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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 114, 9004, and 9034

[Notice 2003–24]

Travel on Behalf of Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating new and revised rules regarding the proper rates and timing for payment for travel on behalf of political committees and candidates on means of transportation that are not offered for commercial passenger service, including government conveyances. The final rules provide more comprehensive guidance than the previous regulations by establishing a single, uniform valuation scheme for campaign travel that does not depend on whether the service provider is a corporation, labor organization, individual, partnership, limited liability company or other entity. The final rules apply to all Federal candidates, including publicly funded presidential candidates as well as other individuals traveling on behalf of candidates, party committees, and other political committees where the travel is in connection with Federal elections. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: The effective date for the revisions to 11 CFR parts 100, 106, 114 and 9034 is January 14, 2004. Further action on revisions to 11 CFR part 9004, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is implementing several changes to its rules governing travel in connection with a Federal election. These final rules establish a simple, uniform payment scheme covering all Federal election travel on either government or private aircraft and other conveyances. The previous regulation at 11 CFR 114.9(e) established the amount and timing for reimbursement by a candidate to a corporation or labor organization for the use of a private airplane or other means of transportation, but did not address means of travel furnished by individuals, partnerships, and other entities. The previous rules in section 114.9(e) also were not fully consistent with the Commission's treatment of similar travel by presidential and vice-presidential candidates using government-provided transportation under 11 CFR 9004.7 and 9034.7. Nor did the previous rules in 11 CFR 114.9(e) establish specific guidance for those traveling on behalf of party committees or other unauthorized committees.

The Notice of Proposed Rulemaking (''NRPM'') on which these final rules are based was published in the **Federal Register** on August 21, 2003. 68 FR 50,481 (August 21, 2003). The comment period was originally set to close on September 19, 2003, but the Commission extended the comment period until September 29, 2003. The Commission received nine comments from ten commenters,[1] and held a public hearing on this and two other rulemakings on October 1, 2003. Seven witnesses testified during the hearing. Transcripts of the hearing are available at *http://www.fec.gov/register.htm.* Please note that, for purposes of this document, the terms ''commenter'' and ''comment'' apply to both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Presidential Election Campaign Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on December 10, 2003.

Explanation and Justification

I. 11 CFR 100.93 Travel by Airplane or Other Means of Transportation

A. Introduction

The Commission's previous candidate travel rules in 11 CFR 114.9(e) focused only on means of travel owned or leased by corporations or labor organizations. In the NPRM, the Commission proposed broadening the rules to include airplanes and other means of travel owned by other persons. The NPRM proposed the addition of new section 11 CFR 100.93, based on the previous 11 CFR 114.9(e) with the organizational and substantive changes described in the NPRM and below. New § 100.93 is one of the enumerated exceptions to the definition of ''contribution'' in 11 CFR part 100, subpart C, and identifies circumstances in which the use of a private means of transportation not owned or leased by candidates, their authorized committees, or other political committees would *not* be contributions.

B. 11 CFR 100.93(a) Scope and Definitions

1. Paragraph (a)(1) Means of Transportation Within the Scope of 11 CFR 100.93

(i) Paragraph (a)(1)(i)—Airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135.

Previous 11 CFR 114.9(e)(1) focused on the use of airplanes owned by

[1] The Commission received written comments from: Perkins, Coie LLP; The Campaign Legal Center; FEC Watch; the Center for Responsive Politics; National Republican Senatorial Committee; National Republican Congressional Committee; National Business Aviation Association, Inc.; Nancy J. Lally; attorneys Lyn Utrecht, Eric Kleinfeld, Pat Fiori, and James Lamb of Ryan, Phillips, Utrecht & MacKinnon; and the Internal Revenue Service.

corporations or labor organizations not ''licensed to offer commercial services for travel in connection with a Federal election.'' Thus, the previous rule distinguished between the use of airplanes owned or leased by a corporation or labor organization licensed to offer commercial services for travel, and airplanes owned by other corporations or labor organizations not normally engaged in commercial air passenger service. This distinction required an examination of the plane's ownership or lease structure to determine the proper reimbursement timing and amount.

One district court found the wording ''licensed to offer commercial services for travel in connection with a Federal election'' to be ambiguous. *See Federal Election Commission* v. *Arlen Specter '96,* 150 F. Supp. 2d 797, 804 and 808 (E.D. Pa. 2001). In that case, a presidential candidate claimed that 11 CFR 114.9(e) applied to all travel on airplanes except airplanes owned or leased by a corporation or labor organization possessing a license for travel in connection with a Federal election. The final rules are intended, in part, to remedy this ambiguity. The Court noted that no such license existed and ultimately deferred to the Commission's longstanding position that 11 CFR 114.9(e) applied only to airplanes owned by corporations or labor organizations not engaged in the business of providing commercial air service generally, without regard to providing service specifically in connection with a Federal election. *Id.* at 812.

In the NPRM, the Commission proposed the normal use of the airplane as the criterion for the applicability of section 100.93. Specifically, if the plane was normally operated for passenger service for a fee, 11 CFR 100.52 would apply, and if it was not, then section 100.93 would apply. Under section 100.52, ''the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services'' is an ''in-kind contribution.'' 11 CFR 100.52(d). Thus, a candidate or other campaign traveler receives an in-kind contribution when he or she is provided commercial transportation without charge or at a charge that is less than the usual and normal charge for that transportation.

The Commission received four comments addressing the scope of section 100.93. Three of the commenters supported the elimination of 11 CFR 114.9(e). Two commenters expressed support for the proposed distinction based on whether the airplane is ''normally operated for commercial passenger service.'' A different commenter, however, recommended that the rule focus on whether the person providing the service normally provides the service as a commercial service, rather than whether a particular airplane is normally operated for commercial passenger service. This commenter asserted that ''when a commercial provider of transportation services leases an airplane specifically for the purpose of providing services to a campaign, the Commission should treat the commercial provider the same as if it owned the airplane. The fact that the airplane had never previously been used as a commercial aircraft would be irrelevant.''

Likewise, another commenter urged the Commission to ''focus on the provider of the air transportation and the primary business of that provider rather than the 'normal use' of a particular aircraft.'' This commenter asserted that it would be too difficult to determine the ''normal use'' of an aircraft in light of the varied ownership structures and shared users and uses of a single plane. The commenter argued that a rule focusing on the ''normal use'' of an aircraft would require significant clarification, including an explanation of whether the ''normal use'' pertained only to use by the usual operator or whether it would also apply to use by other persons leasing the aircraft for particular flights or for a longer period of time. This commenter recommended basing the distinction instead on the ''FAA's long established primary business test.'' Under that test, the commenter stated, any aircraft offered to a candidate or other campaign traveler would be covered by 11 CFR 100.93 so long as air transportation is not the primary business of the provider. This approach is similar to an alternative proposed in the NPRM, which would delineate the airplanes covered by this new section based on whether the service provider is a ''commercial vendor,'' as defined in 11 CFR 116.1(c), of air transportation services.

These comments raise a number of concerns about the difficulties inherent in basing a rule on ''normal use'' of an airplane. The approaches suggested by the commenters would be, to the extent they require a determination of the ownership structure or consideration of the prior use of the airplane, subject to manipulation and would perpetuate the difficulties presented by the previous rule. The Commission rejects the ''commercial vendor'' standard and the commenter's suggested ''primary business test,'' because each would require analysis of the service provider's structure and business practices. One impetus for this rulemaking is to avoid an ownership-dependent analysis in establishing the proper valuation of election-related travel where the value of that travel is not readily ascertainable from a normal and usual charge. The purpose of new § 100.93 is to provide clear guidance to campaign travelers, not to describe the business practices of service providers.

The Commission concludes that the legal operating authority for the airplane, rather than the ownership or leasing arrangement, is the relevant determinant because it indicates the applicability of 11 CFR 100.52(d) or new § 100.93. The service provider's business practice is relevant only to the extent that it discloses the operating authority of the airplane. Because the commenters are correct that a determination of the ''normal use'' of an airplane could be complex, the final rule relies on the classifications already established by the Federal Aviation Administration (''FAA'').

The new rules in § 100.93 apply to all airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135.[2] 11 CFR 100.93(a)(1). This phrase eliminates any potential ambiguity in the current language at 11 CFR 114.9(e) and provides a readily discernible bright line based on existing FAA regulations. Paragraph (a) further clarifies that new section 100.93 also applies to airplanes operated by a Federal, State or local government in the United States.

