 2002, RSPA published an advisory notice to inform shippers and carriers of voluntary measures that can enhance the security of hazardous materials shipments during transportation (67 FR 6963). The notice addressed personnel, facility, and en route security issues and included contact points for obtaining additional, more detailed information. Among other recommendations, the security advisory notice advised employers to be aware of the possibility that someone they employ may pose a potential security risk. RSPA recommended that employers consider establishing a process to verify the information provided by applicants on application forms or resumes, including checking with former and current employers and personal references provided by job applicants.

On March 25, 2003, RSPA published a final rule under Docket No. RSPA–02–12064 (HM–232), herein referred to as HM–232 (68 FR 14510). The final rule requires persons who offer certain hazardous materials for transportation in commerce and persons who transport certain hazardous materials in commerce to develop and implement security plans.

In developing the HM–232 final rule, RSPA assessed the security risks associated with the transportation of different classes and quantities of hazardous materials. RSPA concluded that the most significant security risks involve the transportation of certain radioactive materials; certain explosives; materials that are poisonous by inhalation, certain infectious and toxic substances; and bulk shipments of materials such as flammable and compressed gases, flammable liquids, flammable solids, and corrosives. Based on this security risk assessment, the HM–232 final rule requires persons who offer for transportation or transport the following hazardous materials to develop and implement security plans: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR Part 73; and (6) a shipment that requires placarding. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. In effect, then, the HM–232 final rule applies the security plan requirement to a shipper or carrier of a hazardous material in an amount that requires placarding and to select agents. Using the placarding thresholds to trigger enhanced security requirements covers the materials that present the most significant security threats in transportation and provides a relatively straightforward way to distinguish materials that may present a significant security threat from materials that do not. It also provides consistency for the regulated community, thereby minimizing confusion and facilitating compliance.

The HM–232 final rule also includes new security awareness training requirements for all hazardous materials employees. This training must include an awareness of the security risks associated with hazmat transportation, measures designed to enhance transportation security, and a component covering how to recognize and respond to possible security threats. With regard to personnel security, the final rule requires that each security plan include measures to confirm information provided by job applicants for positions that involve access to, and handling of, hazmat.

On May 5, 2003, RSPA published an interim final rule (IFR) to further enhance the hazardous materials transportation security (68 FR 23832). The IFR described the current system of regulations applicable to the transportation of hazardous materials in commerce, and reviewed DOT activities to enhance the security of hazardous materials shipments. In addition, the rule summarized the requirements of the USA PATRIOT Act and regulations adopted by TSA and the FMCSA to implement the background check provisions of the Act, and described actions taken by FAA, TSA, and the U.S. Coast Guard to address security issues associated with the transportation of hazardous materials by air and vessel. The IFR also incorporated into the HMR a requirement that shippers and transporters of hazardous materials comply with applicable Federal security regulations and revised the procedures for applying for an exemption from the HMR to require applicants to certify compliance with applicable Federal transportation security laws and regulations. Finally, DOT, in consultation with TSA, determined that, based on the analyses and regulatory programs described in the IFR, the provisions of 18 U.S.C. 842(i) do not apply to the commercial transportation of explosives by motor carrier, aircraft, or vessel.

IV. Transportation Security Administration

In the wake of the terrorist attacks of September 11, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), which established the TSA.[3] TSA was created as an agency within DOT, operating under the direction of the Under Secretary of Transportation for Security. TSA became an agency of the DHS in March 2003, by operation of the Homeland Security Act of 2002. (Pub. L. 107–296.) At this point the Under Secretary became the Administrator. The Secretary of DHS has delegated back to the Administrator of TSA all of his authority in ATSA that was vested with the Secretary by operation of law under the Homeland Security Act. TSA continues to possess the statutory authority that ATSA established, which grants the Administrator authority for security in all modes of transportation.[4]

As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats.[5] In addition, TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities.[6]

TSA has exercised this authority extensively in the aviation and commercial trucking industries. For instance, TSA regulations require a fingerprint-based criminal history records check (CHRC) on individuals with access to secured areas of airports and aircraft. *See* 49 CFR parts 1542 and 1544. In addition, TSA recently issued an interim final rule that requires commercial drivers to successfully complete a fingerprint-based CHRC in

[3] Pub. L. 107–71, November 19, 2001, 115 Stat. 597.

[4] 49 U.S.C. 114(d).

[5] 49 U.S.C. 114(f)(1)–(5), (h)(1)–(4).

[6] 49 U.S.C. 114(f)(1) and (5).

order to renew or obtain authority to transport hazardous materials. See 49 CFR part 1572. If an individual has a criminal conviction for certain disqualifying offenses within prescribed time periods, he or she is not granted access to the secured area or granted authority to transport hazmat in commerce.

TSA is authorized to complete background checks on individuals in all modes of transportation and to issue identification media that capture the results of the background check. TSA is currently evaluating the need for and nature of background checks on transportation workers, in addition to those in the aviation and trucking industries, who are in a position to cause or control serious security-related events. TSA is taking a risk-based approach to security regulations so that the government and private sector can prioritize resources based on threat information, vulnerability assessments, and criticality determinations. TSA is engaged in such an analysis concerning background checks for transportation workers in the maritime and rail industries. TSA continues to evaluate the need for additional regulations concerning this population and potential threats, and may issue additional security requirements concerning railroad employees engaged in the transportation of hazmat. A comprehensive, risk-based approach will facilitate the development of standards that are narrowly tailored to suit the industry and the threat. TSA evaluated the measures currently required under DOT hazmat and rail regulations, the nature of rail operations, and the security enhancements completed by the railroads, and has determined that, for the present, they adequately address the security concerns of which it is aware.

V. Transportation by Rail

FRA administers the Federal railroad safety laws (49 U.S.C. chapters 201–213), which encompass all areas of railroad safety (*see* 49 U.S.C. 20103), including security. The terrorist attacks of September 11 and subsequent indications of possible terrorist threats specifically directed at the railroad industry indicate the need to assess the security of hazmat shipments, including individuals in a position to have access to sensitive information regarding, or the ability to control the movement of, explosives and other hazmat. FRA has worked closely with TSA, the railroad industry, and RSPA on rail security issues since September 2001.

The nation's railroads have taken several voluntary steps to enhance security since September 11, 2001. The Association of American Railroads (AAR) established a security task force immediately after the attacks. The task force created action teams to assess vulnerabilities in several critical areas: physical assets, information technology, chemicals and hazardous materials, defense shipments, train operations, and passenger security. AAR worked with chemical industry associations and security consultants to assess terrorism risks in these areas. This risk analysis provided the basis for the industry's security management plan, which was presented to DOT and TSA.

The security management plan, which is currently being implemented, includes a uniform system for communicating threat levels throughout the industry, progressively rigorous countermeasures to be taken depending upon the threat level, and a round-the-clock operations center linking railroad control centers with law enforcement agencies. Among the activities the industry is taking to implement the plan are increasing the awareness of employees about potential security threats, limiting publication of information about sensitive shipments, periodically testing security systems, using railroad police and private security guards to monitor critical infrastructure locations, restricting access to railroad facilities, using video surveillance of hazardous materials shipments in certain areas, conducting security evaluations of specific facilities, and the temporary rerouting or suspension of certain hazmat shipments in the event of a credible terrorist threat. These security enhancements undertaken by the major railroads have helped to reduce the risk that explosives or other hazardous materials can be used for terrorist purposes while in railroad possession.

On May 23, 2003, the General Accounting Office (GAO) issued a report titled ''Rail Safety and Security—Some Actions Already Taken to Enhance Rail Security, but Risk-Based Plan Needed'' (GAO–03–435). GAO found that, since September 11, 2001, the rail and chemical industries have taken steps to improve the security of rail shipments of hazardous materials. The report describes the rail industry's development and implementation of its security plan and actions taken thus far by DOT and TSA to address rail security issues. The report does not address the security issues related to railroad employees that are the subject of this notice, nor does it include any reason to question the determinations in this notice concerning the current need for further regulation to address the risk posed by the transportation of explosives by rail by persons described under section 842(i).

GAO recommends that DOT and DHS work together to develop a risk-based plan specifically to address rail security, including timeframes for actions. As noted elsewhere in this notice, DOT and TSA are in the process of evaluating the need for additional Federal regulations to address rail transportation security. We agree that a comprehensive, risk-based approach will facilitate the development of standards that are narrowly tailored to suit the industry and the threat. Recently adopted regulations, such as the HM–232 and USA PATRIOT Act final rules, as well as initiatives currently in progress, incorporate a risk management approach to security regulation.

1. Process for Handling Hazardous Materials Via Rail

A discussion of the process by which explosives and other hazmat are transported by rail is necessary to analyze security risks and appropriate countermeasures. More than 75 percent of hazardous materials moving by railroad moves in bulk, most commonly in a tank car or covered hopper car. Hazardous materials moving by rail are loaded into a tank car, hopper car, boxcar, trailer, or intermodal container by the shipper (or the shipper's agent). The product is then delivered to the railroad for movement to its destination. Railroad employees do not load hazardous materials into rail cars or containers or unload them at their destination.

To arrange for the transportation of a hazardous materials package, a shipper will contact a railroad freight agent. At this time, the shipping description information—the contents and format of which is prescribed by the HMR—is passed along to the carrier, along with emergency response information, origin pickup point, destination, and the car reporting mark and number. The freight agent, or a shipping clerk, enters this information into the carrier's records, and orders are generated for pickup by either a switch or a road crew, depending on the origin location and its proximity to a terminal. The shipping information may be transmitted orally, but the regulations require a document from the shipper, sent either in hard copy or electronically. The shipper must certify that the materials to be shipped have been classified, packaged, and labeled appropriately and are in proper condition for transportation according to the applicable DOT standards.

The shipper must label non-bulk packages to properly disclose their

contents, and must placard hazmat shipments in accordance with the regulations. Shippers often apply security seals to both bulk and non-bulk containers. Security seals impede access to dangerous commodities and also provide evidence of tampering, if it occurs.

Once the hazardous materials shipment has been accepted for transportation by the railroad, the paperwork that describes the product must accompany the shipment. The HMR require the train crew to have a copy of this paperwork in the complete train consist, which must accurately list the placement of each hazmat shipment in the train. Once the product is delivered to its destination, the paperwork is transferred to the receiving party.

2. Unique Characteristics of Transporting Hazardous Materials Via Rail

There are many factors unique to the rail industry that minimize the degree to which an individual may affect the movement of hazardous materials, including explosives. Railroad employees have a very limited opportunity to gain access to or divert hazardous materials shipments they are transporting. Railroad operating employees do not load or unload hazmat from rail cars, and are not expected to enter the cars or handle their contents in any way. Furthermore, train crews that move these shipments are not issued the tools necessary to remove or break the seals of the hazardous material containers. Gaining access to the hazmat in closed containers, if possible at all, would likely attract the attention of other employees. The HMR prescribe requirements for the packaging of all placarded hazmat, including the type of package, the degree to which all closures must be secured prior to transport, and maintenance and testing requirements to ensure that valves and other closures are in good working condition.

Unlike a truck or aircraft, a train operates on a closed system. It is confined to the tracks it is on, and any deviation from its assigned route is either altogether impossible or difficult to accomplish without being detected quickly by railroad employees or officials. Train crews are expected to move their train along a pre-designated route and communicate with the railroad if any delays occur along the route. A train containing hazardous materials is monitored by a train dispatcher who oversees the movement, and in heavily trafficked areas, controls the movement by a system of signals or mechanical and electronic control devices. Further, on large portions of major railroads, each car moving in a train is monitored by trackside sensors that report its location back to a centralized facility or broadcast its location over the railroad radio network every time it contacts one of a variety of equipment scanners.

Although railroads transport a large volume of hazardous materials, the number of annual explosives shipments via rail is very low. According to the AAR, there are approximately 27 million carloads of freight shipped by rail annually. Of these, 1.7 million are hazmat shipments and approximately 1,200 shipments contain explosives. Of the railroads TSA has surveyed, nearly all stated that explosives shipments are not a coveted product. There simply is not enough of it in the rail transportation network to produce good profit margins.

It is also important to note that, of the 660 small railroads operating in the United States, fewer than 10 are known to ship explosive material by rail at any given time. The incidence of explosives shipments on small railroads is nearly nonexistent.

The major railroads (or Class I railroads) handle 94 percent of the nation's rail freight traffic and employ approximately 90 percent of employees in the rail industry. Each of the Class I railroads employs a police force to guard rail yards and equipment to prevent unauthorized access to facilities, equipment, product, and paperwork. There are approximately 1,300 rail police in service today. The railroads conduct fingerprint-based CHRC on these individuals to ensure that persons with criminal or otherwise problematic backgrounds are not hired as part of the police force. Under 49 U.S.C. 28101, these employees are fully authorized to enforce laws of all states in which the railroad operates. *See also* 49 CFR part 207.

Furthermore, railroad police agents can be linked through extensive radio networks to virtually all railroad employees within their territorial jurisdiction, including train crews, train dispatchers, and railroad workers who maintain the tracks, signals and rolling stock. The railroad police can communicate directly with most railroad employees and can monitor the radio communications between many of the employees. Therefore, railroad employees operate in a setting where the employer is not dependent on state or local law enforcement to detect criminal activity; rather, it employs its own law enforcement officers, with specialized knowledge of railroad operations, to ensure the security of those operations.

The Class I railroads require employees to complete an extensive application prior to employment, which includes criminal, employment, educational, and credit history; citizenship status; and military service and type of discharge. The application also provides that candidates will be disqualified or terminated if any of the information provided on the application is false.

As part of the application process, the Class I railroads conduct background checks on all new hires, although this does not include a fingerprint-based CHRC. The Class I railroads ask applicants to disclose any past criminal history. In addition, the major railroads complete a public records search for statewide criminal and outstanding debt information. Using records linked to the applicant's social security number, the major railroads also check the applicant's employment, credit, and address history. This is a significant evaluation, because it typically confirms a candidate's identity. Experienced investigators place great weight on these records to catch individuals who have adopted false identification, who often move beneath the criminal history radar screen. A number of terrorists involved in previous terrorist attacks would have successfully completed a fingerprint-based CHRC, but may have raised concerns as a result of the social security check.

The employment application also requires information concerning previous military service and citizenship status. If a candidate has served in the armed forces, the railroad requests a copy of the individual's discharge papers. An individual with a dishonorable discharge is not disqualified automatically, but the dishonorable discharge may become grounds for disqualification. The railroad considers the totality of the circumstances, such as the facts that gave rise to the discharge, any rehabilitation that is evident, and the results of the other background checks. Similarly, the railroads do not prohibit hiring aliens, but will not hire an alien unless the proper immigration forms and approvals have been obtained. Any person who has renounced his or her U.S. citizenship would be required to state that he/she is not a U.S. citizen on the application. In a general survey of the Class I railroads, the percentage of non-Canadian aliens working in the railroad industry is extremely small. Citizens of Canada, who typically work

for the Canadian railroads, are discussed in greater detail below.

The railroad employees responsible for actually transporting hazardous materials, *i.e.*, the train crew members, are subject to a variety of requirements that address their fitness for duty, general health, and knowledge of appropriate operating practices. Locomotive engineers are certified pursuant to a comprehensive regulatory regime (49 CFR part 240) that includes safety testing, visual and hearing acuity tests, and alcohol and drug testing (49 CFR part 219). A locomotive engineer's certification may be revoked for failure to follow critical operating rules or for violation of rules concerning alcohol and drug use. *See* 49 CFR 240.117 and 307. In addition, engineers undergo knowledge and operational testing and training periodically that may reveal any severe mental disorder that might jeopardize the person's ability to perform safely. Railroad operating employees almost always work in close proximity to other crew members, so their actions are constantly observed. Abnormal behavior would likely be noticed and reported by fellow employees to management or an employee assistance program. Serious injury can result very quickly while working on or near railroad equipment; consequently, rail employees are typically not tolerant of abnormal or irresponsible behavior in the workplace.

Aside from the locomotive engineer, the other train crew members are conductors and brakemen. FRA's regulations require that, like engineers, these employees are trained and tested on the railroad's operating rules. *See* 49 CFR part 217. These employees are also subject to the alcohol and drug testing regulations, and may be removed from service for violating operating rules or alcohol and drug prohibitions.

We recognize that the background checks conducted by the railroad industry are not as comprehensive as fingerprint-based background checks. However, because of the conditions under which explosives are transported by rail and the difficulty that a potential criminal or terrorist would have in gaining access to or controlling an explosives shipment and the other Federal and industry measures currently in effect, we do not believe that additional regulations concerning railroad employees are warranted at this time. TSA continues to assess the need for more detailed background check requirements in the rail industry and may determine that such standards are necessary in the future.

Because Canadian railroads transport hazardous materials into the United States, locomotive engineers working for these railroads are often citizens of Canada rather than the United States. TSA recently published a rule that requires Canadian train crews entering this country to be vetted by Transport Canada, the agency in the Canadian government that oversees transportation. (68 FR 6083; Feb. 6, 2003.) A Canadian citizen entering the U.S. via rail with explosives shipments on board is not granted access unless Transport Canada certifies that the individual has completed a background investigation. TSA is in the process of amending this rule to extend its application to Canadians who transport explosives within the United States as well. TSA has met with representatives of Canada on several occasions to discuss these procedures, and will conduct similar discussions with Mexico.

FRA has been granted broad authority over railroad safety, including security, which includes authority to address particular safety or security problems through extraordinary remedies. Under 49 U.S.C. 20104, FRA may issue an Emergency Order imposing requirements to abate an emergency situation involving a hazard of death or personal injury. These orders are issued without notice or prior hearing, and can be directed to corporations or individuals. Using such an order, FRA can impose whatever conditions are necessary to address the emergency, up to and including requiring the cessation of operations on a particular line or removing persons from safety-sensitive service. In addition, FRA has statutory authority to disqualify individuals from safety-sensitive service when it is shown that an individual is not fit for service due to his or her violation of one or more safety laws. 49 U.S.C. 20111(c).

VI. Determination Under 18 U.S.C. 845(a)(1)

As noted above, 18 U.S.C. 845(a)(1) provides an exception to the prohibited persons provisions in 18 U.S.C. 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air, which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety.'' Under this exception, if DOT regulations address the transportation security issues associated with persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce. In addition, if it is determined by TSA and DOT jointly that certain aspects of the transportation of explosives do not pose a sufficient security risk and therefore do not warrant regulation, the exception contained in 18 U.S.C. 845(a)(1) also applies, and persons engaged in such transportation would not be subject to criminal prosecution under section 842(i).

DOT is authorized by Federal hazmat law to designate material, including an explosive, as hazardous when transported in commerce in a particular amount and form that may pose an unreasonable risk to health, safety, or security. DOT regulations applicable to the transportation of explosives by all modes include the classification, packaging, hazard communication, and operational requirements described elsewhere in this document. Further, the HMR include specific requirements for security plans and training adopted in the HM–232 final rule.

As discussed in detail above, DOT and TSA assessed the security risks associated with the transportation in commerce of explosives as defined in 18 U.S.C. 841(c)–(f). Based on this assessment, we concluded that the most significant security risks are associated with the transportation of explosives shipments in quantities that require placarding under the HMR. Thus, the HM–232 final rule requires persons who offer or transport shipments of explosives in all modes of transportation that must be placarded under the HMR to develop and implement security plans. There are additional requirements for placarded shipments in transportation, which minimize the risks associated with their transportation. Shipping papers, packaging, car placement, the integrity of seals and closures, hazmat employee training, and maintenance are all areas that must be handled in accordance with prescribed standards.

Non-placarded shipments of explosives are not subject to these requirements. In rulemakings published on May 5, 2003, DOT and TSA determined that non-placarded shipments do not present a sufficient security risk in transportation, at this time, to warrant application of the TSA background check requirements to persons who transport those shipments in commerce or to persons who possess those shipments incidental to transportation in commerce, including persons subject to 18 U.S.C. 842(i). *See* 68 FR 23832 and 68 FR 23852. DOT and TSA continue to assess the security risks posed by the transportation of non-placarded shipments of explosives in commerce and will take appropriate

regulatory action, after public notice and comment, to address those risks.

Nevertheless, non-placarded shipments of explosives continue to be subject to general HMR requirements governing packaging and hazard communication. These risk-based safety requirements also enhance overall transportation security. For example, for high hazard shipments, such as Class 1 materials, the stringent packaging required by the HMR to enhance the safety of the shipment in transportation makes it difficult for someone to tamper with the shipment for a criminal or terrorist purpose. Similarly, shipping documents help shippers, carriers, and consignees account for specific shipments and identify discrepancies or missing packages. In addition, under the HM–232 final rule, hazardous materials employers must ensure that all hazardous materials employees receive security awareness training. Such training must include an awareness of the security risks associated with hazardous materials transportation and a component covering how to recognize and respond to possible security threats.

A joint decision by DOT and TSA as to whether a particular hazardous material, including an explosive, presents a sufficient security risk when transported in commerce to warrant background check or other security requirements is determinative. As noted above, DOT and TSA previously determined that the transportation of non-placarded shipments by persons described under section 842(i) does not present a sufficient security risk to warrant further regulation at this time. That determination also applies to the transportation in commerce of non-placarded explosives via rail.

For the transportation of explosives by rail in amounts that require placarding, RSPA and FRA regulations, the protections inherent in railroad operations against improper use of explosives by railroad employees, and security safeguards imposed by the railroads themselves adequately address, at the current time, security risks associated with rail employees who are involved in such transportation. DOT regulations ensure that explosives shipments are properly loaded, labeled, and documented, and that the shipments are very difficult to tamper with. In addition, the HM–232 final rule requires persons who transport certain hazardous materials to develop and implement security plans. Thus, railroads that carry hazardous materials, including explosives, in amounts that require placarding must have a security plan that conforms to HM–232 requirements. The plan must include an assessment of possible transportation security risks for covered shipments and appropriate measures to address the risks. Specific measures put into place under the plan must address personnel security. To the extent that a railroad identifies security vulnerabilities related to its personnel, its security plan must address those vulnerabilities. Further, major railroads have their own authorized law enforcement officers, and the nature of railroad operations makes it difficult for an employee to have any realistic opportunity to gain access to, improperly use, or redirect the movement of the shipments. Major railroads screen potential employees in a way that is designed to reveal those who are under indictment or have been convicted of serious felonies, are fugitives from justice, are in the country illegally, have renounced their citizenship, or have been dishonorably discharged from the armed forces. Serious felonies involve those offenses that generally pose a substantial threat to public safety and security.

Periodic operational testing and the nature of railroad work create an environment in which mental disorders that give rise to safety or security concerns are likely to be noticed and addressed. FRA's alcohol and drug regulations effectively prevent substance abusers from serving in security-sensitive positions. Recent security enhancements undertaken by the major railroads have also helped to reduce the risk that explosives or other hazardous materials can be used for terrorist purposes while in railroad possession. Small railroads rarely handle any explosives shipments, and many of the safeguards against misuse of those materials that exist on larger railroads are also present on small ones.

For all of these reasons, DOT and TSA have determined that the transportation of explosives via rail by persons described under section 842(i) does not pose a sufficient security risk warranting further regulation at this time. In light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to persons while they are engaged in the transportation of explosives in commerce via rail.

It is important to note that this determination may be reassessed as DOT and TSA continue to identify and address security risks associated with the transportation of explosives. For example, in a rulemaking to be developed under Docket HM–232A, RSPA is evaluating the need to require further security enhancements on materials or categories of materials that present the most serious security risks in transportation. Likewise, TSA is considering transportation worker identification rules that would likely include certain railroad workers and entail background checks. Because of the potential impact of such enhanced security requirements on the economic viability of the hazardous materials transportation industry, any additional security requirements will be developed through normal notice and comment procedures, unless security threats justify expedited or emergency rulemaking.

Issued in Washington, DC, and Arlington, Virginia, on June 4, 2003.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

Allan Rutter,

Administrator, Federal Railroad Administration.

James M. Loy,

Administrator, Transportation Security Administration.

[FR Doc. 03–14489 Filed 6–5–03; 10:39 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15353]

Notice of Receipt of Petition for Decision That Nonconforming 2002 BMW Z8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 BMW Z8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 BMW Z8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 9, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2002 BMW Z8 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2002 BMW Z8 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 BMW Z8 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2002 BMW Z8 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 BMW Z8 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * * .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 2002 BMW Z8 passenger car models comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) replacement of the speedometer and tachometer with U.S.-model components; (b) reprogramming the dash to add all required warning and theft protection functions.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model rear sidemarker lights.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection:* reprogramming the vehicle to actuate the ignition key and safety belt warning systems.

Standard No. 118 *Power Window Systems:* reprogramming the vehicle so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) reprogramming the dash to add the required seat belt warning functions; (b) replacement of the passenger's seat belt with a U.S.-model component. The petitioner states that the vehicle is equipped with a U.S.-model driver's seat belt and with U.S.-model air bags, control units, and related interior parts.

The petitioner states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 4, 2003.

Kathleen DeMeter,

Acting Associate Administrator for Enforcement.

[FR Doc. 03–14437 Filed 6–6–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–279 (Sub–No. 5X)]

Canadian National Railway Co.—Discontinuance of Trackage Rights Exemption—in Erie County, NY

The Canadian National Railway Company (CN) has filed a verified notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 5.3-mile portion of trackage owned by New York Central Lines, LLC (NYC) and operated by CSX Transportation, Inc., in Buffalo, Erie County, NY. The line is described as the following segments: (a) NYC's Chicago Line between CP–2 and CP–5 (milepost 5.4+/−), near the south end of NYC's Seneca Yard; (b) NYC's Compromise Branch between CP–437 and CP–2; and (c) NYC's Bailey Avenue Branch between CP–T and CP–437. The line traverses United States Postal Service Zip Codes 14206, 14207, 14210, 14211, 14212, 14214, 14216, 14218, and 14220.

CN has certified that: (1) No local traffic has been handled to or from any customer for at least 2 years; (2) any overhead traffic routed over the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 9, 2003, unless stayed pending reconsideration. Petitions to stay [1] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by June 19, 2003. Petitions to reopen must be filed by June 30, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CN's representative: Michael J. Barron, Jr., Canadian National, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 30, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14202 Filed 6–6–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c), and 1105.8(b), respectively.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 637X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Grant County, WV

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 5.3-mile line of railroad, extending between milepost BAH 63.7 at Sincel and the end of the track at milepost BAH 69.0 near Henry, in Grant County, WV. The line traverses United States Postal Service Zip Code 26720.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 10, 2003,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by June 20, 2003. Petitions to reopen must be filed by June 30, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–14203 Filed 6–6–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Because this is a discontinuance of service proceeding and not an abandonment, there is no need to provide an opportunity for trail use/rail banking or public use condition requests. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c)(6) and 1105.8. Nevertheless, CSXT filed environmental and historic reports with its notice.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 29, 2003.

The Department of the Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 9, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0025.
Form Number: IRS Form 851.
Type of Review: Extension.
Title: Affiliations Schedule.
Description: Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to the 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/ Recordkeepers: 4,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr., 28 min.
Learning about the law or the form—1 hr., 12 min.
Preparing and sending the form to the IRS—1 hr., 25 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 56,400 hours.

OMB Number: 1545–0239.
Form Number: IRS Form 5754.
Type of Review: Extension.
Title: Statement by Person(s) Receiving Gambling Winnings.
Description: Section 3402(q)(6) of the Internal Revenue Code (IRC) requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. We use the information on Form W–2G to ensure that recipients are properly reporting their income.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 306,000.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 61,200 hours.

OMB Number: 1545–1021.
Form Number: IRS Form 8594.
Type of Review: Extension.
Title: Asset Acquisition Statement.
Description: Form 8594 is used by the buyer and seller of assets to which goodwill or going concern value can attach to report the allocation of the purchase price among the transferred assets.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr.
Learning about the law or the form—2 hr., 34 min.
Preparing and sending the form to the IRS—2 hr., 52 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 329,200 hours.

OMB Number: 1545–1060.
Form Number: IRS Form 8288–B.
Type of Review: Revision.
Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Description: Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by section 1445.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 5,079.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 4 min.
Learning about the law or the form—2 hr., 7 min.
Preparing the form—1 hr., 7 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 28,798 hours.

OMB Number: 1545–1825.
Form Number: IRS Form 13388.
Type of Review: Extension.
Title: Improving the Accuracy of EITC Prepared Returns.
Description: This postcard will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The postcard provides these professionals an opportunity to acquire additional information about the Earned Income Tax Credit (EITC). It is part of a brochure to encourage 100% filing of EITC returns.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 150 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–14359 Filed 6–6–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 28, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 9, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1545.
Regulation Project Number: REG–107644–97 Final.
Type of Review: Extension.
Title: Permitted Elimination of Pre-retirement Optional Forms of Benefit.
Description: The regulation permits an amendment to a qualified plan that eliminates certain pre-retirement optional forms of benefit.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Recordkeepers: 135,000.

Estimated Burden Hours Per Recordkeeper: 22 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 92 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury, PRA Clearance Officer.

[FR Doc. 03–14360 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Leasing—12 CFR part 23.''

DATES: You should submit written comments by August 8, 2003.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0206, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Leasing—12 CFR part 23.

OMB Number: 1557–0206.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 23 are as follows:

12 CFR 23.4(c)—Reporting requirement: National banks must liquidate or re-lease personal property that is no longer subject to lease (off-lease property) within five years from the lease expiration. A bank wishing to extend that five-year holding period for up to an additional five years must obtain OCC approval. To ensure that a bank is not holding property for speculative reasons, the OCC requires the bank to provide a clearly convincing demonstration as to why an additional holding period is necessary. This requirement confers a benefit on national banks and may result in cost savings. This requirement provides flexibility for a bank when it faces unusual and unforeseen conditions under which it would be imprudent to dispose of the off-lease property.

12 CFR 23.4(c)—Recordkeeping requirement: A bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease.

12 CFR 23.5—Recordkeeping requirement: If a national bank enters into both CEBA leases (a personal property lease authorized under 12 U.S.C. 24(Tenth)) and section 24(Seventh) leases (a personal property lease authorized under 12 U.S.C. 24(Seventh)), the bank's records must distinguish between the two types of leases. This information is required to evidence compliance with the statutory limitation on the aggregate amount a national bank may invest in leases pursuant to 12 U.S.C. 24 (Tenth).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 580.

Estimated Total Annual Responses: 625.

Estimated Total Annual Burden: 1,610 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03–14356 Filed 6–6–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information

collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Investment Securities (12 CFR part 1).''

DATES: You should submit written comments by August 8, 2003.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0205, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities (12 CFR part 1).

OMB Number: 1557–0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03–14357 Filed 6–6–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040NR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040NR, U.S. Nonresident Alien Income Tax Return.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Nonresident Alien Income Tax Return.

OMB Number: 1545–0089.

Form Number: 1040NR.

Abstract: Form 1040NR is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 309,170.

Estimated Time Per Respondent: 15 hours, 28 minutes.

Estimated Total Annual Burden Hours: 4,784,780.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14464 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120, Schedule D, Schedule H, Schedule N, and Schedule PH

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120, U.S. Corporation Income Tax Return, Schedule D, Capital Gains and Losses, Schedule H, Section 280H Limitations for a Personal Service Corporation (PSC), Schedule N, Foreign Operations of U.S. Corporations, and Schedule PH, U.S. Personal Holding Company (PHC) Tax.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 1120, U.S. Corporation Income Tax Return, Schedule D, Capital Gains and Losses, Schedule H, Section 280H Limitations for a Personal Service Corporation (PSC), Schedule N, Foreign Operations of U.S. Corporations, and Schedule PH, U.S. Personal Holding Company (PHC) Tax.

OMB Number: 1545–0123.

Form Number: 1120, Schedule D, Schedule H, Schedule N, and Schedule PH.

Abstract: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of Internal Revenue Code section 280H. Schedule N (Form 1120) is used by corporations that have assets or business operation in a foreign country or a U.S. possession to provide international tax and passthrough entity information. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 1,990,783.

Estimated Time Per Respondent: 184 hours, 41 minutes.

Estimated Total Annual Burden Hours: 367,686,291.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14465 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251985–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–251985–96 (TD 8786), Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936 (§ 1.863–3).

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936.

OMB Number: 1545–1556.

Regulation Project Number: REG–251985–96.

Abstract: Section 1.863–3(f)(6) of this regulation requires taxpayers to attach a statement to their tax return furnishing certain information regarding the methodology used to determine the source of their income from cross-border sales of inventory, and the amount of income allocated or apportioned to U.S. or foreign sources in these sales. The information is used by the IRS to establish whether the taxpayer determined the source of its income in accordance with Code section 863.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14466 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120S, Schedule D, and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

OMB Number: 1545–0130.

Form Number: Form 1120S, Schedule D, and Schedule K–1.

Abstract: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule D is used to report gain or loss from sales or exchanges of capital assets and the computation of tax on certain capital gains imposed by Internal Revenue Code section 1374. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 1,880,000.

Estimated Time Per Respondent: 257 hours, 36 minutes.

Estimated Total Annual Burden Hours: 484,305,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14467 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–W, Estimated Tax for Corporations.

DATES: Written comments should be received on or before August 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estimated Tax for Corporations.

OMB Number: 1545–0975.

Form Number: 1120–W.

Abstract: Under section 6655 of the Internal Revenue Code, a corporation with an income tax liability of $500 or more must make four required installments of estimated tax during the tax year or be subject to a penalty for failure to pay estimated income tax. Form 1120–W is used by corporations to compute their estimated income tax and the amount of each required installment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 10 hrs., 21 min.

Estimated Total Annual Burden Hours: 9,315,955.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–14468 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, July 15, 2003, at 1:30 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, July 15, 2003, from 1:30 to 3 p.m. eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to

the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14469 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, July 14, 2003, at 3 p.m., central daylight time.

FOR FURTHER INFORMATION CONTACT: Sandy McQuin at 1–888–912–1227, or (414) 297–1604.

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 5 Taxpayer Advocacy Panel will be held Monday, July 14, 2003, from 3 p.m. to 4 p.m. central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Sandy McQuin at 1–888–912–1227 or (414) 297–1604 for more information.

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: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14470 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

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 4 Taxpayer Advocacy Panel will be held Wednesday, July 2, 2003, from 11 a.m. to noon central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

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: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14471 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, July 10, 2003, at 2 p.m., Central daylight time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

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 Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, July 10, 2003, from 2 p.m. to 3 p.m. Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

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: June 3, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–14472 Filed 6–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of the Public Debt, Treasury

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of the Public Debt (Public Debt) gives notice of a proposed system of records.

DATES: Comments must be received no later than July 9, 2003. The proposed system of records will be effective July 21, 2003 unless Public Debt receives comments which would result in a contrary determination.

ADDRESSES: Send any comments to the Disclosure Officer, Administrative

Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, Room 1428, Main Treasury Building, Washington, DC 20220. Before visiting the library, you must call 202–622–0990 for an appointment. Also, you can download comments at the following World Wide Web address: *''http://www.publicdebt.treas.gov''*

FOR FURTHER INFORMATION CONTACT: For information about Public Debt's anti-money laundering and fraud suppression program, contact the Fraud Inquiry Line at 304–480–8555. The phone line is administered by the Office of the Chief Counsel, Bureau of the Public Debt. For information about this document, contact the Office of the Chief Counsel, Bureau of the Public Debt, at 304–480–8692.

SUPPLEMENTARY INFORMATION: The mission of Public Debt is to borrow the money needed to operate the Federal Government and to account for the resulting debt. Public Debt is establishing the U.S. Treasury Securities Fraud Information System to: (1) Identify and monitor fraudulent and suspicious activity related to Treasury securities and other U.S. obligations; (2) ensure that Public Debt provides a timely and appropriate notification of a possible violation of law to law enforcement and regulatory agencies; (3) protect the Government and individuals from fraud and loss; (4) prevent the misuse of Treasury names and symbols on fraudulent instruments, and (5) compile summary reports, that conform with the spirit of the USA Patriot Act's anti-terrorism financing provisions and the Bank Secrecy Act's anti-money laundering provisions and submit the reports to the Financial Crimes Enforcement Network (FinCEN).

Public Debt has received widespread inquiries from entities and individuals who have been approached by parties in connection with offers of participation in various questionable securities practices and illegal financial instruments, some of which falsely use the Treasury name or symbol. Under 31 U.S.C. 321(a)(5), the Secretary of the Treasury has the general authority to ''prescribe regulations that the Secretary considers best calculated to promote the public convenience and security, and to protect the Government and individuals from fraud and loss, that apply to anyone who may: (A) receive for the Government, Treasury notes, United States notes, or other Government securities; or (B) be engaged or employed in preparing and issuing those notes or securities.'' In addition, under 31 U.S.C. 333(a), no person may use the Department of the Treasury names, symbols, etc. ''in a manner which could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, business activity, or product is in any manner approved, endorsed, sponsored, or authorized by, or associated with, the Department of the Treasury or any entity * * * (of the Department) * * * or any officer or employee thereof.'' See also, 31 CFR part 27, ''Civil Penalty Assessment for Misuse of Department of the Treasury Names, Symbols, Etc.'' Likewise, an ''obligation or security of the United States'' may not be photographed or reproduced, 31 CFR 103.52(a).

To ensure that the Treasury name and its products are protected from fraudulent transactions, Public Debt proposes to maintain records on entities and individuals who are potentially involved in questionable or illegal transactions and practices relating to Treasury securities and other U.S. obligations. These records might, but do not necessarily have to, include allegations of administrative, civil or criminal misconduct, from any source.

Public Debt sells Treasury bills, notes, and bonds as well as U.S. Savings Bonds to investors. In addition to maintaining records on questionable securities practices and illegal financial instruments, Public Debt proposes to maintain records on suspicious activities involving these legitimate Treasury products. Suspicious activity may be any information that Public Debt determines to have a high degree of usefulness in criminal, tax, and, regulatory investigations, or other proceedings, including credit card loss prevention programs.

In particular, Public Debt intends to establish due diligence policies, procedures, and controls that aid in the detection and reporting of any attempt at money laundering involving Treasury securities. Treasury, as an issuer of government securities and a provider of related investment services, is not addressed in the anti-terrorism and anti-money laundering provisions of the USA Patriot Act, the Bank Secrecy Act, or FinCEN's implementing regulations, 31 CFR part 103. Nevertheless, consistent with the purposes of these Acts, Public Debt will take anti-terrorism and anti-money laundering measures, maintain records, and report certain suspicious transactions to appropriate authorities, including FinCEN.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, Public Debt is proposing to establish the following new system of records: Treasury/BPD.009–U.S. Treasury Securities Fraud Information System.

To assist Public Debt in its regulatory and oversight functions, this system will track complaints and inquiries concerning fraudulent or suspicious transactions related to Treasury securities and other U.S. obligations.

Public Debt proposes to exempt records maintained in the system from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2). A proposed rule to exempt this system from certain provisions of the Privacy Act will be published separately in the **Federal Register**.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed Public Debt system of records, U.S. Treasury Securities Fraud Information System, Treasury/BPD.009, is published in its entirety below.

Dated: June 3, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/BPD.009

SYSTEM NAME:

U.S. Treasury Securities Fraud Information System—Treasury/BPD.

SYSTEM LOCATION:

The system of records is located at the Bureau of the Public Debt in Parkersburg, WV and Washington DC as well as the Federal Reserve Banks of Boston, Buffalo, Chicago, Dallas, Kansas City, Philadelphia, Pittsburgh, Richmond, and Minneapolis. This system also covers Public Debt records that are maintained by contractor(s) under agreement. The system manager(s) maintain(s) the system location of these records. The address(es) of the contractor(s) may be obtained from the system manager(s) below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under investigation or who make inquiries or report fraudulent

or suspicious activities related to Treasury securities and other U.S. obligations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of personal information collected/used by this system are necessary to ensure the accurate identification of individuals who report or make fraudulent transactions involving Treasury securities and other U.S. obligations. The types of personal information potentially could include the following:

(1) Personal identifiers (name, including previous name used, and aliases; Social Security number; Tax Identification Number; physical and electronic addresses; telephone, fax, and pager numbers), and;

(2) Authentication aids (personal identification number, password, account number, credit card number, shared-secret identifier, digitized signature, or other unique identifier).