The NPRM indicated that the proposed regulations in 11 CFR 100.93

[2] The FAA requires airplane operators who hold their service out to the public as willing to transport persons or property to be certificated under 14 CFR part 119 to conduct operations in accordance with 14 CFR part 121 or part 135, as applicable, depending primarily on the size of the aircraft used. Operators must notify the FAA of the specific aircraft they intend on using in the part 121 or 135 operation. Foreign aircraft held out to the public within the United States must comply with the requirements of 14 CFR part 129. Operators conducting operations for compensation or hire that are not common carriage, or operators that are private carriage in large aircraft must be certificated by the FAA to operate under part 125. *See* 14 CFR 125.1(a) (applies to aircraft with a seating capacity of 20 or more persons, but only where common carriage is not involved). Operators conducting flights in small private aircraft not for compensation or hire are regulated by the FAA under 14 CFR part 91. Although aircraft operating under 14 CFR part 91 certification are not usually permitted to accept any form of payment or reimbursement from passengers, a special FAA exception permits Federal candidates to reimburse the owners of such aircraft for the use of planes pursuant to the Commission's regulations. *See* 14 CFR 91.321. Aircraft operating under 14 CFR part 125 certification are similarly prohibited from operating as common carriers, but there is no similar general prohibition on the acceptance of payment from passengers to warrant an identical exception.

were intended to apply only to airplanes not authorized by the FAA to conduct operations in air transportation as a common carrier, while the current regulations at 11 CFR 100.52 would apply to all airplanes operated pursuant to other certifications that do permit carriage of passengers for compensation. The final rules in § 100.93(a)(1)(i) differ from the proposed rules by including a specific reference to the operating authority for the planes. Most operators offering passenger service for compensation or hire, such as air carriers or commercial operators, must receive special certification under 14 CFR parts 121, 129, or 135 in order to hold out the use of the airplane to the general public. A usual and normal charge will ordinarily be apparent for the use of these airplanes, so there is no need to apply new § 100.93 to the use of these airplanes. Rather, section 100.93 applies to private jets and other airplanes that are not normally held out to the public, such as airplanes operated exclusively under 14 CFR parts 91 or 125.[3] The pilot of an airplane is usually aware of the operating authority in order to comply with the safety requirements and other duties required for that each different type of operating certification. The status of the airplane can be quickly determined by reference to the operations specifications for that airplane, which will identify the rule part that governs the operator.

New section 100.93 applies to airplanes owned by any ''person,'' as defined at 11 CFR 100.10, as well as airplanes owned by the Federal government or a State or local government. This is intended to remedy whatever confusion might have previously resulted from the fact that previous 11 CFR 114.9(e) covered only corporate and labor organization aircraft.

(ii) Paragraph (a)(1)(ii)—Other means of transportation.

Because most conveyances other than airplanes are not operated subject to FAA authority, new § 100.93 applies to ''other means of transportation not operated for commercial passenger service.'' 11 CFR 100.93(a)(1). The Commission believes that a determination of the normal use of a car, bus, or similar conveyances, while requiring some examination of its normal operation, does not raise the unique complexities presented by the ownership structures, expenses, and uses of airplanes. Without any external regulatory structure to parallel the FAA regulations of airplanes, the Commission concludes that this approach provides the most accurate means of identifying when the usual and normal charge for a conveyance can be readily ascertained for compliance with 11 CFR 100.52(d), and when it cannot.

(iii) Paragraph (a)(1)(iii)—Government conveyances.

Because the scope of the final rules is tied to FAA certification, the Commission is adding new paragraph (a)(1)(iii) to clarify that election-related travel aboard a Federal, State, or local government conveyance is within the scope of new 11 CFR 100.93.

2. Paragraph (a)(2) Means of Transportation Outside the Scope of 11 CFR 100.93

New paragraph (a)(2) of section 100.93 provides that 11 CFR 100.52(a) and (d) continue to apply to travel by means of transportation operated for commercial passenger service. However, for campaign travelers using means of transportation not operated for commercial passenger service where the normal and usual charge may not be obvious, as opposed to commercial airlines or charter or taxi services normally offered for a fee, § 100.93 establishes a substitute for the normal and usual rate for that means of travel.

3. Paragraph (a)(3) Definitions

(i) Paragraph (a)(3)(i)—Campaign traveler.

Paragraph (a)(3) defines several terms used in new section 100.93. In the NPRM, the Commission proposed defining the term ''campaign traveler'' to provide a succinct term covering the candidate, candidate's agent, or other individual traveling on behalf of a candidate or a candidate's authorized committee. One commenter suggested that 11 CFR 100.93 be expanded to include payment for travel by persons traveling on behalf of political parties and other political committees, essentially inviting the Commission to expand the definition of ''campaign traveler'' to these other travelers. The Commission is implementing the suggestion to provide guidance to these other travelers who, if not permitted to rely on this valuation of travel as set forth in this new section, would be left without specific guidance as to the proper rate of reimbursement. By establishing a single rate for travel reimbursement, the new rules will promote greater uniformity among all individuals traveling in connection with a Federal election on behalf of a political committee.

The final rules at 11 CFR 100.93(a)(3)(i)(A) define a new term, ''campaign traveler,'' to include any individual traveling in connection with a Federal election on behalf of a candidate, a political party committee, or any other political committee. In addition, because the news media sometimes accompany Federal candidates on government conveyances and other means of transportation at the candidate's discretion, the final rules address the proper amount of payment for their travel. Section 100.93(a)(3)(i)(B) specifies that members of the news media are included in the definition of ''campaign traveler'' when traveling with a candidate. This definition applies whether or not such candidates are running for President or Vice President or are receiving public funding. It is consistent with the provisions in former 11 CFR 9004.7(b)(5)(i)(C) and 9034.7(b)(5)(i)(C) that required the inclusion of members of the media in calculating the cost of comparable transportation. Once a service provider makes an airplane or other conveyance available for the use of a candidate and the accompanying news media, the service provider must be reimbursed for the value of that travel in order to avoid a contribution from the service provider to the candidate's campaign. Therefore, either the candidate's authorized committee, other political committee responsible for payment of travel expenses for the candidate, or the media travelers, must pay the travel costs, at the same rate, for the members of the media who accompany the candidate(s). *See* 11 CFR 100.93(b), discussed below. The news media may elect to pay the service provider directly, or to reimburse the political committee in accordance with this section and 11 CFR 9004.6 and 9034.6.

(ii) Paragraph (a)(3)(ii)—Service provider.

Given the complex ownership and leasing arrangements often associated with airplanes and other means of transportation, a person providing transportation to a campaign traveler may be either the owner of the conveyance, or may be a different person who is leasing the conveyance from the owner and making it available for the campaign traveler's use. The NPRM proposed to define ''service provider'' as the owner or lessee of an airplane or other conveyance who uses the airplane or other conveyance to provide transportation to a campaign traveler. One commenter expressed concern that this definition would not allow sufficient flexibility for aircraft owners and lessees to provide

[3] Aircraft operating pursuant to 14 CFR parts 91 or 125 are not permitted to operate as common carriers.

alternative transportation when their aircraft becomes unavailable and they are forced to charter different aircraft in order to fulfill their transportation commitments. Presumably, the commenter is concerned that in such instances the service provider would be the owner of the substitute aircraft. A different commenter recommended that the Commission address similar situations in which the owner or lessor of an airplane makes the airplane available to a major client, independent contractor, or other person outside the corporation or labor organization. This commenter urged that in such situations the service provider should be the ''person who has been given the right to use the aircraft,'' rather than the owner or lessor. Likewise, one commenter suggested that the Commission specifically address situations where multiple persons or entities share access to an airplane, such as through a joint ownership or time-sharing agreement. This commenter stated that in such instances the service provider should be the person who makes the airplane available to the candidate

The final rules at 11 CFR 100.93(a)(3)(ii) clarify that the ''service provider'' is the person making the airplane or other conveyance available to the campaign traveler or otherwise providing the transportation to the campaign traveler. Thus, a service provider may be the owner, a person leasing the airplane or other conveyance from the owner, or another person with a legal right to offer the use of the airplane or other conveyance to the campaign traveler.

(iii) Paragraph (a)(3)(iii)—Unreimbursed value.

The proposed rules at paragraph (a)(2) sought to define the term ''unreimbursed value'' as the portion of the value provided to the campaign traveler, calculated according to the rules in this section, that is not reimbursed by the candidate's authorized committee. The proposed definition specified that a late payment would not qualify as a reimbursement under this section, meaning that the value of the service provided would be an in-kind contribution to the candidate. By contrast, a service provider would not make an in-kind contribution if the candidate's authorized committee provides payment within the time specified in paragraphs (c) or (d).

One commenter argued that the rule would unfairly penalize ''absentminded campaign schedulers or late reimbursers'' by treating late payments as contributions, suggesting that the rule as proposed in the NPRM would remove the incentive for *sua sponte* payments outside the permitted time frames. The timing requirements in 11 CFR 100.93 are integral components of the regulatory scheme. The definition of ''unreimbursed value'' in the final rule, which is located in paragraph (a)(3)(iii), is therefore substantially the same as proposed in the NPRM. The Commission does not agree that the definition of ''unreimbursed value'' will discourage *sua sponte* payments after the deadlines because it does not believe those acting in good faith would be deterred from taking corrective, mitigating actions.

C. 11 CFR 100.93(b) General Rule

Section 100.93(b) sets forth the general rule for when the providing of travel does not constitute a contribution to a candidate or political committee, as well as when and to what extent the unreimbursed value of such travel *is* an in-kind contribution. Under paragraph (b)(1), as proposed in the NPRM, a candidate's authorized committee would not receive or accept a contribution if the authorized committee pays the service provider the full value of the transportation within the specified time. One commenter stated that the proposed rule was ''sound and consistent'' with the Act and Commission's treatment of in-kind contributions.

The Commission is implementing the final rule as proposed in the NPRM, with additional clarifications described below and the conforming changes needed to account for payment by members of the news media and for persons traveling on behalf of political party committees and other political committees. Paragraph (b)(1) sets out the rule for most campaign travelers, generally requiring that the candidate's authorized committee, in order to avoid receiving or accepting a contribution, pay the service provider for campaign travelers traveling on behalf of that candidate. Likewise, other political committees (*i.e.*, other than authorized committees) must pay the service provider for other campaign travelers who are traveling on behalf of such committees. For example, if a Federal candidate attending a fundraiser for her own campaign flies on the same private airplane with a government official traveling to appear on behalf of a non-connected political committee in connection with a Federal election, the candidate's authorized committee would pay for the candidate's travel and the non-connected political committee would pay for the government official's travel.

While the authorized committee or other political committee will generally make the reimbursement payment, paragraph (b)(1)(ii) permits a campaign traveler to pay the service provider directly for his or her own travel. However, such payment constitutes an in-kind contribution by the campaign traveler to the candidate or political committee to the extent that it does not qualify for the transportation expense exception set forth in 11 CFR 100.79.[4] In the example above, an individual working for a Federal candidate could choose to pay up to $1,000 from her own pocket for campaign travel without the payment constituting an in-kind contribution, assuming that she had not already made other payments for travel with respect to that election.

Paragraph (b)(1)(iii) similarly specifies that a member of the news media traveling with a candidate may choose to reimburse the service provider directly at the rate not less than the amount set forth in paragraphs (c) or (d) of section 100.93. If a member of the news media elects to have the candidate's authorized committee pay for the media's travel rather than paying the service provider directly, he or she may do so and the candidate's authorized committee is permitted to seek reimbursement from the media. Ultimately it is the candidate's responsibility to ensure that the service provider is reimbursed for the value of the transportation provided to all persons traveling with the candidate.

In light of the fact that the previous rules at 11 CFR 114.9(e) were limited to airplanes owned by corporations or labor organizations, payment was required because the unpaid use of such airplanes is a contribution in violation of 2 U.S.C. 441b. In contrast, the new rule also encompasses airplanes owned or leased by individuals, partnerships, and certain other persons who are permitted to make in-kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, under the new rules, a candidate or political committee may elect to receive an in-kind contribution from the service provider rather than reimbursing that

[4] 11 CFR 100.79(a) permits an individual traveling on behalf of any candidate or political party committee to incur up to $1,000 in transportation expenses with respect to a single election, and up to $2,000 on behalf of all political committees of each political party within a calendar year, without reimbursement and without making a contribution to a candidate or political party committee. Under 11 CFR 100.79(b), volunteers may use personal funds for usual and normal subsistence expenses incidental to volunteer activity. A substantively identical exception to the definition of ''expenditure'' is provided at 11 CFR 100.139.

service provider, so long as the service provider is permitted to make an in-kind contribution and the amount of the contribution does not exceed the limitations of the Act. New 11 CFR 100.93(b)(2) addresses this situation by stating when a service provider makes an in-kind contribution. A candidate's authorized committee or other political committee paying for the travel must comply with the payment conditions in 11 CFR 100.93 to avoid receiving a contribution in the amount of the unreimbursed value. If these conditions are not met, then the provision of the value of the travel would be a prohibited in-kind contribution if the service provider is a corporation or labor organization, or an excessive in-kind contribution if the value of the service would, when added to other contributions to the same candidate or political committee by the service provider, exceed that service provider's contribution limit. *See* 11 CFR 100.93(b)(2). The value of the in-kind contribution is determined in the same manner as the amount of the reimbursement would normally be determined under paragraphs (c), (d) or (e) of new section 100.93.

The Commission recognizes that this approach may, in some cases, require the same type of ownership analysis that is discussed above. This analysis, however, is not a necessary step in every circumstance because it must be employed only where the service's provider elects not to seek full or partial reimbursement from the political committee, or when the political committee fails to pay the service provider. The Commission sought comments on whether reimbursement should always be required, regardless of the ownership, or whether the possibility of an in-kind contribution from a permissible source should be addressed in some other fashion. One commenter stated that it is not important for the Commission to preserve the option of making an in-kind contribution because the value of the transportation will often exceed the contribution limits. While the commenter makes a valid point, there are still some circumstances in which an in-kind contribution is otherwise permissible under the Act. The Commission is therefore preserving the option of an in-kind contribution as described above.

D. 11 CFR 100.93(c) Travel by Airplane

Under the previous rules at 11 CFR 114.9(e)(1), when a candidate or other campaign passenger used an airplane owned by corporation or labor organization not in the business of providing commercial air travel, the rate of reimbursement was either the first-class airfare or the normal charter rate, depending on whether the destination city was served by regularly scheduled commercial air service. The charter rate, which in many cases is considerably higher than first-class airfare to a city in the same area, better represents the actual cost that a political committee would incur, but for the use of the corporate or labor organization airplane, to reach a particular destination by air when that destination is not served by commercial air service. Nevertheless, the NPRM recognized that candidates who campaign in major metropolitan areas that have regularly scheduled commercial airline service will generally be able to use a private plane and reimburse only the equivalent of a first-class airfare, whereas candidates who campaign in more rural areas that have little, if any, commercial air service would be required to reimburse the equivalent charter rate. Consequently, the NPRM expressed concern that the reimbursement scheme in 11 CFR 114.9(e)(1) may have been unnecessarily complex and unfairly affected campaigning in rural areas.

1. Three Alternatives in NPRM

To address these concerns, the NPRM sought comments on three alternative reimbursement rules in proposed 11 CFR 100.93(c), as well as any other appropriate payment systems. The Commission also sought comments on whether and how it should further simplify the rules and address other inequities, if any, arising from the previous application of 11 CFR 114.9(e) or the changes proposed for section 100.93.

Alternative A proposed setting the payment rate at the amount of the lowest unrestricted and non-discounted first-class airfare to the closest airport that has such service. For an airport served by regularly scheduled coach airline service but not regularly scheduled first-class airline service, Alternative A proposed setting the payment at the lowest unrestricted and non-discounted commercial coach rate to that destination.

Alternative B proposed two different payment rates, following closely the travel valuation rules set forth in the ethics rules for the House of Representatives and the United States Senate.[5] The first rate, the normal cost of first-class airfare between the cities, would have applied to previously scheduled flights, as opposed to flights specifically scheduled for a campaign traveler, between cities with regularly scheduled air service. Like Alternative A, Alternative B would also have permitted payment at the unrestricted and non-discounted commercial coach rate where coach service is regularly scheduled on the same route in cases where only coach service is available. The second rate under Alternative B, the normal charter rate for a similar airplane, would have applied to flights specifically scheduled for a campaign traveler and flights where the origin or destination city is not served by regularly scheduled commercial air service.

Alternative C would have established a uniform rule by requiring the payment amount to be the normal and usual cost of chartering a plane of sufficient size to accommodate all campaign travelers plus the news media and security personnel where applicable. This payment rate would depend on the rate for chartering the entire plane, rather than a per-passenger cost, and would not vary based on whether the destination airport is served by regularly scheduled commercial air service of any particular class.

2. Comments on Proposed Alternatives A, B, and C

The Commission received eight comments regarding proposed alternatives A, B, and C, reflecting a lack of consensus. One commenter submitted general recommendations encouraging the Commission to adopt a ''clear, uniform format.''

Two of the comments criticized the previous rules at 11 CFR 114.9(e) for undervaluing the travel service provided by permitting, in some instances, candidates to pay for charter services at the lower first-class airfare rates. This undervaluation of travel services, these commenters asserted, constitutes a prohibited contribution where the service is provided by a corporation or labor organization. These commenters urged the Commission to adopt Alternative C as the most accurate reflection of the actual cost of the travel service provided, as well as the easiest of the alternatives to administer. These commenters opposed Alternative A as permitting an even greater amount of in-kind contributions than allowed under the previous 11 CFR 114.9(e). Furthermore, they stated Alternative B

[5] *See* Select Committee on Ethics, U.S. Senate, Senate Ethics Manual, S. Pub. No. 108–1 (2003), ''Private Air Travel'' at p. 60; Committee on Standards of Official Conduct, U.S. House of Representatives, Rules of the U.S House of Representatives on Gifts and Travel (2001), ''Use of Private Aircraft for Travel'' available at *http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623633.*

would be preferable to Alternative A because it would mandate the charter rate in some cases. These commenters, however, were skeptical that a standard dependent upon whether a flight was ''scheduled specifically for the use of a campaign traveler'' could be enforced effectively. A different commenter, however, urged the Commission to adopt Alternative B as an effective compromise between the approaches in A and C.

In contrast, the other five commenters specifically advocated the implementation of Alternative A. These commenters stressed the simplicity of the rate structure and some expressed support for the reasons in the NPRM for Alternative A. 68 FR at 50,484. One commenter stated that Alternative A would eliminate an ''arbitrary focus on the destination city'' and the need to refer to the FAA's classification of whether an airport offers ''commercial air service.'' The same commenter criticized the previous rule at 11 CFR 114.9(e) for failing to address geographic realities and benefiting ''well-entrenched incumbents to the detriment of candidates running in either an open seat or challenging a well-entrenched incumbent'' because the higher cost of travel would impair the ability of challengers to attract a ''high ranking leader'' and ''other luminaries'' to events in their State or district. Three of these five commenters criticized Alternatives B and C as furthering the inequities of the previous rule and causing campaign travel to be more complicated and expensive. Several commenters specifically advocated the replacement of the advance payment requirement with the seven-day post-travel repayment period.

3. Selection of a Combination of First-Class Airfare, Coach Airfare, and Charter Rates in the Final Rules

After considering the written comments and hearing testimony, the Commission concludes that a combination of first-class airfare, coach airfare, and charter rates presents the most workable and accurate approach to the valuation of campaign travel. Accordingly, new 11 CFR 100.93(c) reflects the basic structure of the previous 11 CFR 114.9(e)(1), with the addition of several clarifications described below.