Supporting records may contain correspondence between Public Debt and the entity or individual submitting a complaint or inquiry, correspondence between Public Debt and the Department of Treasury, or correspondence between Public Debt and law enforcement, regulatory bodies, or other third parties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321(a)(5), 31 U.S.C. 333, 31 U.S.C. 3101, *et seq.* 31 U.S.C. 5318, and 5 U.S.C. 301.

PURPOSE(S):

Records in this system are used to: (1) Identify and monitor fraudulent and suspicious activity related to Treasury securities and other U.S. obligations; (2) ensure that Public Debt provides a timely and appropriate notification of a possible violation of law to law enforcement and regulatory agencies; (3) protect the Government and individuals from fraud and loss; (4) prevent the misuse of Treasury names and symbols on fraudulent instruments; and, (5) compile summary reports, that conform with the spirit of the USA Patriot Act's anti-terrorism financing provisions and the Bank Secrecy Act's anti-money laundering provisions, and submit the reports to the Financial Crimes Enforcement Network (FinCEN).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(4) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Agents or contractors who have been engaged to assist Public Debt in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;

(6) The Department of Justice when seeking legal advice or when (a) the Department of the Treasury or (b) Public Debt, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, multiple client-server platforms that are backed-up to magnetic tape or other storage media, and/or hard copy.

RETRIEVABILITY:

Records may be retrieved by (name, alias name, Social Security number, Tax Identification Number, account number, or other unique identifier).

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

(2) Assistant Commissioner, Office of Investor Services, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

(3) Assistant Commissioner, Office of Securities Operations, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

(4) Chief Counsel, Office of Chief Counsel, Parkersburg Division, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101

NOTIFICATION PROCEDURE:

This system of records is exempt from the Privacy Act provision on notification procedures. (*See* ''Exemptions Claimed for the System,'' below.) An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Disclosure Officer. *See* 31 CFR part 1, Subpart C, appendix I.

Identification Requirements: An individual seeking notification through the mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking notification in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature.

Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses.

Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual.

RECORD ACCESS PROCEDURES:

This system of records is exempt from the Privacy Act provision on record access procedures. (*See* ''Notification Procedure'' above.)

CONTESTING RECORD PROCEDURES:

This system of records is exempt from the Privacy Act provision on contesting record procedures. (*See* ''Notification Procedure'' above.)

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported. (*See* ''Exemptions Claimed for the System,'' below.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

[FR Doc. 03–14361 Filed 6–6–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Capital Grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, funding priorities, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus three completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office, by 4 p.m. Eastern Time on Friday, July 18, 2003. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program web page at: *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at (toll-free) 1–877–332–0334. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the Interim Final Rule published in the **Federal Register** on March 19, 2003 §§ 61.0–61.82.

Submission of Application: An original completed and collated grant application (plus three copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, Florida 33617. Applications must be received in the Grant and Per Diem Field office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–100, Tampa, Florida 33617; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of capital funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible entities to: (1) Expand existing projects; or (2) develop new programs or new components of existing projects. Funding applied for under the capital grant component may be used for: (1) Remodeling or alteration of existing buildings; (2) acquisition of buildings, acquisition and rehabilitation of buildings; (3) new construction; and (4) acquisition of vans for outreach to and/or transportation for homeless veterans (see Interim Final Rule, Published in the **Federal Register**, March 19, 2003, §§ 61.0 through 61.82). Public Law 107–95, § 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. §§ 2011, 2012, 2061, and 2064 authorizes this program. The program has been extended through fiscal year 2005. For eligibility criteria please refer to Interim Final Rule published in the **Federal Register** on March 19, 2003, §§ 61.10 and 61.12.

Capital grant applicants may not receive assistance to replace funds provided by any State or local government to assist homeless persons. A proposal for an existing project that seeks to shift its focus by changing the population being served or the precise mix of services being offered is not eligible for consideration. No more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

VA is pleased to issue this Notice of Fund Availability (NOFA) for the Homeless Providers Grant and Per Diem Program. The Department expects to award approximately $8 million under the capital grant component.

Funding available under this NOFA is being offered to help offset the capital expenses of existing State and local governments, Indian Tribal governments, faith-based, and community-based organizations that are capable of creating and providing supported housing and/or supportive service center services for homeless veterans. The District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, may be considered eligible entities under the definition of ''State'' in the Interim Final Rule, § 61.1 Definitions.

Per diem for these programs is requested in the grant application and paid at the time of grant project completion. It should be noted that VA per diem payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate VA pays for State Home Domiciliary care, which is currently $26.95. Awardees will be required to support their request for per diem payment with adequate fiscal documentation as to program income and expenses.

Interested organizations should know that the vast majority of homeless veterans in this country suffer from mental illness or substance abuse disorders or are dually diagnosed with both mental illness and substance abuse disorders. In addition, many homeless veterans have serious medical problems. Collaboration with VA medical centers, VA community-based outpatient clinics or other health care providers is an important aspect of assuring that homeless veterans have access to appropriate health care services.

It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to verify the completion of the capital grant as well as monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. VA is also implementing new procedures to further this effort. Applicants should be aware of the following:

All awardees that are conditionally selected in response to *this NOFA* must meet the Life Safety Code of the National Fire and Protection Association as it relates to their specific facility. VA will conduct an inspection prior to awardees being able to submit request for payment to ensure this requirement is met.

Upon capital grant completion each program seeking per diem will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless veterans in the per diem-funded program.

Monitoring will include at least an annual review of each per diem program's progress toward meeting internal goals and objectives in helping veterans attain housing stability, adequate income support, and self sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

Each per diem-funded program will participate in VA's national program monitoring and evaluation system administered by VA's Northeast Program Evaluation Center (NEPEC). It is the intention of VA to develop specific performance targets with respect to housing for homeless veterans. NEPEC's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

VA encourages all eligible and interested entities to review this NOFA and consider applying for funds to provide service for homeless veterans.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Public Law 107–95, § 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. §§ 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the interim final rule codified at 38 CFR part 61.0. The interim final rule was published in the **Federal Register** on March 19, 2003, the regulations can be found in their entirety in 38 CFR, §§ 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $8 million is available for the capital grant component. Per diem payments to capital grant recipients are subject to the recipients maintaining the program for which the grant was awarded, the availability of funds and reauthorization of the program past September 30, 2005.

Funding Priorities: VA establishes the following three funding priorities in order to: (1) Implement the provisions of Public Law 107–95 regarding geographical dispersion and non-duplication of service. In this round of capital grant funding, VA expects to award funding to create 800 community-based supported housing beds.

The Urban Institute's analysis of data collected through the 1996 Survey of Homeless Providers and Clients indicates that 21 percent of the homeless population is found in rural and suburban locations. Over the last eight rounds of grants, VA awarded approximately $ 63 million to help establish 271 projects for homeless veterans. Additionally, VA has provided operational funds in the form of per diem for 1,378 beds. *Funding priority 1.* Seven states have no grant or per diem funded programs for homeless veterans. These states are Alaska, Idaho, Kansas, Montana, North Dakota, New Hampshire, and Wyoming. Eligible entities whose projects are located in these states will be considered in the first funding priority. Based on the amount of funding available approximately $1.4 million is available for funding priority 1. Of those eligible entities in the first funding priority, that are legally fundable, the highest scoring applicants from each state will be funded first, followed by the second highest scoring applicants from each state, until enough projects totaling approximately $1.4 million are identified for funding. Applicants not funded in this priority will be placed in the third funding priority.

Funding priority 2. Also, only three grant and per diem-funded programs are affiliated with Indian Tribal Governments. Eligible Indian Tribal Governments will be considered in the second funding priority. Based on the amount of funding available approximately $1.4 million is available for funding priority 2. Of those Indian Tribal Governments in the second funding priority, that are legally fundable, the highest scoring applicants will be funded first, until enough projects totaling approximately $1.4 million are identified for funding. Applicants not funded in this priority will be placed in the third funding priority.

Funding priority 3. Finally, VA is encouraging interested, state and local governments, faith-based, and community-based organizations to apply for funding under this NOFA. Based on the amount of funding available approximately $6.2 million is available for funding priority 3. Eligible entities that are state and local governments, faith-based, and community-based organizations, along with those applicants not selected in the first or second priority will be considered in the third funding priority. Of those eligible entities that are legally fundable, the highest-ranked applications for which funding is available, will be conditionally selected for eligibility to receive a capital grant in accordance with their ranked order until enough projects totaling approximately $6.2 million are identified for funding or until funding is expended.

Methodology: VA will review all capital grants applicants in response to this notice of funding availability as follows: VA will group the applicants into the funding priorities categories. Applicants will then be ranked within their respective funding category based on score and any ranking criteria set forth in that funding category only if the applicant scores at least 600 cumulative points from paragraphs (b) (c) (d) (e) and (i) of the interim final rule published in the **Federal Register**, March 19, 2003, §§ 61.13.

The highest-ranked application for which funding is available, within the highest funding category, will be conditionally selected in accordance with their ranked order until VA reaches the projected bed totals for each category. If funds are still available after selection of those applications in the highest priority group, VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in the interim final rule § 61.14.

Application Requirements: The specific grant application requirements will be specified in the application package. Applicants should be careful to complete the proper application package. Submission of the incorrect application package will result in the application being rejected at threshold. The packages include all required forms and certifications. Selections will be made based on criteria described in the application, Interim Final Rule, and NOFA. Applicants who are

conditionally selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: June 4, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–14598 Filed 6–6–03; 8:45 am]

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Corrections

Federal Register

Vol. 68, No. 110

Monday, June 9, 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 HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1470–P]

RIN 0938–AL89

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates

Correction

In the issue of Wednesday, June 4, 2003, on page 33579, in the second column, in the correction of rule document 03–11966, in the third line, ''July 15, 2003'' should read ''July 8, 2003''.

[FR Doc. C3–11966 Filed 6–6–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 9, 2003

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Change in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient and Long-Term Care Hospital Prospective Payment Systems; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1243–F]

RIN 0938–AM41

Medicare Program; Change in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient and Long-Term Care Hospital Prospective Payment Systems

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: In this final rule, we are revising the methodology for determining payments for extraordinarily high-cost cases (cost outliers) made to Medicare-participating hospitals under the acute care hospital inpatient prospective payment system (IPPS).

Under the existing outlier methodology, the cost-to-charge ratios from hospitals' latest settled cost reports are used in determining a fixed-loss amount cost outlier threshold. We have become aware that, in some cases, hospitals' recent rate-of-charge increases greatly exceed their rate-of-cost increases. Because there is a time lag between the cost-to-charge ratios from the latest settled cost report and current charges, this disparity in the rate-of-increases for charges and costs results in cost-to-charge ratios that are too high, which in turn results in an overestimation of hospitals' current costs per case. Therefore, we are revising our outlier payment methodology to ensure that outlier payments are made only for truly expensive cases.

We also are revising the methodology used to determine payment for high-cost outlier and short-stay outlier cases that are made to Medicare-participating long-term care hospitals (LTCHs) under the long-term care hospital prospective payment system (LTCH PPS). The policies for determining outlier payment under the LTCH PPS are modeled after the outlier payment policies under the IPPS.

EFFECTIVE DATE: The provisions of this final rule are effective on August 8, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548 (IPPS Outlier Policy) Miechal Lefkowitz, (410) 786–5316 (LTCH PPS Outlier Policy)

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

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 toll-free at 1–888–293–6498) 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. Description of the Acute Care Hospital Inpatient Prospective Payment System (IPPS)

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. This payment system is referred to as the acute care hospital inpatient prospective payment system (IPPS). Under the IPPS, each case is categorized into a diagnosis-related group (DRG). Each DRG has a payment weight assigned to it, based on the average resources used to treat Medicare patients in that DRG.

The IPPS base payment rate (also referred to as the average standardized amount) is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located, and if the hospital is located in Alaska or Hawaii, the nonlabor-related share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If a hospital treats a high percentage of low-income patients, it receives a percentage add-on payment applied to the DRG-adjusted base payment rate. This add-on payment, known as the disproportionate share hospital (DSH) adjustment, provides for a percentage increase in Medicare payments to hospitals that qualify under either of two statutory formulas that are designed to identify hospitals that serve a disproportionate share of low-income patients. For qualifying hospitals, the amount of the DSH adjustment may vary based on the outcome of the statutory calculation.

Also, if a hospital is an approved teaching hospital it receives a percentage add-on payment for each case paid under the IPPS. This add-on payment, known as the indirect medical education (IME) adjustment, varies depending on the ratio of residents-to-beds for operating costs and according to the ratio of residents-to-average daily census for capital costs under the IPPS.

Additional payments may be made for cases that involve new technologies that have been approved for special add-on payments. In order to qualify, a new technology must demonstrate that it is a substantial clinical improvement over technologies otherwise available, and that, absent an add-on payment, it would be inadequately paid under the regular DRG payment.

For particular cases that are unusually costly, known as outlier cases (discussed below), the IPPS payment is increased. This additional payment is designed to protect a Medicare-participating hospital from large financial losses due to unusually expensive cases. Any outlier payment due to the hospital is added to the DRG-adjusted base payment rate, plus any DSH, IME, and new technology add-on adjustments.

The regulations governing payments for operating costs under the IPPS are located in 42 CFR Part 412. The specific regulations governing payments for outlier cases are located at 42 CFR 412.80 through 412.86.

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services ''in accordance with a prospective payment system established by the Secretary.'' The basic methodology for determining capital prospective payments is set forth in our regulations at §§ 412.308 and 412.312. Under the capital prospective payment system, payments are adjusted by the same DRG for the case as they are under the operating IPPS. Similar adjustments are also made for IME and DSH as under the operating IPPS. Hospitals also may receive a capital outlier payment for those cases that qualify.

B. Payment for Outlier Cases

1. General

Section 1886(d)(5)(A) of the Act provides for Medicare payments to Medicare-participating hospitals in addition to the basic prospective payments for cases incurring extraordinarily high costs. To qualify for outlier payments, a case must have costs above a fixed-loss cost threshold amount (a dollar amount by which the costs of a case must exceed payments in order to qualify for outliers).

Hospital-specific cost-to-charge ratios are applied to the covered charges for a case to determine whether the costs of the case exceed the fixed-loss outlier threshold. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold. For Federal fiscal year (FY) 2003, the existing fixed-loss outlier threshold is $33,560.

The actual determination of whether a case qualifies for outlier payments takes into account both operating and capital costs and DRG payments. That is, the combined operating and capital costs of a case must exceed the fixed-loss outlier threshold to qualify for an outlier payment. The operating and capital costs are computed separately by multiplying the total covered charges by the operating and capital cost-to-charge ratios. The estimated operating and capital costs are compared with the fixed-loss threshold after dividing that threshold into an operating portion and a capital portion (by first summing the operating and capital ratios and then determining the proportion of that total comprised by the operating and capital ratios and applying these percentages to the fixed-loss threshold). The thresholds are also adjusted by the area wage index (and capital geographic adjustment factor) before being compared to the operating and capital costs of the case. Finally, the outlier payment is based on a marginal cost factor equal to 80 percent of the combined operating and capital costs in excess of the fixed-loss threshold (90 percent for burn DRGs).

The following example simulates the IPPS outlier payment for a case at a generic hospital that receives IME and DSH payments in San Francisco, California (a large urban area). In the example, the patient was discharged after October 1, 2002, and the hospital incurred Medicare-covered charges of $150,000. The DRG assigned to the case was DRG 286 (Adrenal and Pituitary Procedures), which has a FY 2003 relative weight of 2.0937. There is no new technology add-on payment for the case.

Step 1: Determine the Federal operating and capital payment with IME and DSH adjustment based on the following values:

OPERATING PORTION

National Large Urban Standardized Amounts:	
Labor-Related	$3,022.60
Nonlabor-Related	$1,228.60
San Francisco MSA Wage Index	1.4142
IME Operating Adjustment Factor	0.0744
DSH Operating Adjustment Factor	0.1413
DRG 286 Relative Weight	2.0937
Labor-Related Portion	0.711
Nonlabor-Related Portion	0.289

Federal Payment for Operating Costs = DRG Relative Weight × [(Labor-Related Large Urban Standardized Amount × San Francisco MSA Wage Index) + Nonlabor-Related National Large Urban Standardized Amount] × (1 + IME + DSH): 2.0937 × [($3,022.60 × 1.4142) + $1,228.60] × (1 + 0.0744 + 0.1413) = $14,007.26

CAPITAL PORTION

Federal Capital Rate	$407.01
Large Urban Add-On	1.03
San Francisco MSA Geographic Adjustment Factor	1.2679
IME Capital Adjustment Factor	0.0243
DSH Capital Adjustment Factor	0.0631

Federal Payment for Capital Costs = DRG Relative Weight × Federal Capital Rate × Large Urban Add-On × Geographic Adjustment Factor × (1 + IME + DSH): 2.0937 × $407.01 × 1.03 × 1.2679 × (1 + 0.0243 + 0.0631) = $1,210.12

Step 2: Determine operating and capital costs from billed charges by applying the respective cost-to-charge ratios.

Billed Charges	$150,000
Operating Cost-to-Charge Ratio	0.50
Operating Costs = (Billed Charges × Operating Cost-to-Charge Ratio) ($150,000 × .50)	$75,000
Capital Cost-to-Charge Ratio	0.06
Capital Costs = (Billed Charges × Capital Cost-to-Charge Ratio) ($150,000 × .06)	$9,000

Step 3: Determine outlier threshold.

Fixed Loss Threshold	$33,560
Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio:.	
(Operating Cost-to-Charge Ratio) / (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) (.50)/(.50 + .06)	0.8929

Operating Outlier Threshold = {[Fixed Loss Threshold × ((Labor-Related portion × San Francisco MSA Wage Index) + Nonlabor-Related portion)] × Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio} + Federal Payment with IME and DSH: {$33,560 × [(0.711×1.4142) + 0.289] × 0.8929} + $14,007.26=$52,797.78

Capital Cost-to-Charge-Ratio to Total Cost-to-Charge Ratio = [(Capital Cost-to-Charge Ratio)/(Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio)]: {(.06)/(.50+.06)} = 0.1071

Capital Outlier Threshold = (Fixed Loss Threshold × Geographic Adjustment Factor × Large Urban Add-On × Capital CCR to Total CCR) + Federal Payment with IME and DSH: ($33,560×1.2679×1.03×0.1071) + $1,210.12=$5,904.02

Step 4: Determine outlier payment.

Marginal Cost Factor = 0.80

Outlier Payment = (Costs—Outlier Threshold) × Marginal Cost Factor

Operating Outlier Payment = ($75,000 − $52,797.78) × 0.80=$17,761.78

Capital Outlier Payment = ($9,000 − $5,904.02) × 0.80=$2,476.78

2. Cost-to-Charge Ratios

Under our existing regulation at § 412.84(h), the operating cost-to-charge ratio and, effective with cost reporting periods beginning on or after October 1, 1991, the capital cost-to-charge ratio used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report.

In the September 30, 1988 final rule with comment period published in the **Federal Register** (53 FR 38503), we initiated the use of hospital-specific cost-to-charge ratios to determine hospitals' costs for assessing whether a case qualified for payment as a cost outlier. Prior to that change, we determined the cost of discharges based on a nationwide cost-to-charge ratio of 60 percent. We indicated at the time that the use of hospital-specific cost-to-charge ratios is essential to ensure that outlier payments are made only for cases that have extraordinarily high costs, and not merely high charges.

Currently, cost-to-charge ratios are determined using the most recent settled cost report for each hospital. At

the end of the cost reporting period, Medicare charges from all claims are accumulated through the Provider Statistical and Reimbursement Report (PS&R). The PS&R contains data such as the number of discharges and the actual charges from each hospital. The hospital also submits a cost report to its fiscal intermediary, which is used to determine total allowable inpatient Medicare costs. Once all these data are available, the fiscal intermediary then determines the cost-to-charge ratio for the hospital by using charges from the PS&R and costs from the cost report.

The Congress intended that outlier payments would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under our existing outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted.

Recent analysis indicates that some hospitals have taken advantage of two vulnerabilities in our methodology to maximize their outlier payments. One vulnerability is the time lag between the current charges on a submitted bill and the cost-to-charge ratio taken from the most recent settled cost report. The second vulnerability, in some cases, is that hospitals may increase their charges so far above costs that their cost-to-charge ratios fall below 3 standard deviations from the geometric mean of cost-to-charge ratios and a higher statewide average cost-to-charge ratio is applied. In a March 5, 2003 IPPS proposed rule (68 FR 10420) and a March 7, 2003 LTCH PPS proposed rule (68 FR 11234) that are discussed in sections II., III., IV., V., and VI., and section VII., respectively, of this final rule, we proposed to implement new regulations to correct these vulnerabilities and to ensure outlier payments are paid only for truly high-cost cases.