The new rules continue to focus on travel between cities, rather than between particular airports, to account for the various geographic considerations discussed in Advisory Opinion (''AO'') 1999–13,[6] which remains in effect. One commenter recommended a supplementary approach incorporating the standard metropolitan statistical areas (''SMSAs''), a unit of population measurement administered by the Office of Management and Budget. While the Commission views the SMSA approach as overly complicated and unnecessary, it offers the following explanation of the new valuation rule for clarification.

New 11 CFR 100.93(c) provides three valuation methods that apply in different situations: (1) The lowest unrestricted and non-discounted *first-class* airfare available for the dates traveled or within seven calendar days thereof; (2) the lowest unrestricted and non-discounted *coach* airfare available for the dates traveled or within seven calendar days thereof; or (3) the charter rate for a comparable commercial airplane of sufficient size to accommodate all of the campaign travelers, including members of the news media, and security personnel, if applicable.

(i) Paragraph (c)(1)—Travel between cities served by regularly scheduled first-class commercial airline service.

New 11 CFR 100.93(c)(1) requires payment of at least the lowest unrestricted and non-discounted first-class rate for travel between two cities with regularly scheduled first-class airline service. As qualified by new paragraph 100.93(f), discussed below, the rate must be available to the general public for the dates traveled or within seven calendar days thereof. For travel between two cities that each have regularly scheduled first-class airline service, but no regularly scheduled direct flight between the two cities, the required rate is the lowest unrestricted and non-discounted first-class rate for an indirect flight with the same departure city and final destination city.

(ii) Paragraph (c)(2)—Travel between cities served by regularly scheduled coach, but not first-class, commercial airline service.

The final rules also provide a limited allowance for commercial coach service rates to reflect airline industry trends. Paragraph (c)(2) permits the use of the lower coach rate for travel between cities served by regularly scheduled coach airline service but not regularly scheduled first-class airline service. 11 CFR 100.93(c)(2). This rate is based on the previous rules governing publicly-funded presidential candidates' payments for the use of government aircraft. *See* former 11 CFR 9004.7(b)(5)(i)(B) and former 9034.7(b)(5)(i)(B). Paragraph (c)(2) also permits the use of the coach rate where the travel is between one city served by coach commercial airline service, but not first-class commercial airline service, and a second city served by coach commercial airline service, regardless of whether or not the second city is also served by first-class commercial airline service.

(iii) Paragraph (c)(3)—Travel to or from a city not served by regularly scheduled commercial airline service.

Paragraph (c)(3), like paragraph (e)(1) of current section 114.9, requires payment at the normal and usual charter rate for all other flights except certain flights on government planes (*see* discussion of paragraph (e), below.) Thus, the charter rate must be used for travel between two cities not served by regularly scheduled first-class or coach airline service, or between such a city and a different city with regularly scheduled first-class or coach commercial airline service. The charter rate must be calculated at the rate for a charter flight between the same departure and destination cities used for the actual travel. 11 CFR 100.93(c)(3). This rate must also be equivalent to the publicly available rate for a comparable commercial airplane capable of accommodating the same number of campaign travelers, including members of the news media, plus the Secret Service and other security personnel accompanying a candidate. *Id.* This rate is consistent with the previous rules governing publicly funded presidential candidates' payments for the use of government aircraft. *See* 11 CFR 9004.7(b)(5)(i)(B) and 9034.7(b)(5)(i)(B). To the extent that the candidate in Advisory Opinion 1984–48 was not required to include security personnel or news media in the calculation of the sufficient size of the comparable aircraft, that advisory opinion is hereby superseded to promote uniformity in the treatment of all candidate travel.

A ''comparable commercial airplane'' means an airplane of similar make and model as the airplane that actually makes the trip, and with the same

[6] In AO 1999–13, the Commission recognized that particular destination cities might be served by several airports in the surrounding region. In that advisory opinion, the Commission determined that an airport need not be within the corporate limits of a city in order for that city to be considered ''served by regularly scheduled commercial air service.'' The Commission further agreed that it was reasonable for the requestor to determine whether a city is served by a particular airport through reference to published sources such as an FAA directory or a corporate directory regarded at the time as the charter industry's standard reference for airports. To the extent that the advisory opinion contemplates advance payment for air travel and does not recognize that commercial coach rates may be appropriate in other situations, the opinion is superseded.

amenities as that airplane. For example, in Advisory Opinion 1984–48, the Commission interpreted a comparable airplane as being ''of the same type (*e.g.*, jet aircraft versus prop plane) and services offered (*e.g.*, plane with dining service or lavatory versus one without)'' as the plane actually used. The Commission further explained that when a candidate used a twin engine prop jet, a single engine, prop aircraft would not be a comparable aircraft. The term ''comparable commercial airplane'' is intended to require these distinctions as well as other differences such as when a plane is chartered with a crew or without, or with or without fuel.

4. Multi-Stop Travel

One commenter asked the Commission to address multi-stop travel. In response, the Commission is adding the following clarification to 11 CFR 100.93(c) in the final rule. For the purposes of § 100.93 only, the payment for campaign travel must be calculated for each leg of travel. For example: a candidate traveling entirely for the purposes of her own election (and not for a mixed-purpose trip addressed in 11 CFR 106.3) departs from a city in Maryland without any regularly scheduled commercial air service and flies to a city in Illinois that is also without any commercial airline service. After several hours at a campaign rally in the Illinois city, the candidate travels from Illinois to New York City for a campaign fundraising event before returning to Washington, DC. Because there is first class commercial airline service between New York City and Washington, DC, the proper payment for the entire trip would be the amount of the lowest unrestricted and non-discounted first-class airfare from one of the airports serving New York City to one of the airports serving Washington, DC, plus the equivalent charter rate for the flights from the city in Maryland to the city in Illinois, and from Illinois to New York City.

In addition, the Commission is adding language to paragraph (c) in the final rule to clarify payment for travel where several candidates and their entourages travel together aboard the same airplane not operated for commercial passenger service. In such cases, each campaign committee is expected to pay the same first-class rate for each of its campaign travelers or to pay its pro-rata share of the equivalent rate for chartering a comparable airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with its candidate, and security personnel, if applicable. One candidate's committee is not permitted to pay more or less than the other campaign committees with respect to each traveler on the same flight because the value each campaign traveler derives from the provision of the travel service is identical. But for the provision of the private airplane, it would presumably have been necessary for each campaign traveler to pay for a first-class or coach ticket or arrange for a charter flight to reach the same location on the same date.

5. Advance Payment Not Required

The NPRM sought comment on whether campaign travelers should be required to pay the service provider in advance for the value of travel, as they were required to do under previous 11 CFR 114.9(e)(1). Alternatives A and B proposed eliminating the previous advance payment requirement in 11 CFR 114.9(e)(1). In its place, there would be a fixed period of seven calendar days for payment after travel has begun. Under Alternative C, the Commission would have continued to require advance payment for the use of all airplanes not normally used for commercial passenger service.

The Commission recognized that the removal of the advance payment rule could be perceived as a departure from the previous approach under which corporations are prohibited from extending credit outside the ordinary course of their business. *See* 11 CFR part 116. The Commission sought comments on the potential consequences of the rule as proposed, particularly with respect to the use of an airplane owned by a corporation or labor organization where payment does not occur in advance. Several commenters argued for the inclusion of the seven-day rule as a necessary accommodation to the unavoidable constraints of campaign scheduling and last-minute changes in travel plans. One commenter insisted that the advance-payment requirement in the previous rule should be retained, asserting a potential inconsistency with 11 CFR part 116 and arguing that it would be more difficult for the campaign traveler to calculate the necessary amounts as much as the seven days after the departure date.

The Commission disagrees with this latter commenter and is permitting the seven-day post-travel window for payment because of the unique nature of campaign travel cited by the other commenters. The Commission also notes that the previous rule at 11 CFR 114.9(e)(2) had permitted payment for travel other than by airplane within a ''commercially reasonable time,'' thereby allowing for some post-travel payments. Other provisions in 11 CFR 114.9 also contemplate after-the-fact reimbursement for certain goods or services provided by corporations. For example, certain uses of a corporation's or labor organization's facilities under section 114.9(a) through (d) are permissible if reimbursed within a commercially reasonable time.

New 11 CFR 100.93(c) does not require a campaign traveler to pay in advance of travel, but it does establish a strict deadline of payment within seven calendar days of the departure of the flight. For multi-stop travel over a period of more than one day, a campaign traveler may elect to pay for separate flights at different times by calculating the separate seven-day periods for each flight departing on a different day.

The seven-day airplane travel repayment period permitted in paragraph (c) of section 100.93 is shorter than the thirty/sixty day period used for other forms of transportation (*see* discussion of 11 CFR 100.93(d), below) because the political committee has complete control over the timing of the reimbursement as all the necessary passenger information and costs will be determinable at the time the airplane departs. Thus, it will be possible for the candidate's authorized committee, or another political committee, to calculate the proper reimbursement rate for airplane travel without a billing or invoice process to cause delay. In addition, each leg of travel by airplane is very unlikely to last more than one day and can usually be calculated separately, whereas the charter or rental rate for travel on a bus tour or by other means of travel may be based on the total miles traveled or otherwise calculable only at the completion of travel, which may not conclude until several days or weeks after it begins.