Because the fixed-loss threshold is determined based on hospitals' historical charge data, hospitals that have been inappropriately maximizing their outlier payments have caused the threshold to increase dramatically for FY 2003, and even more dramatically for the proposed IPPS FY 2004 outlier threshold of $50,645 (68 FR 27235, May 19, 2003). As illustrated by the table below, the IPPS cost outlier threshold increased by 80 percent from $9,700 in FY 1997 to $17,550 in FY 2001. In addition, the cost outlier threshold increased by 91 percent from $17,550 in FY 2001 to $33,560 in FY 2003. The proposed FY 2004 threshold would be a 51-percent increase over the FY 2003 threshold. The table also demonstrates, for FYs 2000 and 2001, the level at which the threshold would have to have been set in order to result in outlier payments equal to 5.1 percent of total DRG payments (absent further behavioral responses by hospitals).[1] We are required by section 1886(d)(2)(E) of the Act to apply an offset to the average standardized amounts equal to the projected outlier payments as a percentage of total DRG payments. We have historically projected outlier payments to be 5.1 percent of total DRG payments.

Fiscal year	Outlier percentage	Payments in excess of target of 5.1 percent[1] (in billions of dollars)	Outlier threshold	Threshold that would have paid out 5.1 percent
1997	5.5	$0.3	$9,700	.....
1998	6.5	1.0	11,050	.....
1999	7.6	1.8	11,100	.....
2000	7.6	1.8	14,050	21,825
2001	7.7	1.9	17,550	26,200
2002	7.9	2.5	21,025	([2])
2003	6.1	([2])	33,560	.....

[1] All payments are estimated and reflect operating payments only (not capital payments).
[2] Not available.

II. Issuance of Proposed Rules

On March 5, 2003, we published in the **Federal Register** (68 FR 10420) a proposed rule that would change the methodology for establishing how extraordinarily high-cost cases (cost-outliers) qualify for an outlier payment. On March 7, 2003, as part of the proposed rule published in the **Federal Register** (68 FR 11234) to update the payment rates and policies under the LTCH PPS, we included a proposal to apply a similar change in the methodology for establishing outlier payments for LTCHs. We proposed these changes in the payment methodology for both systems in order to correct situations in which rapid increases in charges by certain hospitals have resulted in their cost-to-charge ratios being set too high. Use of these cost-to-charge ratios has resulted in excessive outlier payments to these hospitals.

We received approximately 582 timely pieces of correspondence on the provisions of the March 5, 2003 IPPS outlier proposed rule. We received approximately 22 timely pieces of correspondence on the provisions of the March 7, 2003 LTCH PPS proposed rule that related to payment for outlier cases. In this section of this final rule, we discuss comments we received that are not related to the specific changes we proposed, but are instead more general comments related to outlier payment policies. We also discuss in this section the general issue of allowing a transition period for the changes we are implementing.

Comments directly related to specific proposals to revise the IPPS outlier payment policy and our responses to those comments are addressed in sections III., IV., V., and VI. of this final rule. Comments directly related to the specific proposed LTCH PPS outlier payment policy changes and our responses to those comments are addressed in section VII. of this final rule.

We received a number of comments that, while directly or indirectly related to outlier policy, were unrelated to the policies discussed in the proposed rule. We have not responded to comments that are unrelated to the changes that were proposed in the March 5, 2003

[1] We estimate the FY 2003 percent of outlier payments compared to total DRG payments is 6.1 percent. Although in the May 19, 2003 FY 2004 IPPS proposed rule, we estimated this percentage to be 5.5 percent, we have now determined that this percentage was underestimated.

proposed rule and that are implemented in this final rule. We also received many detailed comments pertaining to specific implementation issues associated with these changes. We also are not addressing them in this final rule, but intend to issue implementation instructions separately and will respond to these comments at that time.

Comment: One commenter suggested that we reinstitute day outliers as an alternative to the current case methodology for outlier payments. The commenter reasoned that day outliers would more fairly and equitably pay hospitals for treating high-cost cases and would allow for payment of an outlier based on the length of stay of a particular Medicare beneficiary.

Response: Section 1886(d)(5)(A)(i) of the Act eliminates day outlier payments for discharges occurring on or after October 1, 1997. This provision was enacted in recognition of the fact that the high costs of a case are a preferable indicator of whether a case merits additional payments as an outlier than a long length stay. Furthermore, although we recognize that the issues with our current methodology for making outlier payments that are discussed in this final rule indicate the need for changes to that methodology, we believe that, after implementation of these changes, it will still be preferable to continue to use high costs to identify outlier cases.

Comment: Several commenters argued that, in the past, CMS has provided a transition period for the introduction of the capital PPS and for the removal of graduate medical education salaries from the calculation of the IPPS wage index. Therefore, the commenters recommended that a similar transition period be applied for any changes to outliers as well.

MedPAC recommended no transition period because, in recent years, some hospitals have received extra payments as a result of substantial outlier revenues. MedPAC further noted that this issue has been prominent in the news media for many months and hospitals have had sufficient opportunity to anticipate the end of these revenues and plan accordingly.

Another commenter also suggested that a transition period was unnecessary and recommended an immediate implementation date because most of the proposed changes will benefit those hospitals that did not try to game the system. In addition, the commenter believed that the proposed changes are designed to correct program abuses and any transition period would serve no legitimate public purpose and would only delay the phaseout of an otherwise overstated threshold.

Some commenters asked that CMS implement the proposals beginning on or after October 1, 2003, in order to allow fiscal intermediaries and hospitals adequate time to update their processing systems. The commenters added that if the proposals are implemented effective October 1, 2003, no disruption would be made mid-year to the cost report; that is, only entire cost reports would be reconciled once the cost report is final settled.

Response: As discussed above, the current outlier payment methodology includes two distinct vulnerabilities that some hospitals have exploited to dramatically increase their outlier payments over a brief period of time by raising their charges in excess of increases in their costs. As these increases in outlier payments to those hospitals are reflected in the data used to calculate the outlier thresholds, they force the outlier threshold to rise so that the projected outlier payout is equal to the outlier offset to the standardized amounts. The result is that hospitals that do not aggressively increase their charges do not receive outlier payments or receive reduced outlier payments for truly costly cases.

An extended transition period would allow the effects of this inappropriate redistribution of outlier payments to continue into the future. We believe it is essential to eliminate those effects as soon as possible in order to ensure that outlier payments are made only for truly high-cost cases. Although, for reasons discussed below, we are delaying implementation of some aspects of the changes we are making until October 1, 2003, we are not transitioning any of these changes beyond that date.

III. Updating Cost-to-Charge Ratios for IPPS Hospitals

A. Background and Provisions of the May 5, 2003 Proposed Rule

Currently, we use the most recent settled cost report when determining cost-to-charge ratios for IPPS hospitals. Generally, the covered charges on bills submitted for payment during FY 2003 are converted to costs by applying a cost-to-charge ratio from cost reports that began in FY 2000 or, in some cases, FY 1999 or even earlier. These covered charges reflect all of a hospital's charge increases to date, in particular those that have occurred since FY 2000 and are not reflected in the FY 2000 cost-to-charge ratios. If a hospital's rate-of-charge increases since FY 2000 exceeds the rate of the hospital's cost increases during that time, the hospital's cost-to-charge ratio based on its FY 2000 cost report will be too high, and applying it to current charges will overestimate the hospital's costs per case during FY 2003. Overestimating costs may result in some cases receiving outlier payments when these cases, in actuality, are not high-cost cases.

Because a hospital has the ability to increase its outlier payments during the time lag between the current charges and the cost-to-charge ratio from the settled cost report, through dramatic charge increases, in the March 5, 2003 IPPS outlier payment proposed rule, we proposed new regulations at § 412.84(i)(1) that would allow fiscal intermediaries to use more up-to-date data when determining the cost-to-charge ratio for each hospital. As mentioned above, currently, fiscal intermediaries use the hospital's most recent settled cost report. We proposed to revise our regulations to specify that fiscal intermediaries will use either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the later cost reporting period.

Hospitals must submit their cost reports within 5 months after the end of their fiscal year. CMS makes a decision to accept a cost report within 30 days. Once the cost report is accepted, CMS makes a tentative settlement of the cost report within 60 days. The tentative settlement is a cursory review of the filed cost report to determine the amount of payment to be paid to the hospital if an amount is due on the as-filed cost report. After the cost report is tentatively settled, it can take 12 to 24 months, depending on the type of review or audit, before the cost report is final-settled. Thus, using cost-to-charge ratios from tentative settled cost reports, as we proposed in the March 5, 2003 proposed rule, reduces the time lag for updating cost-to-charge ratios by a year or more.

However, even the later ratios calculated from the tentative settled cost reports would overestimate costs for hospitals that have continued to increase charges much faster than costs during the time between the tentative settled cost report period and the time when the claim is processed. That is, even though we proposed to reduce the lag in time by revising the regulations to use the latest tentative settled cost report rather than the latest settled cost report, if the cost report is from a later cost reporting period, there would still be a lag of 1 to 2 years during which a hospital's charges may still increase faster than costs. Therefore, we proposed to add a new provision to the regulations that, in the event more

recent charge data indicate that a hospital's charges have been increasing at an excessive rate (relative to the rate-of-increase among other hospitals), CMS would have the authority to direct the fiscal intermediary to change the hospital's operating and capital cost-to-charge ratios to reflect the high charge increases evidenced by the later data. In addition, we proposed to allow a hospital to contact its fiscal intermediary to request that its cost-to-charge ratios, otherwise applicable, be changed if the hospital presents substantial evidence that the ratios are inaccurate. Any such requests would have to be approved by the CMS Regional Office with jurisdiction over that fiscal intermediary.

B. Summary of Public Comments and Departmental Responses

Comment: Several commenters were troubled by our proposal that CMS would have the authority to direct fiscal intermediaries to change a hospital's cost-to-charge ratio based on excessive charges, and the proposal that would allow a hospital to contact its fiscal intermediary to request its cost-to-charge ratio be changed if the hospital presents substantial evidence to support its request. Specifically, the commenters requested that CMS establish clear guidelines for both processes and define what constitutes ''excessive charges'' and ''substantial evidence.''

One commenter noted that some hospital cost reports from 1997 have still not been settled. The commenter asked that there be a graduated update of the cost-to-charge ratio data, updating the data by no more than 2 years in any payment period. For example, the commenter stated, a hospital currently paid using 1997 data would be updated to 1999 in the first payment period under the new methodology and to 2001 in the second period.

Response: Although we understand the commenters' desire that thresholds and parameters established in advance be used to determine when CMS will direct the fiscal intermediaries to apply a cost-to-charge ratio different than one calculated using the latest tentative settled cost report or the latest settled cost report, whichever is from the latest period, we also believe it is important for CMS to have the flexibility to respond appropriately in the future if unforeseen evidence of similar manipulation of outlier payments comes to light. We believe that establishing fixed thresholds in the regulations or in preamble language could limit our ability to respond quickly to stop such abuse. In addition, we believe that predetermined and public thresholds can serve as benchmarks for those hospitals intending to inappropriately maximize outlier payments in the future and would allow hospitals to operate just below the threshold to avoid detection.

With regard to the standards we would apply to determine whether we would direct the fiscal intermediaries to apply a different cost-to-charge ratio (for example, ''excessive charges''), we would compare hospitals' rate-of-increase in charges to the rate-of-increase among other hospitals. Hospitals with increases in charges that are far above the national average rate-of-increase, for example, would be likely to have an alternative ratio assigned. These hospitals would then have the opportunity to request that an alternative ratio be assigned by presenting substantial evidence in support of their request. Such evidence, for example, would be documentation that the hospitals' costs had increased, leading to the increase in charges. At this time, we are still developing the specific procedures involved and plan to issue further guidance through program memoranda.

However, we recognize that, for some hospitals, updating to the cost-to-charge ratio calculated using the latest tentative settled cost reports may represent a substantial leap forward in the data and a potentially large decrease in their cost-to-charge ratios. Although we believe it is appropriate that all hospitals' charges are adjusted by the most accurate cost-to-charge ratio when estimating costs, we recognize the potential negative impact that may occur for some hospitals solely due to the delay in settling their cost reports. Therefore, in this final rule, we are not mandating use of the latest settled or tentatively settled cost report for discharges occurring prior to October 1, 2003. This delay in the effective date from that proposed in the proposed rule should ease the burden of the change in cost-to-charge ratios for most hospitals.

Although we are implementing the change to require the use of the latest of the settled or tentative settled cost report to compute the cost-to-charge ratio for discharges occurring on or after October 1, 2003, we believe that it is necessary to implement the other proposed provision authorizing CMS to specify an alternative cost-to-charge ratio for some hospitals, to be effective for discharges occurring on or after August 8, 2003. Such an alternative would reflect available data, such as the most recent rate-of-increase in charges, to approximate the most accurate cost-to-charge ratio (which may include data in the latest tentatively settled cost report or other data that may be available).

Although this provision will be effective for all hospitals 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. In addition, given the effective date of this final rule, most of the changes in this regulation will apply only for approximately the last 2 months of FY 2003. We are aware that hospitals have projected their outlier payments for the current fiscal year based on the policies in effect as of October 1, 2002, and any change in the middle of the fiscal year could disrupt their budgets. As a result, we intend to limit the impact of this provision during FY 2003 to ensure that the limited resources of fiscal intermediaries are focused upon updating the cost-to-charge ratios for those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios and to maintain the overall predictability of FY 2003 payments for most hospitals. Accordingly, we intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of FY 2003. The criteria for FY 2004 will target a somewhat broader group of hospitals, but will still be limited to those hospitals that have benefited the most from the time lag in updating cost-to-charge ratios, and the majority of hospitals will not be affected.

Comment: Some commenters suggested a transition period for implementing the adoption of the latest tentative settled cost-to-charge ratios and gave a detailed recommendation of how the transition period would be implemented. The commenters recommended two different methods for how a transition period could be implemented:

One recommendation was that FY 2002 would be considered the base year amount. The commenter explained that, beginning with the effective date of the final rule, hospitals would receive a blended cost-to-charge ratio of its base year amount and the cost-to-charge ratio from the most recent tentative cost report. In the first year, hospitals' cost-to-charge ratios would consist of 66.7 percent from a base year and 33.3 percent from the most recent tentative settled cost report. In the second year the cost-to-charge ratio would consist of 33.3 percent from the base year and 66.7

percent from the most recent tentative settled cost report. In the third year, this gradual decrease from the base year could continue or CMS could cease from blending the cost-to-charge ratio.

The second recommendation was a 3-year transition period using blended cost-to-charge ratios as follows: The first year would be 75 percent of the old cost-to-charge ratio and 25 percent of the new. The second year would be 50 percent of the old cost-to-charge ratio and 50 percent of the new cost-to-charge ratio. The third year would be 25 percent of the old cost-to-charge ratio and 75 percent of the new cost-to-charge ratio. During the transition period, CMS would monitor outlier payments to ensure they remain in statutory limits. Only those hospitals that have not been identified by CMS as having excessive outlier payments would qualify for the transition period.

Response: As noted previously, we believe it is essential to eliminate the effects of the inappropriate redistribution of outlier payments as soon as possible; that is, by not allowing hospitals that have benefited from the time lag resulting from the use of the latest settled cost-to-charge ratios to continue to do so. We do not believe any transition period would be appropriate, as it would continue to lead to lower outlier payments to those hospitals that have already been harmed by the inappropriate redistribution of outliers described above. Therefore, although in this final rule we are delaying the effective date of this provision until discharges occurring on or after October 1, 2003, so that most hospitals that had relied on outlier payments based on existing policy may continue to do so for the remainder of the Federal fiscal year, we are not adopting the commenters' suggestions to further delay the effective date by allowing for a blended cost-to-charge ratio.

Comment: Several other commenters offered different recommendations on how CMS should administer updating of a hospital's cost-to-charge ratio. One commenter recommended that hospitals be notified in advance of any change to their cost-to-charge ratio and be given the opportunity to appeal the fiscal intermediary's decision of any change to their cost-to-charge ratio. Another commenter suggested that parameters be set, such as those in Program Memorandums A–02–122 (released December 3, 2002) and A–02–126 (released December 20, 2002), to determine when a cost-to-charge ratio should be updated. One commenter proposed that CMS use an expedited process when a hospital is requesting that its cost-to-charge ratio be decreased and not require the use of ''substantial evidence'' for a reduction. For increases in cost-to-charge ratios, the commenter suggested that CMS might want to reserve final approval and substantial evidence standards. Other commenters suggested that hospitals be provided with an expedited appeals process to resolve quickly any disputes with the fiscal intermediaries over the accuracy of their cost-to-charge ratios. Some commenters supported using a hospital's tentative settled cost report to update cost-to-charge ratios but believed that fiscal intermediaries should have discretion to change a hospital's cost-to-charge ratio.

Response: As we proposed, in this final rule we are implementing a new regulation that specifies that CMS may direct the fiscal intermediary to change a hospital's operating and capital cost-to-charge ratios to reflect the high-charge increases evidenced by the later data. Fiscal intermediaries will not have their own discretion to update a hospital's cost-to-charge ratio. Only CMS will have the authority to direct the fiscal intermediary that an update is necessary in the event more recent charge data indicates that a hospital's charges have been increasing at an excessive rate (relative to the rate-of-increase among other hospitals).

C. Provisions of the Final Rule Relating to Updating Cost-to-Charge Ratios

We are establishing a new § 412.84(i)(1), which specifies that, for discharges occurring on or after 60 calendar days after the date of publication of this final rule, in the event more recent charge data indicate that a hospital's charges have been increasing at an excessive rate (relative to the rate-of-increase among other hospitals), CMS may direct the fiscal intermediary to change the hospital's operating and capital cost-to-charge ratios to reflect the high-charge increases evidenced by the later data. A hospital may also request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. Before the change can go into effect, the CMS Regional Office must approve the request.

We also are establishing § 412.84(i)(2), which provides that, for discharges occurring on or after October 1, 2003, the operating and capital cost-to-charge ratios applied at the time a claim is processed are based on either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the latest cost reporting period.

IV. Statewide Average Cost-to-Charge Ratios

A. Background and Provisions of the March 5, 2003 Proposed Rule

As hospitals raise their charges faster than their costs increase, over time their cost-to-charge ratios will decline. If hospitals continue to increase charges at a faster rate than their costs increase over a long period of time, or if they increase charges at extreme rates, their cost-to-charge ratios may fall below the range considered reasonable under the regulations (0.194 for operating cost-to-charge ratios and 0.012 for capital cost-to-charge ratios in FY 2003 (67 FR 50125)), and, under current regulations at § 412.84(h), their fiscal intermediaries will assign a statewide average cost-to-charge ratio. These statewide averages are generally considerably higher than the threshold. Therefore, under existing regulations, these hospitals benefit from an artificially high ratio being applied to their already high charges. Furthermore, hospitals can continue to increase charges faster than costs, without any further downward adjustment to their cost-to-charge ratios.

For example, in a 3-year span, one hospital was found to have an increase in charges of 60 percent from FY 1999 to FY 2000, 35 percent from FY 2000 to FY 2001, and 13 percent from FY 2001 to FY 2002. This hospital's actual operating cost-to-charge ratio for FY 2003 was 0.093. Because this number is below the threshold of 0.194, the fiscal intermediary assigned this hospital the statewide average cost-to-charge ratio of 0.328 (from Table 8A of the August 1, 2002 IPPS final rule (67 FR 50263)). In this case, the assignment of the statewide average cost-to-charge ratio to this hospital increased the hospital's estimated costs per case far above the estimate using the actual ratio, leading to substantially higher outlier payments to the hospital as a result of this policy.

In December 2002, we issued Program Memorandum A–02–122, which requested fiscal intermediaries to identify all hospitals receiving the statewide average operating or capital cost-to-charge ratio because their cost-to-charge ratios fell below the floor of reasonable parameters. We received a list of 43 hospitals that were assigned the statewide average operating cost-to-charge ratio and 14 hospitals that were receiving the statewide average capital cost-to-charge ratio. Three hospitals were found on both lists. Prior to application of the statewide average cost-to-charge ratios, the average actual operating cost-to-charge ratio for the 43 hospitals was 0.164, and the average actual capital cost-to-charge ratio for the

14 listed hospitals was 0.008. In contrast, the statewide average operating cost-to-charge ratio for the 43 hospitals was 0.3425 and the statewide average capital cost-to-charge ratio for the 14 hospitals was 0.035.

Because of hospitals' ability to increase their charges to lower their cost-to-charge ratios in order to be assigned the statewide average, in the March 5, 2003 proposed rule, we proposed to remove the requirement in our existing regulations that specified that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. We proposed that hospitals would receive their actual cost-to-charge ratios, no matter how low their ratios fall.

We proposed that statewide average cost-to-charge ratios would still apply in those instances in which a hospital's operating or capital cost-to-charge ratio exceeds the upper threshold. We indicated that cost-to-charge ratios above this range are probably due to faulty data reporting or entry and should not be used to identify and pay for outliers. In addition, we proposed that hospitals that have not yet filed their first Medicare cost reports with their fiscal intermediaries would still receive the statewide average cost-to-charge ratios.

B. Summary of Public Comments and Departmental Responses

Comment: Many commenters supported the proposal to remove the existing requirement that specified that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. However, they argued that the requirement to use the statewide average ratio for those hospitals that are above 3 standard deviations from the geometric mean should also be removed. The commenters reasoned that the policy should be consistent for the floor and the ceiling. As an alternative to using the statewide average (instead of ratios above the ceiling), some commenters suggested that we reduce the parameter of 3 standard deviations above the mean to a lower standard. Another commenter stated that CMS was acting in bad faith by eliminating the statewide average for the floor but not the ceiling.

Response: The changes we are making in this final rule are in response to a specific problem associated with hospitals intentionally taking advantage of our policy to assign the statewide cost-to-charge ratios when a hospital's own ratio fell below the floor. There is no similar incentive for hospitals to increase their ratios to the ceiling. Also, we believe it is unlikely a hospital would maintain a cost-to-charge ratio as high as 3 standard deviations of the geometric mean over a period of years. Therefore, we continue to believe the statewide average should be assigned for those hospitals with ratios above the ceiling.

Comment: One commenter argued that a transition period would be necessary because this change would have an immediate impact on affected hospitals' credit stability and patient service levels in certain regions. Another commenter suggested a transition period for those hospitals that did not engage in aggressive pricesetting. The commenter suggested a gradual phaseout of the statewide average. On the other hand, many commenters also supported the immediate elimination of the statewide average from the floor.

Response: We believe that, for hospitals receiving the statewide average cost-to-charge ratio because their actual ratio fell below 3 standard deviations below the geometric mean, their actual ratio is a more accurate reflection of the relationship between their costs and charges. Although it may not have been a specific objective of each hospital currently in this situation to increase charges until its ratio fell below the floor, we are not persuaded there is any justification to continue making outlier payments to these hospitals on the basis of a cost-to-charge ratio that clearly results in excessive outlier payments. Therefore, we are adopting as final the proposed change that eliminates the use of the statewide average for hospitals below 3 standard deviations from the geometric mean effective for discharges occurring on or after 60 calendar days after the date of publication of this final rule.

C. Provisions of the Final Rule Relating to Statewide Average Cost-to-Charge Ratios

We are implementing new regulations at §§ 412.84(h) and (i)(1) that are effective 60 calendar days after the date of publication of this final rule, that remove the existing requirement that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. Hospitals will receive their actual cost-to-charge ratios, no matter how low their ratios fall.

The statewide average cost-to-charge ratios will still apply in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside of reasonable parameters (that is, exceed the upper threshold). In addition, hospitals that have not yet filed their first Medicare cost reports with their fiscal intermediaries would still receive the statewide average cost-to-charge ratios. CMS will continue to set forth the reasonable parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published in the **Federal Register** in accordance with § 412.8(b).

V. Reconciling Outlier Payments Through Settled Cost Reports

A. Background and Provisions of the March 5, 2003 Proposed Rule

Under the IPPS, hospitals submit a bill for each Medicare patient stay for which they expect a payment from Medicare. The bill includes information needed to: (1) Classify the case to a DRG; (2) determine whether the case was a transfer; (3) identify whether a new technology eligible for add-on payments was involved; and (4) calculate the costs of a case to determine whether it is eligible for an outlier payment or a new technology add-on payment. This latter calculation is based on the covered charges reported on the bill, which, as discussed above, are also used to estimate the covered costs of the case by applying the cost-to-charge ratio.

The information from the bill is processed through the fiscal intermediary's claims processing system to determine the payment amount for each case. Unless a hospital qualifies for periodic interim payments under § 412.116(b), or other interim payments, payment is made on the basis of the actual amount determined for each bill processed. For hospitals that qualify for periodic interim payments, the fiscal intermediary estimates a hospital's IPPS payments and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. However, outlier payments are not made on an interim basis, but are made on a claim-by-claim basis (even for hospitals that qualify for interim payments under § 412.116(b)), and generally represent final payment (§ 412.116(e)). This policy is in contrast to payments under the IME adjustment and the DSH adjustment, both of which are routinely adjusted when hospitals' cost reports are settled to reflect updated data such as the number of residents or patient days during the actual cost reporting period.

However, as stated earlier in this preamble, we are increasingly aware that some hospitals have taken advantage of the existing outlier policy

by increasing their charges at extremely high rates, knowing that there would be a time lag before their cost-to-charge ratios would be adjusted to reflect the higher charges. The steps we proposed in the March 5, 2003 proposed rule, and are implementing here, to direct fiscal intermediaries to update cost-to-charge ratios using the most recent tentative settled cost reports (and in some cases, even later data) and using actual rather than statewide average ratios for hospitals that have cost-to-charge ratios higher than 3.0 standard deviations below the geometric mean cost-to-charge ratio, would greatly reduce the opportunity for hospitals to manipulate the system to maximize outlier payments. However, these steps would not completely eliminate all such opportunity. A hospital would still be able to dramatically increase its charges by far above the rate-of-increase in costs during any given year. This possibility is of great concern, given the recent findings that some hospitals have been able to receive large outlier payments by doing just that.

Therefore, we proposed to add a provision to our regulations to provide that outlier payments would become subject to reconciliation when hospitals' cost reports are settled. Under this policy, payments would be processed throughout the year using operating and capital cost-to-charge ratios based on the best information available at that time. We proposed that when the cost report is settled, any reconciliation of outlier payments by fiscal intermediaries would be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

This process would require some degree of recalculating outlier payments for individual claims. It is not possible to distinguish, on an aggregate basis, how much a hospital's outlier payments would change due to a change in its cost-to-charge ratios. This is because, in the event of a decline in a ratio, some cases may no longer qualify for any outlier payments while other cases may qualify for lower outlier payments. Therefore, the only way to determine accurately the net effect of a decrease in cost-to-charge ratios on a hospital's total outlier payments is to assess the impact on a claim-by-claim basis. We indicated in the proposed rule that we were still assessing the procedural modifications that would be necessary to implement this change.

Because, under our proposal, outlier payments would be based on the relationship between the hospital's costs and charges at the time a discharge occurred, the proposed methodology would ensure that when final outlier payments are made, they would reflect an accurate assessment of the actual costs the hospital incurred. Nevertheless, a final vulnerability remains. Even though the final payment would reflect a hospital's true cost experience, there would still be the opportunity for a hospital to manipulate its outlier payments by dramatically increasing charges during the year in which the discharge occurs. In this situation, the hospital would receive excessive outlier payments, which, although the hospital would incur an overpayment and have to refund the money when the cost report is settled, would allow the hospital to obtain excess payments from the Medicare Trust Fund on a short-term basis.

Under section 1886(d)(5)(A)(iii) of the Act, the amount of any outlier payment should ''approximate the marginal cost of care'' in excess of the DRG payment and the fixed-loss threshold. Accordingly, because a hospital would have had access to any excess outlier payments until they are repaid to the Trust Fund (or, in the case of an underpayment, would not have had access to the appropriate amount during the same period), it may be necessary to adjust the amount of the final outlier payment to reflect the time value of the funds for that time period. Therefore, we proposed to add § 412.84(m) to provide that when the cost report is settled, outlier payments would be subject to an adjustment to account for the value of the money during the time period it was inappropriately held by the hospital. This adjustment would also apply in cases where outlier payments were underpaid to the hospital. In those cases, the adjustment would result in additional payments to hospitals. Any adjustment would be based upon a widely available index to be established in advance by the Secretary, and would be applied from the midpoint of the cost reporting period to the date of reconciliation (or when additional payments are issued, in the case of underpayments). This adjustment to reflect the time value of a hospital's outlier payments would ensure that the outlier payment received by the hospital at the time its cost report is settled appropriately reflects the hospital's approximate marginal costs, in excess of the DRG payment and fixed-loss threshold, of providing the care.

This proposed adjustment was also intended to account for the unique susceptibility of outlier payments to manipulation. Hospitals set their own level of charges and are able to change their charges, without review by their fiscal intermediaries. As outlined above, changes in charges directly affect the level of outlier payments. This lack of fiscal intermediary review of a factor affecting a hospital's payments is in contrast to other IPPS adjustments, such as the IME adjustment or the DSH adjustment, where the fiscal intermediary must agree to a change to the determining factor (the resident-to-bed ratio or the share of low-income patients, respectively).

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less then 5 percent nor more than 6 percent of the total estimated operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Despite the fact that each individual hospital's outlier payments may be subject to adjustment when the cost report is settled, we continue to believe that the fixed-loss outlier threshold (discussed in section VI. of this final rule) should be based on projected payments using the latest available historical data without retroactive adjustments, either midyear or at the end of the year, to ensure that actual outlier payments are equal to 5.1 percent of total DRG payments. That is, our proposed change was intended only to allow for use of the actual cost-to-charge ratio from the cost reporting period that corresponds to the discharges for which the outlier payments are made to adjust outlier payments to reflect the hospital's true costs of providing care. This adjustment would be made irrespective of whether the nationwide percentage of outlier payments relative to total operating DRG payments is equal to the outlier offset that is applied to the average standardized amounts (generally, 5.1 percent).

Outlier payments are intended to recognize the fact that hospitals occasionally treat cases that are extraordinarily costly and otherwise not adequately compensated under an average-based payment system. However, we can only estimate actual costs based on the charges for a case because charges are the only data available that indicate the resource usage for an individual case. Therefore, our ability to identify true outlier cases is dependent on the accuracy of the cost-to-charge ratios. To the extent some hospitals may be motivated to maximize outlier payments by taking advantage of the lag in updating the cost-to-charge

ratios, the payment system remains vulnerable to overpayments to individual hospitals. Therefore, we believe the only way to eliminate the potential for such overpayments is to provide a mechanism for final settlement of outlier payments using actual cost-to-charge ratios from final settled cost reports.

However, the fixed-loss outlier threshold is an important aspect of the prospective nature of the IPPS. The outlier payment policy is designed to alleviate any financial disincentive hospitals may have against providing any medically necessary care their patients may require, even those patients who become very sick and require extraordinary resources. The preestablished threshold allows hospitals to approximate their Medicare payment for an individual patient while that patient is still in the hospital. Even though we proposed to make outlier payments susceptible to a reconciliation based on the hospital's actual cost-to-charge ratios during the contemporaneous cost reporting period, the hospital should still be in a position to make this approximation. Hospitals have immediate access to the information needed to determine what their cost-to-charge ratio will be when their cost reports are settled. Even if the final cost-to-charge ratio is likely to be different from the ratio used initially to process and pay the claim, as noted above, hospitals not only have the information available to estimate their cost-to-charge ratios, but also have the ability to control them, through the structure and levels of their charges.

If we were to make retroactive adjustments to outlier payments to ensure total payments are 5.1 percent of DRG payments (by retroactively adjusting outlier payments), we would be removing this important aspect of the prospective nature of the IPPS. Because such an across-the-board adjustment would either lead to more or less outlier payments for all hospitals, hospitals would no longer be able to reliably approximate their payment for a patient while the patient is still hospitalized. We believe it would be neither necessary nor appropriate to make such an aggregate retroactive adjustment.

Furthermore, we believe it is consistent with the intent of the language at section 1886(d)(5)(A)(iv) of the Act not to do so. This section calls for the Secretary to ensure that outlier payments are equal to or greater than 5 percent and less than or equal to 6 percent of projected or estimated (not actual) DRG payments. We believe this language reflects the intent of Congress regarding the prospectivity of the IPPS. However, we do not believe it prevents settling outlier payments based on hospitals' actual cost-to-charge ratios during the period when the discharge occurs.

B. Summary of Public Comments and Departmental Responses

Comment: Many commenters argued that it is inappropriate to reconcile outlier payments through settled cost reports because IPPS payments are prospective and any type of reconciliation would make outlier payments retrospective.

In addition, some commenters claimed that cost report reconciliation for outliers is inconsistent with the government's position in prior litigation involving the Medicare outlier payment methodology. The commenters cited *County of Los Angeles* v. *Shalala,* 192 F.3d 1005 (D.C. Cir. 1999), and stated that in this case the Secretary succeeded in arguing to the United States Court of Appeals for the District of Columbia that the Act does not require retroactive adjustments to outlier payments in order to ensure that the actual amount of outlier reimbursement furnished to hospitals is between 5 and 6 percent of the total payments made under IPPS, notwithstanding the language in section 1886(d)(5)(A)(iii) of the Act (42 U.S.C. 1395ww(d)(5)(A)(iii)) mandating that outlier payments may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates. The commenters further asserted that any reconciliation of outlier payments would be inconsistent with the government's policy of refusing to make retroactive adjustments to outlier payments when estimates and projections prove inaccurate.

Response: As an initial matter, our position in the court cases is more accurately presented as stating that the language of the statute does not clearly mandate that the actual amount of outlier payments must be between 5 and 6 percent of total payments and that our policy of not making retroactive adjustments to ensure that actual payments fall between that range is consistent with the intent of Congress. However, the commenter is correct that we have scrupulously guarded the prospective nature of the IPPS over the years. The IPPS has continued and served as a model for prospective payment systems for other provider types under Medicare because it is fair and predictable. We believe any change to the system, especially one as significant as making outlier payments subject to retroactive adjustments, must be evaluated in terms of its impact on those key characteristics of the IPPS.

As noted above and in the proposed rule, in light of the gross abuses of the current methodology by some hospitals and the negative impact such overpayments ultimately have on other hospitals due to their effect on the threshold, we believe the option of reconciling outlier payments based on the settled cost report for hospitals that have been initially paid using a significantly inaccurate cost-to-charge ratio compared to the actual ratio from the cost reporting period is now appropriate. In our view, reconciling outlier payments because they were originally paid on the basis of a significantly inaccurate cost-to-charge ratio is similar to recovering outlier payments when adjustments are made to covered charges for any services that are not found to be medically necessary or appropriate Medicare services upon medical or other review. This review is explicitly provided for at § 412.84(d). This provision was established when the IPPS was first implemented for FY 1984 (48 FR 39785).

The court cases referenced by the commenters all addressed the issue of whether outlier payments must be retroactively adjusted when the level of the threshold determined in advance of the fiscal year to which it applies ultimately results in actual outlier payments that are a smaller percentage of total DRG payments than was originally projected. We believe that an important goal of a PPS is predictability. Therefore, we believe that the fixed-loss outlier threshold should be projected based on the best available historical data and should not be adjusted retroactively. A retroactive change to the fixed-loss outlier threshold would affect all hospitals subject to the IPPS, thereby undercutting the predictability of the system as a whole.

However, if we deem it necessary as a result of a hospital-specific data variance to reconcile outlier payments of an individual hospital, such action on our part would not affect the predictability of the entire system. Rather, because each hospital is on notice as to our revised methodology for determining cost-to-charge ratios and that outlier payments are subject to possible reconciliation, and because each hospital has the necessary data regarding its own costs and charges to predict its actual cost-to-charge ratio, we are able to maintain the predictability of the system as a whole. Further, because reconciliation of outlier payments will affect only certain hospitals, the administrative burden of implementing such a policy is minimized.

Accordingly, we continue to believe that the fixed-loss outlier threshold should be based on projected payments using the latest available historical data without retroactive adjustments. This was our position in the court cases cited by the commenter, and it has been our consistent and often stated position, including above in this final rule and the March 5, 2003 proposed rule.

Comment: Some commenters suggested that we clarify how reconciliation will be implemented and only reconcile outlier payments to those providers whose cost-to-charge ratios increased or decreased outside of certain parameters. The commenters suggested that we reconcile outlier payments only for those hospitals that would otherwise receive substantial outlier overpayments or underpayments (for example, where the cost-to-charge ratio increased or decreased by 15 percent). Limiting any reconciliation to those hospitals would have the desired impact of focusing the attention of CMS on those hospitals that deserve additional scrutiny without placing such a burden on all hospitals. Another commenter believed the savings of reconciliation would be offset by the additional workload for fiscal intermediaries and hospitals.

One commenter suggested that we eliminate the proposal of reconciliation and use a quarterly or semiannual review similar to periodic interim payment reviews. The commenter explained that these reviews would be performed by a joint effort of the provider and the fiscal intermediary, resulting in interim cost-to-charge ratio adjustments throughout the fiscal year (with no lump-sum adjustment or individual claims adjustment), based on cost and charge data available from hospital records.

Response: In the proposed rule, we proposed to establish the authority for CMS to reconcile outlier payments, but we did not propose to require that all hospitals' outlier payments be reconciled. We acknowledge the commenters' concerns about the administrative costs associated with reprocessing and reconciling all inpatient claims and the desirability of limiting which hospitals' outlier payments will be reconciled. Therefore, we agree that any reconciliation of outlier payments should be done on a limited basis.

Moreover, although this provision is effective 60 days after the date of publication of this final rule, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. In addition, most of the changes in this regulation will apply for approximately the last 2 months of FY 2003. We intend to limit the impact of this provision during FY 2003 to ensure that the limited resources of fiscal intermediaries are focused upon those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios and to maintain the overall predictability of FY 2003 payments for most hospitals. Accordingly, we intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of FY 2003.

In the same program instruction, we will issue thresholds for fiscal intermediaries to reconcile outlier payments for other hospitals during FY 2003.

For cost reporting periods beginning during FY 2004, we are considering instructing fiscal intermediaries to conduct reconciliation for hospitals whose actual cost-to-charge ratios are found to be plus or minus 10 percentage points from the cost-to-charge ratio used during that time period to make outlier payments, and that have total FY 2004 outlier payments that exceed $500,000. We believe these thresholds would appropriately capture those hospitals whose outlier payments will be substantially inaccurate when using the ratio from the contemporaneous cost reporting period. Hospitals exceeding these thresholds during their applicable cost reporting periods would become subject to reconciliation of their outlier payments. These thresholds would be reevaluated annually and, if necessary, modified each year. However, fiscal intermediaries would also have the administrative discretion to reconcile additional hospitals' cost reports based on analysis that indicates the outlier payments made to those hospitals are significantly inaccurate.

We continue to believe that cost report reconciliation is the most appropriate way to ensure that outlier payments are made only for truly costly cases. We believe the type of ongoing reviews suggested by the commenter referenced above would be an inefficient approach to addressing this problem, because it would require extensive ongoing reviews of every hospital's cost and charge data. However, we believe the problems leading to this final rule actually occur among a limited number of hospitals.

Comment: Some commenters believed that reconciliation is unnecessary because the proposed changes that would eliminate the use of statewide averages and mandate use of the most recent tentative cost report would suffice to keep hospitals from gaming outliers. Therefore, they believed CMS should abandon its proposal to reconcile outlier payments.

Response: The steps we are taking in this final rule to direct fiscal intermediaries to update cost-to-charge ratios using the most recent tentative settled cost reports and using actual cost-to-charge ratios rather than statewide average ratios will greatly reduce the opportunity for hospitals to manipulate the system to maximize outlier payments. However, these steps will not completely eliminate all such opportunity. A hospital would still be able to dramatically increase its charges far above its rate-of-increase in costs during any given year in order to obtain excessive outlier payments. Therefore, we believe reconciliation is necessary to ensure that outlier payments are appropriately paid in the future.