6. ''Deadhead Miles'' Not Considered Separately

The NPRM requested comment regarding how, if at all, to account for the expenses associated with the positioning of the airplane, known as ''deadhead miles.'' Two commenters asserted that these costs are normally incorporated into the rates offered for commercial service, so there is no need for the Commission to address them separately. One of these commenters argued that those costs are beyond the control of the traveler. The Commission generally agrees with this reasoning and is not requiring any additional payment for these costs when campaign travelers use private airplanes. To promote uniformity between the treatment of publicly funded candidates and all

other candidates, the Commission is removing 11 CFR 9004.7(b)(5)(ii) and 9034.7(b)(5)(ii).

E. 11 CFR 100.93(d) Other Means of Transportation

For other means of travel, such as limousines, other automobiles, trains, helicopters, and buses, a political committee must pay the service provider an amount equivalent to the normal and usual fare or rental charge for a comparable commercial conveyance that is capable of accommodating the same number of campaign travelers, including members of the news media, plus security personnel, if applicable. 11 CFR 100.93(d). This rate is consistent with the previous rules governing publicly funded presidential candidates' payments for the use of government conveyances other than airplanes. *See* 11 CFR 9004.7(b)(5)(iii) and 9034.7(b)(5)(iii). A ''comparable commercial conveyance'' is one that approximates the same class and type of the conveyance actually used, with similar features and amenities. For example, when a campaign traveler uses a private bus, a ''comparable commercial conveyance'' would be a similar type of motor vehicle with similar amenities and features. As with payment for travel by airplane, the rate must be available to the general public for the dates traveled or within seven calendar days thereof. *See* new 11 CFR 100.93(f).

Just as the Commission is no longer requiring advance payment for travel by airplane, the Commission is also setting a post-travel period of time for payment for travel by means other than by airplane: thirty calendar days from the receipt of the invoice, but no more than sixty calendar days following the date the travel commenced. *See* 11 CFR 100.93(d). One commenter urged the Commission to fix the sixty-day time period from the date the travel ends, rather than when the travel commenced, to accommodate longer trips, invoice delays, and the resolution of any disputes between the campaign traveler and the service provider. The same commenter further cautioned against finding that a contribution occurs where a political committee fails to pay within the required time period if it has made a good faith effort to obtain or reasonably disputes an invoice. The Commission is cognizant of the potential tension between this thirty/sixty-day allowance and the general prohibitions on extension of credit outside the ordinary course of business. *See* 11 CFR part 116, discussed above. The Commission is permitting the limited thirty/sixty-day provision with the expectation that the invoice will be sent within the ordinary course of business and payment will be made promptly. It therefore does not agree with the commenter's suggestion that the time period should be extended indefinitely so long as the campaign traveler continues to travel. The Commission notes that a political committee need not wait until the end of the travel to submit payment for the travel service. A political committee faced with an invoice delay or involved in a payment dispute with a service provider may, in the rare instance where the matter cannot be resolved within the sixty-day period, pay an approximate amount and seek reimbursement from the service provider. A political committee also may treat the matter as a disputed debt under 11 CFR 116.10.

This fixed deadline in new 11 CFR 100.93(d) adds greater clarity and certainty than the reference in the previous 11 CFR 114.9(e)(2) to a ''commercially reasonable'' period while retaining the flexibility necessary to account for costs that cannot be calculated until the completion of travel or shortly thereafter. The sixty-day cutoff will help to ensure that the invoice will be rendered to the political committee promptly. Any extensions of credit resulting from payments not being made within the sixty-day period are considered in-kind contributions to the candidate or other political committee responsible for payment of the travel, and thus violate the Act and Commission regulations where such contributions are prohibited or excessive. As set forth in new paragraph (f), the payment rate is set at the usual and normal fare or rental charge available to the general public for the dates traveled or within seven calendar days thereof.

F. 11 CFR 100.93(e) Government Conveyances

Paragraph (e) of 11 CFR 100.93 provides the required amount of payment for travel using any means of transportation, including an airplane, that is owned or leased by the Federal government or any State or local government. The required amount of payment for travel by a campaign traveler on government airplanes is the amount of payment set forth in paragraph (c) of § 100.93: A political committee must pay the first-class, coach, or charter rate in accordance with 11 CFR 100.93(c) and (f). 11 CFR 100.93(e)(1)(ii).

Under paragraph (c), however, Air Force One and many other military airplanes would be required to use a comparable charter rate in some instances because their travel would be between military bases and not between cities served by regularly scheduled first-class commercial airline service. Because it would be difficult to find a charter airplane comparable to Air Force One and other military airplanes, new paragraph (e)(1)(i) provides a special rule for government airplanes traveling to or from a military base. When such travel occurs, the political committee may pay the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class service that is geographically closest to the military base actually used.

The required amount of payment for use of other means of travel owned or leased by a Federal, State, or local government is the amount of payment set forth in paragraph (d): The usual fare or rental charge available to the general public on the same travel date for a comparable vehicle that is capable of accommodating the same number of campaign travelers, including members of the news media, plus the Secret Service and other security personnel accompanying a candidate. A political committee paying for the use of government travel by airplane or other conveyance must also comply with the time limitations in paragraphs (c) and (d), respectively.

Note that paragraph (e), like all of section 100.93, is limited to travel in connection with a Federal election. Individuals traveling on official government business are not required to reimburse the service provider under this section. A significant portion of travel on government conveyances is paid for using funds authorized and appropriated by the Federal Government. The use of Federal funds is governed by general appropriations law and is subject to Congressional oversight. The prohibitions and limitations of the Act apply to a contribution or expenditure by a ''person,'' as defined in 2 U.S.C. 431(11) and 11 CFR 100.10. *See* FEC Interpretation of Allocation of Candidate Travel Expenses, 67 FR 5,445 (Feb. 6, 2002). The statutory definition of the term ''person'' expressly excludes the Federal Government and any authority thereof.[7] The Commission has previously concluded that the travel allocation and reporting regulations at 11 CFR 106.3(b) are not applicable to

[7] 2 U.S.C. 431(11) provides: ''The term 'person' includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.''

the extent that a candidate pays for travel expenses using funds authorized and appropriated by the Federal Government. 67 FR 5,445.

G. 11 CFR 100.93(f) Date and Public Availability of Payment Rate

Because airfares vary based on the date and time of travel, the Commission sought comments on how precisely the payment rate should correspond to the actual date of travel. For example, some airlines or charter companies may set a base rate for tickets purchased over a month in advance of the travel date that is different than the price of the same ticket when purchased on the date of travel. One commenter urged the Commission to permit the normal advance ticket price when calculating the comparable rate as required in proposed section 100.93. Another commenter indicated that a search for first-class rates with a travel agency should be sufficient, but asserted that Internet fares were ''too volatile'' to use in determining the proper rate. A different commenter argued that the phrase ''lowest unrestricted and non-discounted first-class airfare available for time traveled'' is adequately specific, so there is no need to specify ''some mandated artificial purchase time-frame, such as within seven days of the travel date.''

The final rules in section 100.93 include a new paragraph (f), which specifies that the payment amount must be an unrestricted non-discounted rate available to the general public for the dates traveled or within seven calendar days thereof.[8] New paragraph (f) applies to all of the payment rates set forth in paragraphs (c), (d) and (e) of 11 CFR 100.93. The Commission agrees that special discounted fares are inappropriate for the purposes of this rule and is therefore foreclosing reliance on ''e-savers'' and other special fares, such as non-refundable fares or fares dependent on advance purchase, that do not approximate the normal and usual ''walk-up'' charge for the travel route. Paragraph (f) specifies that the rate must be available to the general public. Candidates and other campaign travelers may not, for example, use a ''government rate'' or membership discount to establish the proper amount of payment. The rate must approximate the amount that a campaign traveler would have to pay if he or she actually scheduled an equivalent flight at an unrestricted non-discounted fare aboard a commercial airplane or, for non-airplane travel, the unrestricted non-discounted rental charge or fare for an equivalent trip aboard a comparable commercial conveyance.

In light of the comments and additional clarifications, the Commission is not prescribing a set period of time during which comparable rates must be ascertained, except that the rate must be determined by the time the payment is due.

H. 11 CFR 100.93(g) Preemption

The rates required by section 100.93 generally establish a floor, rather than a ceiling, on the amount of reimbursement payment required to avoid a contribution. With the exception of payment for campaign travel by publicly funded presidential and vice-presidential candidates and individuals traveling on their behalf, candidates and other campaign travelers may pay a higher amount than called for by section 100.93, such as when the service provider seeks a higher rate of payment for the use of the conveyance.

In some cases, there may be State or local laws governing the use of State or local government conveyances. In other cases, State or local laws may require certain officeholders or public employees to pay a higher rate for travel. State or local laws may also require payment in advance, or within a shorter period than the seven-day window permitted by 11 CFR 100.93(c) or the thirty-day window permitted under 11 CFR 100.93(d). A new paragraph (g) in the final rules therefore clarifies that applicable State or local laws are preempted to the extent that they purport to supplant the rates or timing requirements of 11 CFR 100.93. State or local officeholders may choose to comply with State or local laws requiring higher payment rates or more stringent requirements on the time of payment, but they cannot be *required* to comply with those laws.

I. 11 CFR 100.93(h) Reporting

The NPRM proposed requiring political committees to report the value of unreimbursed travel by campaign travelers as well as the actual date of travel. Two commenters opposed the proposed reporting requirements, arguing that they would impose unnecessary burdens and questioning whether significant violations could be exposed using the additional information reported. One of these commenters asserted that ''[s]omeone intent on violating the law simply would not report the travel.'' Another commenter argued that the proposed reporting requirements would go further than existing requirements, and would exceed the scope of 2 U.S.C. 434(b)(5) if it required specific dates of travel. This commenter stated that there is currently no requirement that an authorized committee must disclose the date of a fundraiser, the range of dates that a poll was taken, or the date of a mailing. Another commenter expressed a concern that the report of campaign travel payment might disclose sensitive campaign information. In contrast, a different commenter supported the proposed approach, stating that ''candidate committees always are, or ought to be, aware of receiving transportation from third parties.''