Comment: One commenter suggested the use of a rolling 3-year average instead of reconciliation. The commenter explained that if a hospital is found to have a cost-to-charge ratio that significantly decreased over a short period of time, the cost-to-charge ratio that would be used to pay outliers would be projected by applying the 3-year average rate of change in cost-to-charge ratios over a rolling 3-year period. Cost reports used from that 3-year period would include the most recent audited or tentatively settled cost report for each year. The commenter provided an example where the cost-to-charge ratio from the most recent tentatively settled cost report is trended down to reflect the fact that over a longer period of time, charge increases have exceeded cost increases. This rolling 3-year average would be applied to hospitals that trigger this mechanism for a period of several years, until the period where the charge increases that gave rise to the use of the projection has worked its way through the method.

Response: The changes in this final rule are designed to take away any incentive for hospitals to seek outlier payments that are excessive. We believe the method recommended by the commenter still leaves the potential to game the system. For example, a hospital with a high cost-to-charge ratio can lower its charges substantially in any given year and receive extra outlier payments until the 3-year average is applied. Also, even after the 3-year moving average is applied, the hospital can continue to raise its charges in any given year and continue to receive outlier payments that do not reflect its

actual cost-to-charge ratio. At the end of the fiscal year, the hospital would receive a new cost-to-charge ratio based on its 3-year rolling average when in reality its actual cost-to-charge ratio is much lower. A hospital could continue to stay ahead of the system every year and receive outlier payments that do not reflect its actual cost-to-charge ratio. This is the exact behavior we are trying to prevent and, therefore, we believe we need to implement the process of reconciliation to dissuade hospitals from gaming the system.

Comment: Other commenters believed reconciliation would lead to further unpredictability and volatility in the Medicare payment system and would have implications for cost report simplification. Another commenter expressed similar concerns that some hospitals' cost reports may not be settled for longer than 2 to 3 years and would be subject to large overpayments that would then be subject to an adjustment for the time value of money. Similarly, a hospital's cost report can be reopened at a later date even after final settlement, which would cause further uncertainty if reconciliation had been conducted in the past.

Response: We plan to issue further guidance through program memoranda detailing the specific operational aspects of reconciling outlier payments on the cost report. At this time, we are still developing the specific procedures involved, including the exact timing of any reconciliation in terms of the cost reporting settlement process and the appeals process.

Comment: Several commenters argued that it would be inappropriate, illogical, and inconsistent with current policies to single-out outliers for adjustments to account for the time value of money. The commenters pointed out that other IPPS payment adjustments, such as IME and DSH, are subject to reconciliation but hospitals are not charged for the time value of money when those overpayments or underpayments are reconciled. However, another commenter agreed that outlier payments are substantially different from IME and DSH payments and the premise for adjusting for the time value of money with respect to outlier payments (when it is limited to situations where the cost-to-charge ratio is substantially inaccurate, and does not involve policy disputes) is not applicable to other adjustments such as IME and DSH.

Response: As we noted above and in the proposed rule, outlier payments are uniquely susceptible to manipulation because hospitals set their own level of charges and are able to change their charges without notification to, or review by, their fiscal intermediary. Such changes by a hospital directly affect its level of outlier payments, unlike IME or DSH where the fiscal intermediary must agree to a change to the underlying data. Therefore, even though the money may be recouped if the outlier payments are reconciled, the hospital would essentially be able to unilaterally increase its charges and acquire an interest-free loan in the meantime. For that reason, we believe it is appropriate to apply an adjustment for the time value of overpayments or underpayments identified at cost report reconciliation. Because the other changes we are making in this final rule will largely ensure the payments hospitals receive for outlier cases are accurate, we do not anticipate it will be necessary to apply this adjustment broadly. Therefore, the actual total impact of this adjustment should be relatively small.

Comment: One commenter argued that there is no statutory authorization for this adjustment. The commenter referenced section 1815(d) of the Act (42 U.S.C. 1395g(d)), which provides that interest is charged when a final determination is made and payment is not made within 30 days of the date of the determination. The commenter concluded there is no authority to impose interest in any fashion except in a manner consistent with this statutory authorization, and, thus, the proposed time value adjustment should be withdrawn.

Response: The reference cited by the commenter authorizes Medicare to charge and pay interest when an overpayment or underpayment is made. However, the referenced statutory authority is not the basis for the proposal to adjust outlier payments for the time value of money when reconciliation is made. Rather, this adjustment is consistent with the statutory requirement at section 1886(d)(5)(A)(iii) that outlier payments approximate the marginal cost of care beyond the threshold. That is, because hospitals are uniquely able to manipulate outlier payments by increasing charges, it is necessary to establish a mechanism whereby an adjustment can be made to ensure payments appropriately reflect the true marginal costs of care for outlier cases. As a result, the outlier adjustment can be distinguished from other IPPS payment adjustments where interest is applied, such as IME or DSH, because changes to these adjustments are subject to review by the fiscal intermediary before additional payments are made.

C. Provisions of the Final Rule Relating to Reconciliation of Outlier Payments Through Settled Cost Reports

We are adding § 412.84(i)(3) to provide that, effective 60 calendar days after the date of publication of this final rule, outlier payments will become subject to adjustment when hospitals' cost reports coinciding with the discharge are settled.

Payments will be processed throughout the year using the appropriate historical operating and capital cost-to-charge ratios, consistent with the regulations. When the cost report is settled, any reconciliation of outlier payments by fiscal intermediaries will be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the cost report and charge data determined at the time the cost report coinciding with the discharge is settled. We intend to issue program instructions to the fiscal intermediaries that will provide specific criteria for identifying those hospitals subject to reconciliation for the remainder of FY 2003 and for FY 2004. These criteria for FY 2003 will allow the fiscal intermediaries to focus their limited resources on only those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios. The criteria for FY 2004 will target a somewhat broader group of hospitals, but will still be limited to those hospitals that have benefited the most from the time lag in updating cost-to-charge ratios, and the majority of hospitals will not be affected. Also, fiscal intermediaries will have the administrative discretion to reconcile additional hospitals' cost reports based on analysis that indicates the outlier payments made to those hospitals are significantly inaccurate.

In addition, effective for discharges occurring on or after 60 calendar days after the date of publication of this final rule, for those hospitals for which reconciliation is necessary, outlier payments will be adjusted to account for the time value of any underpayments or overpayments (§ 412.84(m)).

VI. Fixed-Loss Outlier Threshold for IPPS Hospitals

A. Background and Provisions of the March 5, 2003 Proposed Rule

As noted above, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total estimated operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the

Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the average standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

In the August 1, 2002, IPPS final rule, we established the FY 2003 outlier fixed-loss threshold at $33,560 (67 FR 50122). This was a nearly 60-percent increase over the FY 2002 threshold of $21,025. The primary reason for this dramatic increase was a change in our methodology to use the rate of increase in charges rather than the rate-of-increase in costs to determine the threshold. That is, because we use FY 2001 cases to project the threshold for FY 2003, it is necessary to inflate the charges on the FY 2001 bills to approximate the charges on a similar claim for FY 2003. Prior to the calculation of the FY 2003 outlier threshold, we used the rate-of-cost increase from the most recent cost reports available to inflate actual charges on the prior year's bills to estimate what the charges would be in the upcoming year.

Our analysis indicated hospitals' charges were increasing at a much faster rate than costs. Therefore, in the August 1, 2002, IPPS final rule, we changed our methodology to inflate charges (67 FR 50122). Rather than using the observed rate-of-increase in costs from the cost reports, we inflated the FY 2001 charges by a 2-year average annual rate of change in actual charges per case from FY 1999 to FY 2000, and from FY 2000 to FY 2001, to estimate what the charges would be in FY 2003 for a similar claim.

The provisions of this final rule make several changes to better target outlier payments to the most costly cases. As a result, outlier payments to the hospitals that have been most aggressively increasing their charges to maximize outlier payments will be dramatically reduced. However, we are concerned that unrestrained charge increases have continued to occur during FY 2003 prior to the implementation of these final changes, and will likely result in outlier payments in excess of the 5.1 percent offset established by the August 1, 2002, IPPS final rule. (We now estimate FY 2003 outlier payments are equal to 6.1 percent of total DRG payments.) For example, hospitals intending to maximize outlier payments during FY 2003 could continue to do so by increasing charges enough to outpace the increase in the threshold. In fact, given the public attention on this behavior over the past few months and the potential for other hospitals to begin to aggressively increase their charges, and consequently their outlier payments, it is possible this type of aggressive gaming of the outlier policy has become more widespread in recent months.

Because of the extreme uncertainty regarding the effects of aggressive hospital charging practices on FY 2003 outlier payments to date, we did not propose any change to the FY 2003 fixed-loss threshold ($33,560) in the March 5, 2003, proposed rule. However, we noted that data for the first quarter of FY 2003 inpatient claims would be available soon and these data would allow us to evaluate whether outlier payments to date appear to be approximately 5.1 percent of total DRG payments. We solicited comments and data from hospitals with respect to the recent trends in hospital charges and the implications for outlier payments if the fixed-loss threshold were to remain at $33,560. We indicated in the March 5, 2003, proposed rule that, based upon that analysis and the comments we received in response to the proposed rule, we would adjust the threshold accordingly in the final rule.

B. Summary of Public Comments and Departmental Responses

Comment: Many commenters recommended that we lower the outlier threshold to ensure that hospitals have access to these special payments to cover extremely high-cost Medicare patients. In addition, they argued that because the threshold was raised from $21,025 in FY 2002 to $33,650 in FY 2003 based on policies in place at the beginning of the year, the threshold should now be lowered to reflect these mid-year changes.

Some commenters suggested that if a new threshold cannot be calculated by the publication date of the final rule, we should apply the FY 2002 threshold until a new threshold could be calculated. They argued that use of this threshold would enable all legitimate claims to qualify for cost outlier status.

MedPAC noted that failing to adjust the threshold would continue to deny additional payments to hospitals that have extraordinarily costly cases, thwarting the legislative purpose of the policy. One commenter suggested we lower the threshold close to the FY 2002 amount because it was not the intent of the Congress to have such a high outlier threshold for those hospitals that did not try to manipulate the outlier system and have sustained high losses for true outlier cases.

One commenter argued that last year, for purposes of setting a FY 2003 outlier threshold, CMS inflated charges using a 2-year average annual rate of change in charges per case from FY 1999 to FY 2000, and from FY 2000 to FY 2001, because CMS analysis demonstrated that charges have been growing at a much faster rate than recent estimates of cost growth. The commenter argued that, based on the new proposals in the proposed rule, this methodology was now unnecessary because the assumption of a lag in cost reports no longer applies.

One commenter recommended that we lower the threshold to the FY 2002 amount and implement this threshold retroactively to October 1, 2002. The commenter explained that many hospitals did not game the system and have had their outlier payments reduced over the years because the threshold has increased dramatically over the last 3 years due to a limited number of hospitals who gamed the system.

Response: We reestimated the fixed-loss threshold reflecting the changes implemented in this final rule that will be in effect during a portion of FY 2003. To do that reestimation, we inflated charges from the FY 2002 Medicare Provider Analysis and Review (MedPAR) file by the 2-year average annual rate of change in charges per case to predict charges for FY 2004. We believe the use of charge inflation is more appropriate than our previous methodology of cost inflation because charges are increasing at a much faster rate than costs. Therefore, we disagree that we should return to using the previous methodology based on cost inflation. Originally, when the FY 2003 threshold of $33,560 was set, we used FY 2001 MedPAR records. Because more recent data are now available, we believe it would be appropriate to use FY 2002 data to reestimate the FY 2003 threshold, taking into account the changes implemented by this final rule.

As noted previously, we continued to pay substantially more than was projected for outlier payments in FY 2002. Our most recent estimate is that we paid approximately 7.9 percent of total DRG payments in outliers, well in excess of our original projection of 5.1 percent, and higher than the percentage of total DRG payments for outliers in FY 2001. That percentage was 7.7. Therefore, using FY 2002 cases to estimate the outlier threshold for FY 2003 would result in a threshold of $42,300. However, after accounting for the changes implemented in this final rule, we estimate the threshold would be only slightly higher than the current threshold (by approximately $600).

We believe it is appropriate not to change the FY 2003 outlier threshold at this time. Although our current empirical estimate of the threshold indicates it could be slightly higher, there are other considerations that lead us to conclude the threshold should remain at $33,560. Increasing the threshold would result in lower outlier payments for all hospitals, not just those that have been aggressively maximizing their outlier payments. Changing the threshold for the remaining few months of the fiscal year could disrupt hospitals' budgeting plans and would be contrary to the overall prospectivity of the IPPS. We do believe that we have the authority to revise the threshold, given the extraordinary circumstances that have occurred (in particular, the manipulation of the policy by some hospitals). However, in light of the relatively small difference between the current threshold and our revised estimate, and the limited amount of time remaining in the fiscal year, we have concluded it is more appropriate to maintain the threshold at $33,560.

We note that, in the May 19, 2003, IPPS proposed rule for FY 2004, we proposed an outlier threshold of $50,645 for FY 2004 (68 FR 27235). Because that proposed rule was published prior to the publication of this final rule, the FY 2004 outlier threshold was calculated without accounting for the changes implemented in this final rule. The changes implemented here will be reflected in the calculation of the final FY 2004 outlier threshold.

C. Provisions of the Final Rule Relating to the Fixed-Loss Outlier Threshold

We are maintaining the fixed-loss outlier threshold at $33,560 for the remainder of FY 2003. We also are maintaining the marginal cost factor, the percentage of costs above the threshold that is paid for outlier cases, at 80 percent.

VII. Adjustment for High-Cost Outliers and Short-Stay Outliers Under the LTCH PPS

A. Background

Under the LTCH PPS, as implemented in the regulations at § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. In the LTCH PPS final rule for the 2004 LTCH PPS rate year, we intend to summarize the proposals relating to outlier payments under the LTCH PPS that were made in the March 7, 2003, LTCH PPS proposed rule (68 FR 11250), and will explain that we have responded to comments submitted on behalf of LTCHs and finalized the LTCH PPS outlier policy in this final outlier rule. We believe it is appropriate to finalize the changes to the IPPS outlier policies and the LTCH PPS outlier policy at the same time because the LTCH PPS outlier policy is modeled after the IPPS outlier policy. Accordingly, following is a summary of the LTCH PPS outlier policy as proposed in the March 7, 2003, proposed rule and our responses to the public comments we received on that proposed rule.

Under the regulations at § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients. We include a provision for outlier payments under the LTCH PPS and set the outlier threshold before the beginning of the applicable rate update year so that total outlier payments are projected to equal 8 percent of total payments under the LTCH PPS.

Under § 412.525(a), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. We calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.525(a), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount).

We determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the hospital will receive any additional payments. We calculate the fixed-loss amount by simulating aggregate payments with and without an outlier policy. The fixed-loss amount results in estimated total outlier payments projected to be equal to 8 percent of projected total LTCH PPS payments.

Outlier payments under the LTCH PPS are determined consistent with the IPPS outlier policy. Currently, under the IPPS, a floor and a ceiling are applied to an acute care hospital's cost-to-charge ratio and if the acute care hospital's cost-to-charge ratio is either below the floor or above the ceiling, the applicable statewide average cost-to-charge ratio is assigned to the acute care hospital. Similarly, if a LTCH's cost-to-charge ratio is below the floor or above the ceiling, currently the applicable statewide average cost-to-charge ratio is assigned to the hospital. In addition, for LTCHs for which we are unable to compute a cost-to-charge ratio, we also assign the applicable statewide average. Currently, MedPAR claims data and cost-to-charge ratios based on the latest available cost report data from the Hospital Cost Report Information System (HCRIS) and corresponding MedPAR claims data are used to establish a fixed-loss threshold amount under the LTCH PPS.

B. Establishment of the Fixed-Loss Amount for Outlier Payments Under the LTCH PPS

For FY 2003, based on FY 2001 MedPAR claims data and cost-to-charge ratios based on the latest available data from HCRIS and corresponding MedPAR claims data from FYs 1998 and 1999, we established a fixed-loss amount of $24,450. In the March 7, 2003, proposed rule, for the 2004 LTCH PPS rate year, we proposed to continue to use the March 2002 update of the FY 2001 MedPAR claims data to determine a fixed-loss threshold that would result in outlier payments projected to be equal to 8 percent of total payments, based on the policies described in that proposed rule, because these data were the best data available. We calculated cost-to-charge ratios for determining the March 7, 2003, proposed fixed-loss amount based on the latest available cost report data in HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000.

Consistent with the proposed outlier policy changes for acute care hospitals under the IPPS discussed in the March 5, 2003, proposed rule (68 FR 10420), in the March 7, 2003, LTCH PPS proposed rule, we proposed to no longer assign the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio falls below the floor. We proposed this policy change because, as is the case for acute care hospitals, we believe LTCHs could arbitrarily increase their charges in order to maximize

outlier payments. Even though this arbitrary increase in charges should result in a lower cost-to-charge ratio in the future (due to the lag time in cost report settlement), currently when a LTCH's actual cost-to-charge ratio falls below the floor, the LTCH's cost-to-charge ratio would be raised to the applicable statewide average. This application of the statewide average would result in inappropriately higher outlier payments. Accordingly, we proposed to apply the LTCH's actual cost-to-charge ratio to determine the cost of the case, even where the LTCH's actual cost-to-charge ratio falls below the floor. No longer applying the applicable statewide average cost-to-charge ratio when a LTCH's actual cost-to-charge ratio falls below the floor would result in a lower future cost-to-charge ratio. Applying this lower cost-to-charge ratio to charges in the future to determine the cost of the case would result in more appropriate outlier payments. Therefore, consistent with the proposed policy change for acute care hospitals under the IPPS, we proposed that LTCHs would receive their actual cost-to-charge ratios no matter how low their ratios fall. Also, consistent with the proposed policy change for acute care hospitals under the IPPS, we proposed under § 412.525(a)(4), by cross-referencing proposed § 412.84(i), to continue to apply the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio exceeds the ceiling by proposing to adopt the proposed policy at proposed § 412.84(i)(1)(ii). Cost-to-charge ratios above this range are probably due to faulty data reporting or entry, and, therefore, should not be used to identify and make payments for outlier cases because such data are clearly errors and should not be relied upon.

In addition, we proposed to make a similar change to § 412.529(c), by cross-referencing proposed § 412.84(i), for determining short-stay outlier payments to indicate that the applicable statewide average cost-to-charge ratio would be applied when a LTCH's cost-to-charge ratio exceeds the ceiling, but not when a LTCH's cost-to-charge ratio falls below the floor. Since cost-to-charge ratios are also used in determining short-stay outlier payments, the rationale for the proposed change mirrored that for high-cost outliers.

Therefore, consistent with IPPS outlier policy, in determining the proposed fixed-loss amount for the 2004 LTCH PPS rate year in the March 7, 2003, LTCH PPS proposed rule, we proposed to use only the current combined operating and capital cost-to-charge ratio ceiling under the IPPS of 1.421 (as explained in the IPPS final rule (67 FR 50125, August 1, 2002)). We believe that using the current combined IPPS operating and capital cost-to-charge ratio ceiling for LTCHs is appropriate since, as we explained in the August 30, 2002, LTCH PPS final rule (67 FR 55960), LTCHs are certified as acute care hospitals that meet the criteria set forth in section 1861(e) of the Act in order to participate in the Medicare program. As we also discussed in the August 30, 2002, LTCH PPS final rule (67 FR 55956), in general, hospitals are paid as a LTCH only because their average length of stay is greater than 25 days in accordance with § 412.23(e). Furthermore, prior to qualifying as a LTCH under § 412.23(e)(2)(i), the hospitals generally are paid as acute care hospitals under the IPPS during the period in which they demonstrate that they have an average length of stay of greater than 25 days. Accordingly, if a LTCH's cost-to-charge ratio is above this ceiling, we proposed to assign the applicable IPPS statewide average cost-to-charge ratio. (Currently, the applicable IPPS statewide averages can be found in Tables 8A and 8B of the August 1, 2002, IPPS final rule (67 FR 50263).) We also would assign the applicable statewide average for LTCHs for which we are unable to compute a cost-to-charge ratio. Accordingly, in the March 7, 2003, LTCH PPS proposed rule, for the proposed 2004 LTCH PPS rate year, we proposed a fixed-loss amount of $19,978. Thus, we proposed to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC–DRG and the proposed fixed-loss amount of $19,978).