The Commission disagrees with the commenters who characterize the reporting requirements as overly burdensome and of minimal value. No reports other than regularly scheduled committee disclosure reports are required. Moreover, the disbursement by the political committee for the travel payment must already be reported, along with its purpose, like all other disbursements, under 11 CFR 104.1 and 104.3(b)(3) or (4). The Commission views the reporting of the date of travel to be entirely consistent with the disclosure purposes of the Act. It seems unlikely that reporting the date of travel would force the disclosure of sensitive campaign information, particularly in light of the fact that the payment and reporting of such payment will occur after the travel has been completed in most cases and in light of the fact that many campaign events are covered by the news media. For these reasons, the Commission is adopting the final rules on reporting that generally follow the proposed rules.

Paragraph (h)(1) of 11 CFR 100.93 refers the reader to the existing reporting requirements for the receipt of an in-kind contribution. Under 11 CFR 104.13, a candidate's authorized committee and other political committees must report the amount of unreimbursed value for travel services as both the receipt of a contribution from the service provider and an expenditure by the political committee.

In addition, the political committee on whose behalf the travel was undertaken must report the travel dates on the report disclosing the reimbursement for the travel service. Under new paragraph (h)(2) of section 100.93, the political committee must report the actual date of travel in the ''purpose of disbursement'' field corresponding to the disbursement.

J. 11 CFR 100.93(i) Recordkeeping

Presidential and vice-presidential candidates receiving public funds have

[8] The seven-day period is permitted to account for cities that may have commercial airline service on certain days of the week, but no commercial service on other days.

been required to maintain records documenting the rates used in calculating their travel reimbursements. *See* former 11 CFR 9004.7(b)(5)(v) and former 9034.7(b)(5)(v). To standardize the treatment of campaign travel, the Commission in the NPRM proposed extending these recordkeeping requirements to all candidates and moving them to new 11 CFR 100.93(i). Of the two commenters addressing this subject, one opposed it as a burden unwarranted by evidence of widespread abuse. The other commenter expressed support for the proposed recordkeeping requirements.

The final rules implement the recordkeeping requirements proposed in the NPRM and incorporate several other documentation requirements from 11 CFR 9004.7(b)(5)(v) and 9034.7(b)(5)(v) to standardize recordkeeping for candidate travel, to ensure accuracy in reporting, and to enhance the disclosure of disbursements for travel. These recordkeeping provisions have worked well, in practice, for presidential committees. Most of this information must be acquired regardless of any recordkeeping duty so that the campaign traveler can ensure that the political committee is paying the appropriate amount to the service provider. In addition, the final rules require that the political committee document the tail number of the airplane actually used. For military airplanes without tail numbers, some other unique identifier for that airplane will suffice. This documentation is needed to ensure accurate reporting and disclosure in light of the broadened scope of the new rules and the importance of the operating license of each aircraft.

The recordkeeping requirements for airplanes in the final rules vary slightly depending on whether the rate of payment is based on 11 CFR 100.93(c)(1) or (2) (*i.e.*, whether the actual travel was between two cities served by regularly scheduled first-class commercial airline service or not.) For travel paid for under paragraph (c)(1) or (c)(2), the political committee must maintain a record of the name of the service provider, the tail number of the airplane used, an itinerary for the trip that lists the total numbers of passengers and specifies the campaign travelers, and the information on which the first-class payment is based. 11 CFR 100.93(i)(1). For travel on a government aircraft to or from a military base (see 11 CFR 100.93(e)(1)(i)), the payment rate is also tied to the first-class rate between two cities served by regularly scheduled first-class commercial airline service so the recordkeeping requirements are the same as for travel paid for under paragraph (c)(1). 11 CFR 100.93(i)(1).

For all other travel by airplane, payment is based on a charter or rental rate for a comparable charter airplane, so a record of the size, model, and make of the airplane used must be maintained in addition to the other information described above. 11 CFR 100.93(i)(2)(i). The itinerary for the trip must lists the total numbers of passengers and specify the number of security personnel as well as campaign travelers. 11 CFR 100.93(i)(2)(ii). The political committee must document the rate for a comparable charter airplane by listing the name of the company offering that service to the public and the dates of the comparison rates. 11 CFR 100.93(i)(2)(iii). For travel other than by airplane, payment is based on a charter or rental rate for a comparable conveyance, so a record of the size, model, and make of the conveyance used must be maintained in addition to the other itinerary and service provider information described above. 11 CFR 100.93(i)(3).

II. 11 CFR 106.3 Allocation of Expenses Between Campaign and Non-Campaign Related Travel

The final rules make only one change to 11 CFR 106.3. Candidates who use government conveyance or accommodations for campaign-related travel are currently required to report an expenditure in the amount equivalent to the ''rate for comparable commercial conveyance or accommodation.'' 11 CFR 106.3(e). To eliminate disparities between campaign-related travel on private planes and travel on government planes, the Commission is revising 11 CFR 106.3 by replacing the reference to the ''rate of comparable commercial conveyance'' with a reference to the applicable rates for travel reimbursement set forth in 11 CFR 100.93(c),(d) and (e). Both the reimbursement rates and the payment due dates in 11 CFR 100.93 would be applicable to travel by airplane and other means of travel, whether owned by an individual, corporation, labor organization, partnership, the Federal government, a State government, or any other person. The Commission sought comment on this approach in the NPRM, but received none.

III. 11 CFR 114.9 Use of Corporate or Labor Organization Facilities

Previously, paragraph (e) of section 114.9 established the proper reimbursement rate for a candidate's use of a means of travel owned or leased by corporations or labor organizations. The Commission recognized in the NPRM that in most cases the means of travel used for campaign trips is likely to be owned or leased by a corporation or labor organization, but not in all cases. Individuals or partnerships own some airplanes and other means of travel. To accommodate more uniform and comprehensive travel reimbursement rules, the Commission proposed replacing 11 CFR 114.9(e) with new section 11 CFR 100.93. Both of the commenters who addressed this issue expressed support for the broadened scope and new location of the rule.

For the reasons explained above, the Commission is removing and reserving paragraph (e) of section 114.9. The subject matter previously addressed in 11 CFR 114.9(e) is addressed in new 11 CFR 100.93. In addition, the heading of section 114.9, previously ''Use of corporate and labor organization facilities and means of transportation,'' is revised to remove the reference to means of transportation because the rules governing corporate and labor organization means of transportation are now located in 11 CFR 100.93.

IV. 11 CFR 9004.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

As described below, the Commission is replacing the separate reimbursement rates for general election campaign travel by presidential and vice-presidential candidates with a reference to the rates required by new 11 CFR 100.93. A technical revision to 11 CFR 9004.6(b)(2) is necessary to conform the previous reference to paragraph (C) of 9004.7(b)(5)(i), which is removed.

V. 11 CFR 9004.7 Allocation of Travel Expenditures

The regulations at 11 CFR 9004.7(b) govern travel on government conveyances by general election presidential and vice-presidential candidates receiving federal funding. This rule requires the presidential or vice-presidential candidate to pay the appropriate government entity at one of several specified rates. These rates are established in largely the same manner as the reimbursement rates set forth in the previous 11 CFR 114.9(e).

In the NPRM, the Commission proposed revising 11 CFR 9004.7(b)(5)(i) and (b)(8) to replace the parallel rate determinations in this rule with a reference to the reimbursement rates set forth in 11 CFR 100.93. The Commission did not receive any comments on this proposal.

In the final rules, § 9004.7(b)(5)(i) provides that the reimbursement rates in 11 CFR 100.93 serve as the applicable

valuation of travel by presidential and vice-presidential candidates aboard government conveyances. The final rules therefore do not include previous paragraphs (A), (B), and (C) of 11 CFR 9004.7(b)(5)(i), which had set out the proper valuation rates for the use of a government airplane for campaign-related travel. For the reasons stated in the above discussion of ''deadhead miles'' in the Explanation and Justification for 11 CFR 100.93, the Commission is also removing and reserving 9004.7(b)(5)(ii). The final rules also include a technical revision to 11 CFR 9004.7(b)(5)(iii) to replace the specified rate for use of a government conveyance with a reference to the rate in 11 CFR 100.93(d). In addition, the recordkeeping provisions of former 11 CFR 9004.7(b)(5)(v) are being moved to new 11 CFR 100.93(i) and cross references to the latter section are being added in paragraph (b)(5)(v) of section 9004.7.

The NPRM proposed minor changes to the wording in paragraphs (b)(5)(i) through (iv) in sections 9004.7 and 9034.7 to set the required reimbursement rate as a floor, not a ceiling on how much the candidate may reimburse, in order to permit a candidate to pay at a higher rate. Such a ceiling is necessary, however, to ensure the conservation of public funds. The final rules therefore do not include these proposed changes. However, the cross reference to new 11 CFR 100.93 in 11 CFR 9004.7(b)(8) does include a revision specifying that section 100.93 governs airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR part 121, 129, or 135, and government conveyances, thereby mirroring the revision to the scope of section 100.93.

VI. 11 CFR 9034.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

As with the changes to 11 CFR 9004.7, the Commission is replacing in 11 CFR 9034.7 the separate reimbursement rates for primary election campaign travel by presidential candidates with a reference to the rates required by new 11 CFR 100.93. A conforming revision to 11 CFR 9034.6(b)(2) is therefore necessary to replace the previous reference to paragraph (C) of section 9034.7(b)(5)(i), which is removed.

VII. 11 CFR 9034.7 Allocation of Travel Expenditures

The regulations at 11 CFR 9034.7(b) are substantively identical to the regulations at 11 CFR 9007.4(b), except that section 9034.7 governs travel on government conveyance by *primary* election presidential candidates receiving public funds. The changes being made to 11 CFR 9034.7(b) follow the changes made to 11 CFR 9004.7(b) for the reasons stated above in the explanation and justification for that section.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these final rules, which impose obligations only on Federal candidates, their campaign committees, other individuals traveling in connection with a Federal election, and the political committees on whose behalf this travel is conducted. Federal candidates, their campaign committees, and most other political party committees and other political committees entitled to rely on these rules are not small entities. These rules generally relieve existing restrictions on the timing of reimbursement for certain travel and are largely intended to simplify the process of determining reimbursement rates. The rules do not impose compliance costs on any service providers (as defined in the rules) that are small entities so as to cause a significant economic impact. With respect to the determination of the amount of reimbursement for travel, the new rules merely reflect an extension of existing similar rules. To the extent that operators of air-taxi services or on-demand air charter services are small entities indirectly impacted by these rules, any economic effects would result from the travel choices of individual candidates or other travelers rather than Commission requirements and, in any event, are likely to be less than $100,000,000 per year.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

11 CFR Part 114

Business and industry, elections, labor.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending subchapters A, E, and F of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. Section 100.93 is added to subpart C of part 100 to read as follows:

§ 100.93 Travel by airplane or other means of transportation.

(a) *Scope and definitions.*

(1) This section applies to all campaign travelers who use:

(i) An airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR part 121, 129, or 135;

(ii) Other means of transportation not operated for commercial passenger service; or

(iii) An airplane or other means of transportation operated by a Federal, State, or local government.

(2) Campaign travelers who use an airplane that is licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR part 121, 129, or 135, or other means of transportation that is operated for commercial passenger service, such as a commercial airline flight, charter flight, taxi, or an automobile provided by a rental company, are governed by 11 CFR 100.52(a) and (d), not this section.

(3) For the purposes of this section:

(i) *Campaign traveler* means

(A) Any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee; or

(B) Any member of the news media traveling with a candidate.

(ii) *Service provider* means the owner of an airplane or other conveyance, or a person who leases an airplane or other conveyance from the owner or otherwise obtains a legal right to the use of an airplane or other conveyance, and who uses the airplane or other conveyance to provide transportation to a campaign traveler. For a jointly owned or leased airplane or other conveyance, the service provider is the person who makes the airplane or other conveyance available to the campaign traveler.

(iii) *Unreimbursed value* means the difference between the value of the transportation service provided, as set

forth in this section, and the amount of payment for that transportation service by the political committee or campaign traveler to the service provider within the time limits set forth in this section.

(b) *General rule.*

(1) No contribution is made by a service provider to a candidate or political committee if:

(i) Every candidate's authorized committee or other political committee on behalf of which the travel is conducted pays the service provider, within the required time, for the full value of the transportation, as determined in accordance with paragraphs (c), (d) or (e) of this section, provided to all campaign travelers who are traveling on behalf of that candidate or political committee; or

(ii) Every campaign traveler for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of the transportation provided to that campaign traveler as determined in accordance with paragraphs (c), (d) or (e) of this section. *See* 11 CFR 100.79 and 100.139 for treatment of certain unreimbursed transportation expenses incurred by individuals traveling on behalf of candidates, authorized committees, and political committees of political parties; and

(iii) Every member of the news media traveling with a candidate for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of his or her transportation as determined in accordance with paragraphs (c), (d) or (e) of this section.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler, as determined in accordance with paragraphs (c), (d) or (e) of this section, is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled.

(c) *Travel by airplane.* If a campaign traveler uses an airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider, no later than seven (7) calendar days after the date the flight began, for each such campaign traveler no less than the following amount for each leg of the trip:

(1) In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class airfare;

(2) In the case of travel between a city served by regularly scheduled coach commercial airline service, but not regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and non-discounted coach airfare; or

(3) In the case of travel to or from a city not served by regularly scheduled commercial airline service, the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(d) *Other means of transportation.* If a campaign traveler uses any other means of transportation, including an automobile, train, or helicopter, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider within thirty (30) calendar days after the date of receipt of the invoice for such travel, but not later than sixty (60) calendar days after the date the travel began, at the normal and usual fare or rental charge for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(e) *Government conveyances.*

(1) If a campaign traveler uses an airplane that is provided by the Federal government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the governmental entity:

(i) For travel to or from a military airbase or other location not accessible to the general public, the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class commercial airline service that is geographically closest to the military airbase or other location actually used; or

(ii) For all other travel, in accordance with paragraph (c) of this section.

(2) If a campaign traveler uses a conveyance, other than an airplane, that is provided by the Federal Government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the government entity in accordance with paragraph (d) of this section.

(f) *Date and public availability of payment rate.* For purposes of paragraphs (c), (d) and (e) of this section, the payment rate must be the rate available to the general public for the dates traveled or within seven (7) calendar days thereof. The payment rate must be determined by the time the payment is due under paragraph (c) or (d) of this section.

(g) *Preemption.* In all respects, State or local laws are preempted with respect to travel in connection with a Federal election to the extent they purport to supplant the rates or timing requirements of 11 CFR 100.93.

(h) *Reporting.*

(1) In accordance with 11 CFR 104.13, a political committee on whose behalf the unreimbursed travel is conducted must report the receipt of an in-kind contribution and the making of an expenditure under paragraph (b)(2) of this section.

(2) When reporting a disbursement for travel services in accordance with this section, a political committee on whose behalf the travel is conducted must report the actual dates of travel for which the disbursement is made in the ''purpose of disbursement'' field.

(i) *Recordkeeping.*

(1) For travel by airplane between cities served by regularly scheduled first-class or coach commercial airline service, or for travel to or from a military base on a government airplane, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and tail number (or other unique identifier for military airplanes) of the airplane used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers; and

(iii) The lowest unrestricted non-discounted airfare available in accordance with paragraphs (c), (e) and (f) of this section, including the airline offering that fare, flight number, travel service, if any, providing that fare, and the dates on which the rates are based.

(2) For travel by airplane to or from a city not served by regularly scheduled commercial airline service, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model, make and tail number (or other unique identifier for military airplanes) of the airplane used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The rate for the comparable charter airplane available in accordance with paragraph (c), (e) and (f) of this section, including the airline, charter or air taxi operator, and travel service, if any, offering that fare to the public, and the dates on which the rates are based.

(3) For travel by other conveyances, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model and make of the conveyance used;

(ii) An itinerary showing the departure and destination locations and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The commercial fare or rental charge available in accordance with paragraph (d) and (f) of this section for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers including members of the news media traveling with a candidate, and security personnel, if applicable.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 4. Section 106.3 is amended by revising paragraph (e) to read as follows:

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

* * * * *

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government accommodations for travel that is campaign-related is the rate for comparable accommodations. The reportable expenditure for a candidate who uses a government conveyance for travel that is campaign-related is the applicable rate for a comparable commercial conveyance set forth in 11 CFR 100.93(e). In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 5. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

■ 6. Section 114.9 is amended by revising the section title and removing and reserving paragraph (e) to read as follows:

§ 114.9 Use of corporate or labor organization facilities.

* * * * *

(e) [Reserved]

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 7. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

■ 8. Section 9004.6 is amended by revising paragraph (b)(2) to read as follows:

§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.

* * * * *

(b) * * *

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9004.7(b)(5)(i), the total number of individuals shall not include national security staff.

* * * * *

■ 9. Section 9004.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9004.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5)(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the applicable rate set forth in 11 CFR 100.93(e).

(ii) [Reserved]

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted airfare as required by 11 CFR 100.93(i)(1) or (2) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3) in addition to any other documentation required in this section.

* * * * *

(8) Travel on airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, government conveyances, and other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

PART 9034—ENTITLEMENTS

■ 10. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

■ 11. Section 9034.6 is amended by revising paragraph (b)(2) to read as follows:

§ 9034.6 Expenditures for transportation and services made available to media personnel; reimbursements.

* * * * *

(b) * * *

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of

individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 100.93 and 9034.7(b)(5)(i), the total number of individuals shall not include national security staff.

* * * * *

■ 12. Section 9034.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9034.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5) (i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(e).

(ii) [Reserved]

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted airfare as required by 11 CFR 100.93(i)(1) or (2) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3) in addition to any other documentation required in this section.

* * * * *

(8) Travel on airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, government conveyances, and other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: December 10, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–30872 Filed 12–12–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–15–AD; Amendment 39–13384; AD 2003–25–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, C1, L, L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters with a Breeze 300-pound electric hoist (hoist) installed that requires modifying and re-identifying the hoist operator control unit and replacing certain fuses. This amendment is prompted by a test of a hoist that revealed an anomaly in the electrical control circuit. The actions specified by this AD are intended to prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter.