C. Reconciliation of Outlier Payments Upon Cost Report Settlement

Under existing regulations at § 412.525(a), we specify that no retroactive adjustment will be made to the outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios for outlier cases. This policy is consistent with the existing outlier payment policy for short-term acute care hospitals under the IPPS. However, as discussed earlier, in the March 5, 2003 IPPS proposed rule (68 FR 10420), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because we became aware that payment vulnerabilities exist in the current IPPS outlier policy. Because the LTCH PPS high-cost outlier and short-stay policies are modeled after the IPPS outlier policy, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision.

As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 5, 2003, proposed rule, we proposed in the March 7, 2003, LTCH PPS proposed rule under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(m), that, for LTCHs, any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the actual cost-to-charge ratio and the estimated cost-to-charge ratio for the period during which the discharge occurs. As was the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we indicated that we were still assessing the procedural changes that would be necessary to implement this change for LTCHs under the LTCH PPS. In addition, we proposed to make a similar change in § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(m), to indicate that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs.

In addition, because we currently use cost-to-charge ratios based on the latest settled cost report, again consistent with the policy for acute care hospitals under the IPPS, any dramatic increases in charges by LTCHs during the payment year are not reflected in the cost-to-charge ratios when making outlier payments under the LTCH PPS. Consistent with the proposed policy change for acute care hospitals under the IPPS at proposed § 412.84(i) discussed in the March 5, 2003 IPPS proposed rule, because a LTCH has the ability to increase its outlier payments through a dramatic increase in charges and because of the lag time in the data used to calculate cost-to-charge ratios, in the March 7, 2003 LTCH PPS proposed rule, we proposed that fiscal intermediaries would use more recent data when determining a LTCH's cost-to-charge ratio. Therefore, under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(i), we proposed that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later. In addition, we proposed to make a similar change to the short-stay outlier policy at § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(i), to indicate that subject to the proposed provisions in the regulations at § 412.84(i), fiscal

intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later.

In the March 7, 2003, LTCH PPS proposed rule, when we calculated the proposed fixed-loss amount of $19,978 for the proposed 2004 LTCH PPS rate year, we did not assign the applicable statewide average cost-to-charge ratio when a LTCH's actual cost-to-charge ratio fell below the floor, consistent with the proposed IPPS outlier policy. However, because many features of the LTCH PPS are dependent upon IPPS outlier policies, we did not believe it was appropriate to finalize the proposed changes to the LTCH PPS outlier policy in the LTCH PPS final rule. Therefore, in calculating the final fixed-loss amount, we intend to apply the existing outlier policy (that is, not the policies proposed in the March 7, 2003, LTCH PPS proposed rule), using the statewide average for LTCHs whose cost-to-charge ratios fall below the floor. In addition, after analyzing the data that we would use to calculate the fixed-loss amount, we would only apply the statewide average to one LTCH that would have a cost-to-charge ratio that falls below the floor. Based on this analysis, we have concluded that it will not be necessary to recalculate a new fixed-loss amount once this outlier rule becomes effective because the difference between a fixed-loss amount based on the elimination of the floor and a fixed-loss amount based on the statewide average would be negligible. Thus, the fixed-loss amount published in the LTCH PPS final rule will not be affected by changes in the outlier policy.

D. Application of Outlier Policy to Short-Stay Outlier Cases

Under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the LTCH PPS outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for a short-stay outlier case, the high-cost outlier payment is based on 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the fixed-loss amount and the amount paid under the short-stay outlier policy).

E. Summary of Public Comments on the LTCH PPS Outlier Policy in the March 7, 2003, Proposed Rule and Departmental Responses

Of the approximately 30 pieces of correspondence we received on the March 7, 2003, LTCH PPS proposed rule, 22 pieces contained public comments on the proposed LTCH PPS high-cost and short-stay outlier policies that were included in the proposed rule. A summary of those comments and our departmental responses follow.

Comment: Many commenters supported our proposal to use the most recent tentatively settled Medicare cost report to determine the cost-to-charge ratios to be used for outlier payments under the LTCH PPS, since this policy would provide the most current data reviewed by the fiscal intermediaries for purposes of the outlier payment. A number of commenters also agreed with the proposal to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio, stating that this proposal would remove incentives to rapidly increase charges relative to costs.

Response: We agree with the commenters and we are adopting the proposal to use the most recent tentatively settled Medicare cost report to determine the cost-to-charge ratios and the proposal to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio. However, we want to take the opportunity in this final rule to clarify some points about the application of these policies.

The IPPS outlier policy in this final rule, which requires applying a hospital's actual cost-to-charge ratio to determine the cost of a case, even where the hospital's actual cost-to-charge ratio falls below the floor, will become effective 60 calendar days after the date of publication of this final rule. This policy will similarly become effective for LTCHs 60 calendar days after the date of publication of this final rule. For purposes of making actual outlier payments for discharges between July 1, 2003, and the effective date of this outlier rule (60 calendar days after the date of publication), LTCHs' cost-to-charge ratios that are below the floor will be replaced by the statewide average as under existing policy, while any outlier payments made on or after the effective date of this outlier rule will be determined under the new policy using the LTCHs' actual cost-to-charge ratio, even if that cost-to-charge ratio is below the floor.

Following is an example of how the policy eliminating the floor cost-to-charge ratio will apply beginning July 1, 2003:

As of July 1, 2003, Hospital A has a cost-to-charge ratio of 0.250, which is above the current cost-to-charge ratio floor of 0.206. Therefore, for purposes of determining outlier payment in the 2004 LTCH PPS rate year (July 1, 2003, to June 30, 2004), Hospital A would continue to use its cost-to-charge ratio of 0.250 (unless the fiscal intermediary changes Hospital A's cost-to-charge ratio due to tentative settlement of a cost report) and use the fixed-loss amount to be published in the LTCH PPS final rule for the 2004 LTCH PPS rate year.

Hospital B has a cost-to-charge ratio of 0.200, which is below the cost-to-charge ratio floor of 0.206. For purposes of determining outlier payments from July 1, 2003, until the effective date of this final rule (60 calendar days after the date of publication), Hospital B continues to use the statewide average cost-to-charge ratio. However, beginning with the effective date of the final rule, Hospital B uses its actual cost-to-charge ratio of 0.200 (unless the fiscal intermediary changes Hospital B's cost-to-charge ratio due to tentative settlement of a cost report), and continues to use the fixed-loss amount to be published in the LTCH PPS final rule.

Comment: Numerous other commenters representing LTCHs disagreed with our proposed policy that, for LTCHs, any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the actual cost-to-charge ratio and the estimated cost-to-charge ratio for the period during which the discharge occurs. One commenter stated that the proposal would create accounting difficulties for hospitals and fiscal intermediaries, and suggested that if CMS is concerned about ''gaming'' related to outlier payments, then, as an alternative, the fiscal intermediaries could monitor charges per diem using PS&R data, or a quarterly reporting mechanism can be established similar to the HCFA–91. Other commenters wrote that constant updates to the cost-to-charge ratios for outlier payments would be a costly and burdensome process for LTCHs and fiscal intermediaries to administer. The commenters recommended that CMS maintain its current policy of using the most recent final cost report for cost-to-charge ratios with no changes until the following fiscal year.

Another commenter stated that requiring the fiscal intermediary to notify providers every time a change is

made to the cost-to-charge ratio in the fiscal intermediary's system will cause the provider to make multiple unnecessary adjustments to properly account for the difference in payment for high-cost outliers and short-stay outlier cases. The commenter proposed that the fiscal intermediary should be required to send the provider notification each time the cost-to-charge ratio will be changed in its system.

Response: As explained in response to comments on the IPPS outlier proposed rule, although the provision concerning reconciliation is effective 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. Accordingly, we intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of the LTCH rate year.

Notably, however, for LTCHs, particularly because the universe of LTCHs is relatively small, we do not believe it will be overly burdensome for the fiscal intermediaries to rerun a LTCH's claims to determine the accurate outlier payment amount. We also do not believe that the reconciliation of outlier payments for LTCHs will be overly burdensome because LTCHs are on notice of the revised methodology.

We also are not adopting the commenter's recommendation to establish a system for monitoring PS&R data or for quarterly reporting. While those procedures might aid in detecting aberrant charge increases, we believe that the reconciliation process is preferable because it allows for outlier payments to be ultimately determined based on actual cost-to-charge ratios, rather than on estimates. Finally, we agree with the commenter that the fiscal intermediaries should notify the hospitals whenever a change is made to the cost-to-charge ratio. We plan to provide more details on this procedure in program instructions to be issued after the publication of this final rule.

Comment: Several commenters questioned whether CMS has the authority to retroactively adjust outlier payments, stating that it is ''completely contrary to the entire concept of a prospective payment system,'' and would generate budgeting uncertainty and administrative burden for hospitals and CMS.

One commenter claimed that the Secretary of the Department of Health and Human Services has argued in court that the Medicare statute does not allow retroactive adjustments to outlier payments. (See *County of Los Angeles* v. *Shalala*, 192 F.3d 1005 (D.C. Cir. 1999).)

Another commenter argued that since the LTCH PPS is uniquely different from the IPPS in that a much greater percentage of overall payment under the LTCH PPS is dependent upon cost-to-charge ratios (high-cost outliers and short-stay outliers combined), subjecting such a large portion of payments to a cost-based settlement approach defeats the purpose and benefits of a PPS. Specifically, the commenter noted that since the cost-to-charge ratio is used to determine payment for both high-cost outliers and for short-stay outliers, which combined, can represent a significant percentage of all discharges from a LTCH, both the classification of a case as a short-stay or high-cost outlier and the resulting payment amount would have to be reassessed and possible retroactive adjustments would have to be made following an audit of more recent cost report data. Therefore, the commenter believed that a policy that allows for retroactive adjustments to prior payment amounts introduces a large amount of uncertainty and complexity that the PPS was intended to eliminate.

Response: As an initial matter, our position in the court cases is more accurately presented as stating that the language of the statute does not clearly mandate that the actual amount of outlier payments must be between 5 and 6 percent of total outlier payments under the IPPS, and that our policy of not making retroactive adjustments to ensure that actual payments fall between that range is consistent with the intent of Congress. However, the commenters are correct in pointing out that a basic premise of a PPS is predictability of payment, the prospectivity of the system is undermined when it is manipulated and abused in order to maximize reimbursement. Under the IPPS, in light of the gross abuses of the current methodology by some hospitals, and the negative impact such overpayments ultimately have on other hospitals due to their impact on the fixed-loss amount, we believe the option of reconciling outlier payments based on the settled cost report for hospitals that have been initially paid using a significantly inaccurate cost-to-charge ratio compared to the actual ratio from the cost reporting period is now appropriate. We believe that at this time it is appropriate to adopt this policy for the LTCH PPS because it will contribute to the overall accuracy and fairness of the fixed-loss amount under the prospective payment system.

As we stated above, in our view, reconciling outlier payments because they were originally paid on the basis of a significantly inaccurate cost-to-charge ratio is similar to recovering outlier payments when adjustments are made to covered charges for any services that are not found to be medically necessary or appropriate under Medicare upon medical or other review. This review is explicitly provided for under the IPPS policy at § 412.84(d). This provision was established when the IPPS was first implemented for FY 1984 (48 FR 39785).

The court cases referenced by the commenters all addressed the issue of whether outlier payments must be retroactively adjusted when the level of the fixed-loss amount under the IPPS determined in advance of the fiscal year to which it applies ultimately results in actual IPPS outlier payments that are a smaller percentage of total IPPS DRG payments than was originally projected. We believe that an important goal of a PPS is predictability. Therefore, we believe that the fixed-loss outlier threshold, whether under the IPPS or the LTCH PPS, should be projected based on the best available historical data and should not be adjusted retroactively. We believe that a retroactive change to the fixed-loss outlier threshold would affect all hospitals subject to a PPS, thereby undercutting the predictability of the system as a whole. However, if we deem it necessary as a result of a hospital-specific data variance to reconcile outlier payments of an individual hospital, such action on our part would not affect predictability of the entire system. Rather, because each hospital is on notice as to our revised methodology for determining cost-to-charge ratios and that outlier payments are subject to possible reconciliation, we are able to maintain the predictability of the system as a whole. Further, because reconciliation of outlier payments will affect only certain hospitals, the administrative burden of implementing such a policy is minimized. Accordingly, we continue to believe that the fixed-loss amount should be based on projected payments using the latest available historical data without retroactive adjustments. This was our position in the court cases cited by the commenter, and it has been our consistent and often stated position, including earlier in this final rule and in the March 5, 2003, IPPS outlier proposed rule.

Comment: One commenter recommended that subregulatory

guidelines for the review of outlier payments be established, specifying what changes to the cost-to-charge ratios would trigger a review and what entity is responsible for determining whether a review is necessary. The commenter added that CMS should ensure that outlier thresholds are estimated to reflect 8 percent of total payments. Another commenter stated that the proposed reconciliation to cost-to-charge ratios should be limited only to those hospitals that meet certain criteria, such as hospitals that cross a defined threshold of charge increases combined with a high level of outlier payments compared to the norm. The commenter requested that the final rule include specific criteria to be used for the determination of hospitals that will be subject to such an adjustment.

Response: As we stated earlier in this final rule, we intend to issue a program instruction to the fiscal intermediaries in the near future that will provide specific criteria to be used in the reconciliation of outlier payments for the remainder of the LTCH PPS rate year.

For cost reporting periods beginning on or after October 1, 2003, we are considering instructing fiscal intermediaries to conduct reconciliation for those LTCHs whose actual cost-to-charge ratios are found to be plus or minus 10 percentage points from the cost-to-charge ratio used during that time period to make outlier payments, and that have total FY 2004 outlier payments (high-cost and short stay outlier payments combined) that exceed $500,000. We believe these thresholds would appropriately capture those LTCHs whose outlier payments will be substantially inaccurate when using the ratio from the contemporaneous cost reporting period compared to the ratio from the latest cost reporting period. LTCHs exceeding these thresholds during their applicable cost reporting periods would become subject to reconciliation of their outlier payments. These thresholds would be reevaluated annually and, if necessary, modified each year. However, fiscal intermediaries would also have the administrative discretion to reconcile additional LTCHs' cost reports based on analysis that indicates the outlier payments made to those hospitals are significantly inaccurate.

In addition, we will continue to ensure that outlier payments are projected to be equal to 8 percent of total LTCH PPS payments by using the best and most recent available data in computing the fixed-loss amount.

Comment: One commenter strongly supported and recommended approval of the proposals to use the most recent settled or tentatively settled cost report or other latest available data from the provider or the fiscal intermediary, and the reconciliation for outlier payments upon cost report settlement. The commenter was in favor of these proposals because the commenter believed that they correct the ''inappropriately harmful impact'' that the current rules have on those hospitals that hold charge increases to a level lower than their cost increases. The commenter recommended that these proposed policies should be applied retroactively to the beginning of the LTCH PPS. However, the commenter did not agree that an adjustment for the time value of overpayments or underpayments should be applied to outlier payments received in a cost reporting period, since the issue has already been addressed in the regulations at 42 CFR 405.378, and no other aspect of a final settlement reflects payment of interest.

Another commenter asserted that interest should not be assessed after the cost report is settled and before the provider has a chance to review and appeal potentially erroneous claims. Instead, the commenter recommended that CMS should allow a 180-day appeal period to give providers an opportunity to review the settlement and file appeals without interest.

Response: As we stated earlier, we are adopting as final the proposals to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio, the use of the cost-to-charge ratio from a tentatively settled cost report or alternative best available data, and finalizing the reconciliation policy for outlier payments upon cost report settlement. We understand the commenters' concerns and acknowledge that a change in policy is needed, but under our rulemaking authority, there is a serious question as to whether we could apply these policies retroactively. Therefore, consistent with the rationale explained under the IPPS section of this final rule, the effective date of the policies concerning elimination of the floor, and using alternative data from the fiscal intermediary or the provider, is for discharges occurring on or after August 8, 2003. The use of the later of either the most recent tentatively settled cost report or the most recent settled cost report is effective for discharges occurring on or after October 1, 2003. The effective date of reconciliation of outlier payments is for discharges occurring on or after August 8, 2003.

As noted previously, although the provision concerning reconciliation is effective 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. We intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of the LTCH rate year.

We are implementing these effective dates under §§ 412.84(i) and (m), as referenced under the LTCH PPS outlier regulations at §§ 412.525(a)(4) and 412.529(c)(5).

In regard to the commenter's objection to the policy concerning the time value of money, outlier payments are uniquely susceptible to manipulation because hospitals set their own level of charges without review by the fiscal intermediary. Therefore, despite the recovery of the overpayment by CMS, a hospital would essentially benefit from an interest-free loan simply by increasing its charges in the interim. In order to ensure that hospitals are reimbursed fairly for extremely costly cases, it is necessary to establish a mechanism whereby an adjustment can be made to help guarantee that payments appropriately reflect the marginal costs of care for outlier cases. Under the LTCH PPS, it is also important to ensure that hospitals are paid correctly for short-stay outlier cases. We believe an adjustment for the time value of money is the appropriate mechanism to use to ensure equity and accuracy of payments.

Comment: Several commenters noted the potential implications a retroactive adjustment to high-cost outlier payments may have on a beneficiary's use of lifetime reserve days. Medicare beneficiaries in a LTCH are much more likely to exceed their 90 days of available inpatient care during a LTCH stay than during a short-term acute hospital stay. A Medicare beneficiary's lifetime reserve days (days 91 through 150) are not used as long as coinsurance days are available or as long as a stay is covered under the LTC–DRG. However, as soon as a day of care moves the beneficiary into the high-cost outlier category, this day and subsequent days are counted against the beneficiary's lifetime reserve days, and the stay is paid by Medicare as a high-cost outlier, with beneficiary coinsurance equal to half of the inpatient deductible amount. The commenters stated that the proposed policy would result in retroactive adjustments to the day on which a patient's stay moves into the

high cost category, thereby retroactively adjusting the lifetime reserve days available to a beneficiary.

One commenter stated that coverage based on a changing cost-to-charge ratio would not be a sound policy, and CMS should consider changing the high-cost outlier threshold determination to a per diem methodology to ensure that all beneficiaries receive the same number of benefit days and coverage.

The commenters also pointed out that, for similar reasons, a policy that would retroactively reconcile outlier payments will create an unworkable system for the administration of Medicare supplemental (Medigap and Medicaid) payments, since such a policy anticipates that the Medigap and Medicaid programs will make retroactive adjustments to beneficiary benefits and payments. The commenters recommended that CMS consider severing the link between the count of Part A benefit days and cost outlier status and, instead, count beneficiary Part A days on a per diem basis so that the Part A benefit is not dependent upon changes to the cost-to-charge ratio and high-cost outlier status.

Response: We have reviewed all the comments concerning the effect of the policy for reconciling outlier payments on a beneficiary's lifetime reserve days and eligibility for coverage under the Medigap and Medicaid programs. We believe that the commenters have raised a number of valid concerns. While we are adopting as final the policy to reconcile outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs, we believe that, because the outlier policy changes are intended to address accuracy of outlier payments rather than coverage or eligibility, any changes to a LTCH's outlier payments made as a result of reconciliation should not retroactively affect a beneficiary's lifetime reserve days or coverage status under Medigap or Medicaid. Specifically, no retroactive adjustments will be made to determine the day on which a beneficiary's stay moves to high-cost outlier status, and, therefore, no retroactive adjustments will be made to lifetime reserve days used or available. The reconciliation of outlier payments to the LTCH by the fiscal intermediary will simply be a redetermination of outlier payment upon cost report settlement. Similarly, no retroactive adjustments are required to be made to beneficiary benefits and payments under Medigap and Medicaid.

Accordingly, we do not believe it is necessary to adopt the policy suggested by the commenters under which beneficiary Part A days would be counted on a per diem basis, since the receipt of Part A benefits will not be dependent upon changes to the cost-to-charge ratio and outlier status.

Comment: Commenters wrote that since the LTCH PPS is new and CMS and the LTCH industry have almost no experience with the LTCH PPS and outlier payments, CMS has no policy reason for changing the LTCH PPS outlier policy at this time. The commenters stated that additional time and experience under the new system are needed before CMS has the information necessary to appropriately address potential problems.

Response: We disagree with the commenters' assertion that because the LTCH PPS is still in its nascent stages, the challenges that have surfaced under the IPPS may not yet necessarily apply to the LTCH PPS. However, we believe those same challenges may arise in the LTCH PPS context because many of this system's features are modeled after the IPPS. We believe that being proactive in ensuring the accuracy of outlier payments by making additional payments only for truly high-cost cases is a matter of sound public policy. It is also our responsibility to ensure the integrity of the Medicare Trust Fund, which we believe this policy accomplishes. We note that we will continue to monitor all aspects of the LTCH PPS, and may propose to make other adjustments in the future if warranted.

Comment: One commenter asked that CMS clarify the effective date of the proposed cost-to-charge ratio policies. The commenter stated that if the effective date is for discharges occurring on or after July 1, 2003, then, for LTCHs with a fiscal year end date of June 30, the implementation process would be eased for the fiscal intermediaries and LTCHs. However, for those LTCHs that do not have a fiscal year end date of June 30, the commenter asserted that the task of accounting for the proposed cost-to-charge ratio regulations would be administratively burdensome for the fiscal intermediaries and LTCHs. Therefore, the commenter requested that the effective date for the proposed outlier regulations should be for cost reporting periods beginning on or after July 1, 2003.

Response: We do not believe that the implementation of the outlier policies will be overly burdensome to LTCHs. As we noted previously, although this provision is effective 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. We intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of the LTCH rate year.

Also, as we stated in responses to comments above, the outlier policy on applying a LTCH's actual cost-to-charge ratio to determine the cost of a case, even where the LTCH's actual cost-to-charge ratio falls below the floor, will become effective for discharges occurring on or after August 8, 2003. For purposes of making outlier payments between July 1, 2003, and August 8, 2003, cost-to-charge ratios that fall below the floor will be replaced by the statewide average, while any outlier payments made on or after August 8, 2003, will be determined using the actual cost-to-charge ratio, even if that cost-to-charge ratio falls below the floor.

The policies at § 412.84(i)(1), (3), and (4) and § 412.84(m), as referenced under the LTCH PPS outlier regulations at § 412.525(a)(4) and § 412.529(c)(5) concerning use of alternative ratios and the elimination of the floor on cost-to-charge ratios are effective for discharges occurring on or after August 8, 2003. The effective date of the policy concerning use of the most recent tentatively settled cost report or the most recent settled cost report at § 412.84(i)(2) is for discharges occurring on or after October 1, 2003. The effective date of the policy regarding reconciliation of outlier payments is for discharges occurring on or after August 8, 2003.

For example, regardless of the fiscal year begin date, between July 1, 2003, and August 8, 2003, if a hospital's cost-to-charge ratio is below the floor, the hospital would continue to use the statewide average cost-to-charge ratio as under existing policy. However, beginning with discharges occurring on or after August 8, 2003, the hospital would use its actual cost-to-charge ratio, even if it were below the floor, and not the statewide average cost-to-charge ratio. Similarly, effective August 8, 2003, under § 412.84(i)(1), CMS may use an alternative cost-to-charge ratio, or a hospital may request that the fiscal intermediary use a different cost-to-charge ratio based on substantial evidence presented by the hospital. Then, regardless of a hospital's fiscal year begin date, effective for discharges occurring on or after October 1, 2003, a hospital's cost-to-charge ratio will be based on the data available from the most recently tentatively settled or final

settled cost report, whichever is later. Finally, once a hospital submits to the fiscal intermediary its cost report for the period ending on or after August 8, 2003, the fiscal intermediary would use the program instructions we intend to issue in the near future that will provide specific criteria for implementing this provision on reconciliation.

Comment: A commenter who wrote on behalf of LTCHs that have a fiscal year end date of December 31, asked the following questions related to the proposed cost-to-charge ratio policy: (1) Will the cost-to-charge ratio for outlier payments be derived from the prior year's (December 31, 2002) cost report or from the fiscal year ending December 31, 2001, cost report, since the fiscal year ending December 31, 2002, cost report is not due to the Medicare fiscal intermediary until May 31, 2003? (2) Will the cost-to-charge ratio change when the fiscal year ending December 31, 2003, cost report is filed on May 31, 2004? (3) Will the cost-to-charge ratio for fiscal year ending December 31, 2003, outlier payments change when the cost report is tentatively settled and finalized in 2004 or 2005? (4) Will the cost-to-charge ratios for fiscal year ending December 31, 2003, change when appeals are settled in 2006 or 2007? (5) Will each Medicare claim applicable to outlier payments be reprocessed when the cost-to-charge ratio changes?

Response: It appears that the commenter is essentially asking how cost report settlement will affect changes to a hospital's cost-to-charge ratio. As explained above, each hospital's cost-to-charge ratio may change effective for discharges occurring on or after August 8, 2003, in instances where the cost-to-charge ratio is below the floor, or CMS believes an alternative cost-to-charge ratio should be used. A hospital's cost-to-charge ratio also may change effective for discharges occurring on or after October 1, 2003, based on the most recent tentatively settled cost report, or the final settled cost report, whichever is later.

In response to the commenter's third question, the reconciliation policy is effective for discharges occurring on or after 60 calendar days after the publication of this final rule. As we stated above, we intend to issue a program instruction to fiscal intermediaries in the near future that will provide specific criteria for determining how the reconciliation of outlier payments will be implemented. However, we note, as with other cost report settlement issues, the hospital may appeal the Notice of Program Reimbursement for the December 31, 2004, cost report and the cost-to-charge ratio, and, therefore, outlier payments may change depending on the outcome of the appeal.

Finally, in response to the commenter's fifth question, not all claims may be reprocessed when the cost-to-charge ratio changes upon reconciliation. Again, as explained previously, we intend to issue a program instruction to fiscal intermediaries that will provide specific criteria for determining how the reconciliation of outlier payments will be implemented.

Comment: One commenter supported the proposal to use more recent cost-to-charge ratios to calculate outlier payments and eliminate the use of the statewide average cost-to-charge ratio floor, but expressed concern that an abrupt change to cost-to-charge ratios would create significant and unanticipated reductions in outlier payments and urged CMS to implement a transition period for all hospitals that would be adversely affected by the proposed policy changes.

Response: We have received many comments stating that a transition period is necessary, mostly in relation to the proposed policy for IPPS outlier payments. In the context of LTCHs, we do not believe that this policy will result in significant reductions in historic outlier payments, because the LTCH PPS is a new system, there were no outlier payments under the previous reasonable cost-based payment methodology, and LTCHs only recently had the opportunity to choose whether they wish to be reimbursed on a blend of LTCH PPS and reasonable cost-based payments over a 5-year period, or on 100 percent of the Federal rate. Therefore, we do not believe that the proposed changes to the outlier policy will place any LTCHs at risk for a substantial loss of reimbursement. In addition, as stated above, we believe that the proposed policy changes will ensure that the fixed-loss amount is established at a reasonable level and that each hospital will be reimbursed for high-cost and short-stay outlier cases in an accurate and equitable manner. Thus, we believe that it is in the best interest of CMS and the hospital community as a whole to forego a transition period and implement the proposed changes to the outlier policy as soon as possible.

E. Provisions of the Final Rule

Consistent with the final IPPS outlier policy in this final rule, we are revising §§ 412.525(a)(4) and 412.529(c)(5) to specify that, for discharges from LTCHs under the LTCH PPS occurring on or after October 1, 2002, and before August 8, 2003, no reconciliations will be made to high-cost outlier payments or to short-stay outlier payments, respectively, upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio of the case. We are specifying in §§ 412.525(a)(4)(iii) and 412.529(c)(5)(iii) that for discharges from LTCHs under the LTCH PPS occurring on or after October 1, 2003, high-cost outlier payments and short-stay outlier payments, respectively, are subject to the provisions of § 412.84(i)(2) (which are applicable to IPPS hospitals).

G. Short-Stay Outlier Cases

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care or they may be discharged and not readmitted because they no longer require treatment. Furthermore, patients may expire early in their LTCH stay.

As we discussed in the August 30, 2002, LTCH PPS final rule (67 FR 55970), generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. We believe that a payment adjustment for short-stay outlier cases results in more appropriate payments, because these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios simulated for LTCHs, for the cases described above, show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly ''overpaid'' for the resources they have actually expended.

Under § 412.529, we adjust the per discharge payment for a short-stay outlier patient to the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment, for all cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG.

As we discussed in section VI.C.3. of the March 7, 2003, proposed rule, in the March 5, 2003, proposed rule (68 FR 10420), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because we became aware that payment vulnerabilities exist in the current IPPS outlier policy. Because the LTCH PPS high-cost outlier and short-stay outlier payments are also based on cost-to-charge ratios as under the IPPS, we believe they are

susceptible to the same payment vulnerabilities as the IPPS and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(i) and (m) in the March 5, 2003, proposed rule (68 FR 10429) and as we proposed for LTCHs above for high-cost outlier payments at § 412.525(a)(4)(ii), we proposed under § 412.529 that short-stay outlier payments would be subject to the proposed provisions in the regulations at § 412.84(i) and (m). Therefore, consistent with the proposed changes to the high-cost outlier policy discussed in section VI.C.3. of the March 7, 2003, proposed rule, we proposed, by cross-referencing § 412.84(i), that fiscal intermediaries would use either the most recent settled cost report or the most recent tentatively settled cost report, whichever is later, in estimating a LTCH's cost-to-charge ratio. We also proposed, by cross-referencing § 412.84(i), that the applicable statewide average cost-to-charge ratio would only be applied when a LTCH's cost-to-charge ratio exceeds the ceiling. Finally, we proposed, by cross-referencing § 412.84(m), that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs. We further noted that as was the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we were still assessing the procedural changes that would be necessary to implement this change.

We received numerous comments on the proposed changes to the outlier policy as it relates to short-stay outliers. We have summarized and responded to these comments in the previous section related to outlier payments under the LTCH PPS. Therefore, as discussed above, under § 412.529, short-stay outlier payments are subject to the provisions of §§ 412.84(i)(1), (3), and (4) and § 412.84(m) for discharges occurring on or after August 8, 2003, and subject to the provisions of § 412.84(i)(2) for discharges occurring on or after October 1, 2003.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the March 5, 2003, proposed rule, we solicited comment on the recordkeeping requirements referenced in the proposed amendments to § 412.84. Under the proposed amendments to § 412.84(h), a hospital may request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. The burden imposed by this section is the time it takes to write the request. We estimated that 120 hospitals would make this request per year and that it would take each one 8 hours for a total annual burden of 960 hours.

We did not receive any comments on this information collection requirement and are making no revisions to it. We will submit this information collection requirement to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act. The requirement will not go into effect until we receive OMB approval.

If you comment on this information collection and recordkeeping requirement, please mail, e-mail or fax copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Julie Brown, CMS–1243–F, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Brenda Aguilar, CMS Desk Officer, *baguilar@omb.eop.gov*. Fax: (202) 395–6974.

IX. Impact Analysis

A. Introduction

We have examined the impacts of this final 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), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

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).

We have determined that this final rule is a major rule as defined in 5 U.S.C. 804(2). We estimate the total impact of the policies implemented in this final rule will be to reduce outlier payments for the remainder of FY 2003 by $150 million. Therefore, we have prepared the quantitative analysis under this impact analysis section at IX.G. of this preamble.

C. Regulatory Flexibility Analysis

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 based on their nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity. As stated above, we have prepared the quantitative analysis under this impact analysis section at IX.G. of this preamble.

D. Effects on Rural Hospitals

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical

Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the IPPS, we classify these hospitals as urban hospitals.

It is clear that the changes we are making in this final rule will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and that the effects on some hospitals might be significant. Therefore, the discussion of the quantitative analysis under section IX.G. of this preamble, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule or a final rule, which has been preceded by a proposed rule, that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not result in any unfunded mandates for State, local, or tribal governments or the private sector, as defined by section 202.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule and a 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 final rule in light of Executive Order 13132 and have determined that it does not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

G. Quantitative Analysis

As described above, the changes we are making in this final rule will better target outlier payments to the most costly cases. First, we are providing that fiscal intermediaries will no longer assign the statewide average cost-to-charge ratio in place of the actual cost-to-charge ratio when the hospital's actual ratio is more than 3 standard deviations below the geometric mean cost-to-charge ratio. Second, we are implementing the use of the most recent tentatively settled Medicare cost report to determine a hospital's cost-to-charge ratio. Third, outlier payments may be subject to reconciliation when the cost report corresponding with the outlier cases is settled, using the actual cost-to-charge ratio calculated from the final settled cost report rather than the cost-to-charge ratio from the latest tentative settled cost report at the time the claim is processed.

We anticipate these changes will lower payments to hospitals that have been aggressively gaming the existing outlier payment methodology by manipulating their charges toward those hospitals with truly high-cost cases (by lowering the thresholds). For some hospitals, the effects of the reduced payments may be quite dramatic. For those hospitals, the impact of this final rule will be to significantly decrease their outlier payments. It is difficult to quantify precisely the impact on these hospitals of this change because we will not know the final applicable cost-to-charge ratios until the cost reports are settled. However, assuming that once concurrent cost-to-charge ratios are used for these hospitals, their outlier payments as a percent of their total DRG payments are similar to past levels, we estimate a reduction of $50 million in outlier payments to these hospitals for the 2 months remaining in FY 2003.

For the 43 hospitals currently receiving outlier payments on the basis of a statewide average cost-to-charge ratio because their actual ratios are below the lower threshold, their outlier payments will begin to decline effective for discharges occurring on or after 60 days following the date of publication of this final rule. However, it is difficult to quantify the impacts upon these hospitals because we do not have data available to assess whether they have increased their charges in order to offset any anticipated reduction in their outlier payments. However, assuming no behavioral responses on the part of hospitals, we estimate that, for the approximately 2 months remaining in FY 2003 after this change goes into effect, payments to these hospitals will decline by $95 million.

For most hospitals, this final rule will not have an impact on their FY 2003 outlier payments. This is because the fixed-loss threshold is remaining at $33,560, and for the changes effective during FY 2003, we will instruct the fiscal intermediaries to focus their limited resources only on those hospitals that appear to have disproportionately benefited from the time lag in updating their cost-to-charge ratios. Also, we will not require the use of more recent cost-to-charge ratios until FY 2004.

We have examined the potential impact of the changes in the methodology for determining cost-to-charge ratios for purposes of payment of high-cost outliers and short-stay outliers under the LTCH PPS. Because the LTCH PPS is a new system that has only been in effect since October 1, 2002, and the vulnerabilities that have surfaced under the IPPS do not yet necessarily apply to LTCHs, we do not believe these policies will have a significant financial impact on LTCHs in FY 2003.

H. Alternatives Considered

For purposes of this analysis, we considered several alternatives to the changes we are finalizing in this rule as discussed above. One alternative would be to not make any changes to the current outlier policy. However, we believe that in light of the evidence that hospitals have been manipulating our current outlier policy, it is important to change the current policy as it existed prior to this final rule, to ensure these payments go to truly expensive cases. Therefore, we do not believe retaining that current policy is a viable option.

We also considered establishing a policy that hospitals' cost-to-charge ratios would be based on their rates-of-increase in charges as an alternative to reconciling outlier payments on the cost reports. However, we believe this approach would be extremely complex. In addition, this approach would require us to make assumptions about the relationship between costs and charges that may not apply in particular circumstances. Therefore, this alternative would be likely to lead to inequitable treatment of some hospitals.

We considered eliminating the application of statewide average cost-to-charge ratios altogether. However, it is necessary to have some ratio to assign to new hospitals that have not yet filed their first cost report. Also, we believe it remains appropriate to assign the statewide average cost-to-charge ratio in cases where a hospital's cost-to-charge ratio exceeds 3 standard deviations from the geometric mean.

I. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble of this final rule, the Centers for

Medicare & Medicaid Services amends 42 CFR part 412 as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 412.84 is amended by—
■ A. Revising paragraph (h).
■ B. Redesignating paragraphs (i), (j), and (k) as paragraphs (j), (k), and (l), respectively.
■ C. Adding a new paragraph (i).
■ D. In redesignated paragraph (k), removing the phrase ''paragraph (k) of this section'' and adding in its place ''paragraph (l) of this section.''
■ E. In redesignated paragraph (l), removing the phrase ''paragraph (j) of this section'' and adding in its place ''paragraph (k) of this section.''
■ F. Adding a new paragraph (m).
■ The additions and revisions read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(h) For discharges occurring before October 1, 2003, the operating and capital cost-to-charge ratios used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report. For discharges occurring before August 8, 2003, statewide cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. CMS sets forth the reasonable parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published in the **Federal Register** in accordance with § 412.8(b).

(i)(1) For discharges occurring on or after August 8, 2003, CMS may specify an alternative to the ratios otherwise applicable under paragraphs (h) or (i)(2) of this section. A hospital may also request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. Such a request must be approved by the CMS Regional Office.

(2) For discharges occurring on or after October 1, 2003, the operating and capital cost-to-charge ratios applied at the time a claim is processed are based on either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the latest cost reporting period.

(3) For discharges occurring on or after August 8, 2003, the fiscal intermediary may use a statewide average cost-to-charge ratio if it is unable to determine an accurate operating or capital cost-to-charge ratio for a hospital in one of the following circumstances:

(i) New hospitals that have not yet submitted their first Medicare cost report. (For this purpose, a new hospital is defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18 of this chapter.)

(ii) Hospitals whose operating or capital cost-to-charge ratio is in excess of 3 standard deviations above the corresponding national geometric mean. This mean is recalculated annually by CMS and published in the annual notice of prospective payment rates issued in accordance with § 412.8(b).

(iii) Other hospitals for whom the fiscal intermediary obtains accurate data with which to calculate either an operating or capital cost-to-charge ratio (or both) are not available.

(4) For discharges occurring on or after August 8, 2003, any reconciliation of outlier payments will be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

* * * * *

(m) Effective for discharges occurring on or after August 8, 2003, at the time of any reconciliation under paragraph (h)(3) of this section, outlier payments may be adjusted to account for the time value of any underpayments or overpayments. Any adjustment will be based upon a widely available index to be established in advance by the Secretary, and will be applied from the midpoint of the cost reporting period to the date of reconciliation.

§ 412.116 [Amended]

■ 3. In § 412.116(e), the second sentence is removed.

■ 4. Section 412.525 is amended by revising paragraph (a)(4) to read as follows:

§ 412.525 Adjustments to the Federal prospective payment.

(a) *Adjustments for high-cost outliers.*

* * *

(4)(i) For discharges occurring on or after October 1, 2002 and before August 8, 2003, no reconciliations will be made to outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio of the case.

(ii) For discharges occurring on or after August 8, 2003, high-cost outlier payments are subject to the provisions of §§ 412.84(i)(1), (i)(3), and (i)(4) and (m) for adjustments of cost-to-charge ratios.

(iii) For discharges occurring on or after October 1, 2003, high-cost outlier payments are subject to the provisions of § 412.84(i)(2) for adjustments to cost-to-charge ratios.

* * * * *

■ 5. Section 412.529 is amended by revising paragraph (c)(5) to read as follows:

§ 412.529 Special payment provision for short-stay outliers.

* * * * *

(c) * * *

(5)(i) For discharges occurring on or after October 1, 2002 and before August 8, 2003, no reconciliations will be made to short-stay outlier payments upon cost report settlement to account for differences between cost-to-charge ratio and the actual cost-to-charge ratio of the case.

(ii) For discharges occurring on or after August 8, 2003, short-stay outlier payments are subject to the provisions of §§ 412.84(i)(1), (i)(3), and (i)(4) and (m) for adjustments of cost-to-charge ratios.

(iii) For discharges occurring on or after October 1, 2003, short-stay outlier payments are subject to the provisions of § 412.84(i)(2) for adjustments to cost-to-charge ratios.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance.)

Dated: May 30, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–14492 Filed 6–5–03; 3:27 pm]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 243/P.L. 108–28
Concerning participation of Taiwan in the World Health Organization. (May 29, 2003; 117 Stat. 769)

S. 330/P.L. 108–29
Veterans' Memorial Preservation and Recognition Act of 2003 (May 29, 2003; 117 Stat. 772)

S. 870/P.L. 108–30
To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

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CFR CHECKLIST

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81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
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48 Chapters:			
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1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
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29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
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186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.