DATES: Effective January 20, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on August 22, 2003 (68 FR 50731). That action proposed to require, within 100 hours time-in-service (TIS) or 2 months, whichever comes first, modifying and re-identifying the hoist operator control unit and replacing certain fuses.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332C, C1, L, L1, Model AS350B, BA, BB, B1, B2, B3 and D, and Model AS355E, F, F1, F2 and N helicopters. The DGAC advises of the discovery of a case of failure of a rescue hoist emergency release control system to operate due to an anomaly in the electrical control circuit.

Eurocopter has issued Alert Service Bulletin (ASB) No. 25.00.71, for Model AS355E, F, F1, F2, and N helicopters; and ASB No. 25.00.79, for Model AS350B, BA, BB, B1, B2, B3, and D helicopters. Both ASBs are dated November 12, 2002, and specify embodiment of MOD 07 3190 on helicopters equipped with the fixed parts for the hoist. MOD 07 3190 consists of (1) eliminating resistor 27M in the hoist operator's control unit 26M and (2) replacing the 25A quick-response fuses on the Honeywell unit at 31 alpha or 21 delta for the Model AS350 or on the distribution panel 10 alpha for the Model 355 helicopters. Eurocopter has also issued Alert Service Bulletin No. 25.01.18, dated November 12, 2002, for Model AS332C, C1, L, and L1 helicopters. Modification 332PCS 78 288 consists of eliminating resistor 81M in hoist box 91M and re-identifying the hoist box as 332P67–2894–01, –02, –03, or –04, depending on which electrical wiring assembly is installed in the helicopter. The DGAC has classified these ASBs as mandatory and issued AD 2002–585(A) and AD 2002–584(A), both dated November 27, 2002, to ensure the continued airworthiness of these helicopters in France.

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

public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 58 helicopters of U.S. registry (50 Model AS350 helicopters and 8 Model AS355 helicopters, and no Model AS332 helicopters) and the required actions will take approximately 3.5 work hours per helicopter to accomplish at an average labor rate of $60 per work hour. Required parts will cost approximately $10 for a time-delay fuse for Model AS350 series helicopters, or $20 for two time-delay fuses for Model AS355 series helicopters. Based on these figures, we estimate the total cost impact of the AD on U.S. operators will be $12,840 to modify each hoist in the entire fleet.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–25–01 Eurocopter France: Amendment 39–13384. Docket No. 2003–SW–15–AD.

Applicability: Model AS332C, C1, L, and L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N helicopters with a Breeze 300-pound electric hoist (hoist) and hoist operator control unit 26M, part number (P/N) 350A63–1136–00 or 350A63–1136–01, and hoist electric box 91M, P/N 332A67–2875–00, installed, certificated in any category.

Compliance: Required within 100 hours time-in-service or within 2 months, whichever occurs first, unless accomplished previously.

To prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify and re-identify the hoist operator control unit; replace the fuses; and functionally test the hoist operation and the emergency jettison controls in accordance with the Accomplishment Instructions, paragraph 2B, Operational Procedure, of Eurocopter Alert Service Bulletin (ASB) No. 25.00.71 for Model AS355E, F, F1, F2, and N helicopters; ASB No. 25.00.79 for Model AS350B, BA, B1, B2, B3, and D helicopters; and ASB No. 25.01.18 for Model AS332 C, C1, L, and L1 helicopters, all dated November 12, 2002, as applicable.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) The actions required by this AD shall be done using Eurocopter Alert Service Bulletin (ASB) No. 25.00.71 for Model AS355E, F, F1, F2, and N helicopters; ASB No. 25.00.79 for Model AS350B, BA, B1, B2, B3, and D helicopters; and ASB No. 25.01.18 for Model AS332 C, C1, L, and L1 helicopters, all dated November 12, 2002. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on January 20, 2004.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–584(A) and AD 2002–585(A), both dated November 27, 2002.

Issued in Fort Worth, Texas, on December 4, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–30688 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16075; Airspace Docket No. 03–AAL–18]

Establishment of Class E Airspace; Mentasta Lake/Mountains Area, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace in the Mentasta Lake/Mountains Area, AK. A need was identified to operate via Instrument Flight Rules (IFR) from Tok, AK off-airways, to/from Anchorage, AK. Class E airspace did not exist below 14,500 feet in the Mentasta Lake/Mountains Area, AK to allow Anchorage ARTCC to provide IFR enroute services. This rule results in new Class E airspace upward from 1,200 feet (ft.) above the surface in the Mentasta Lake/Mountains Area, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, September 22, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 1,200ft. above the surface in the Mentasta Lake/Mountains Area, AK (68 FR 55013). A commercial flight operator (part 135) identified a need for more direct routings to/from Tok, AK. The action establishes Class E airspace sufficient to contain aircraft proceeding to and from Tok, AK direct to join the Federal airways in the vicinity of Gulkana, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been

received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6006 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Mentasta Lake/Mountains Area, Alaska. This additional Class E airspace was created to accommodate aircraft operating (IFR) from Tok, AK off-airways, to/from Anchorage, AK and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations in the Mentasta Lake/Mountains Area, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6006 Class E airspace extending upward from 1,200 feet or more above the surface of the earth.

* * * * *

AAL AK E6 Mentasta Lake/Mountains Area, AK [New]

That airspace extending upward from 1,200 feet bounded on the north by V–444, on the south by G–8 and on the west by V–515, excluding the Fairbanks Class E Airspace and that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on December 3, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–30907 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16083; Airspace Docket No. 03–AAL–19]

Establishment of Class E Airspace; Manokotak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action establishes Class E airspace at Manokotak, AK to provide adequate controlled airspace to contain aircraft executing a new Standard Instrument Approach Procedure (SIAP) and a Textual Departure Procedure. This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Manokotak, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, September 22, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700ft. above the surface at Manokotak, AK (68 FR 55012). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing a new SIAP for the Manokotak/New Airport. The new approach is Area Navigation-Global Positioning System (RNAV GPS) A, original. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.2 mile radius of the Manokotak/New Airport is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Manokotak, Alaska. This additional Class E airspace was created to accommodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Manokotak/New Airport, Manokotak, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Manokotak, AK [New]

Manokotak/New Airport, AK
(Lat. 58°59′25″ N., long. 159°03′00″ W.)
That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Manokotak/New Airport.

* * * * *

Issued in Anchorage, AK, on December 3, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–30908 Filed 12–12–03; 8:45 am

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16503; Airspace Docket No. 03–ACE–87]

Modification of Class E Airspace; Winterset, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Wednesday, December 3, 2003, (68 FR 67590) [FR Doc. 03–30013]. It corrects an error in the Winterset-Madison County Airport airport reference point used in the Winterset, IA Class E airspace area legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–30013, published on Wednesday, December 3, 2003, (68 FR 67590) modified Class E airspace at Winterset, IA. The modification enlarged the controlled airspace area around Winterset-Madison County Airport to provide proper protection for diverse departures and to bring the Winterset, IA Class E airspace area legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the Winterset-Madison County Airport airport reference point used in the legal description was published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Winterset, IA Class E airspace, as published in the **Federal Register** on Wednesday, December 3, 2003, (68 FR 67590) [FR Doc. 03–30013] is corrected as follows:

§ 71.1 [Corrected]

■ On page 67591, Column 3, paragraph headed ''ACE IA E5 Winterset, IA,'' second line, change ''long.92°01′16'' to read ''long.94°01′16.''

Issued in Kansas City, MO, on December 4, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30910 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000]

Standardization of Generator Interconnection Agreements and Procedures; Notice of Extension of Time

September 26, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule: notice of extension of time.

SUMMARY: On July 24, 2003, the Commission issued a final rule (Order No. 2003) addressing the standardization of generator interconnection agreements and procedures (68 FR 49846, August 19, 2003). The date for complying with the extensive filing requirements of Commission's Order No. 2003 is being extended at the request of various regional transmission organizations and independent system operators.

DATES: Compliance filing deadline: January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

SUPPLEMENTARY INFORMATION:

Notice of Extension of Time

September 26, 2003.

On September 9, 12, 16, 22, and September 24, 2003, respective Motions for an Extension of Time to comply with Commission Order No. 2003 were filed in the above-captioned proceeding on behalf of the Midwest Independent Transmission System Operator, Inc., the New York Independent System Operator, Inc., PJM Interconnection, L.L.C., the New England Power Pool Participants Committee and ISO New England, Inc., the New England Transmission Owners, the California Independent System Operator Corporation and its Jurisdictional Participating Transmission Owners and

the New York Transmission Owners (Movants). The motions state that additional time is needed for Regional Transmission Organization and Independent System Operators to review the extensive filing requirements of Order No. 2003, to pursue discussions with stakeholders and various working groups, to study potential regional variances related to the Final Rule and to address time-consuming implementation issues. On September 16, 2003, Arizona Public Service Company and American Transmission L.L.C. filed answers in support of MISO's September 9th filing in this docket.

Upon consideration, notice is hereby given that Regional Transmission Organizations and Independent System Operators are granted an extension of time to comply with Commission Order No. 2003 until the close of business on January 20, 2004, as requested by the Movants.

Magalie R. Salas,

Secretary.

[FR Doc. 03–30933 Filed 12–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 89

[Public Notice 4556]

RIN 1400–AA34

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: In accordance with the Immigration and Nationality Act of 1952, as amended, the Department of State is updating the list of countries in which performance of one or more specified activities of longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country.

EFFECTIVE DATE: This rule is effective January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen M. Miller, Office of Transportation Policy (EB/TRA/OTP/MA), Room 5828, Department of State, Washington DC 20851–5816, who may be reached at (202) 647–9992.

SUPPLEMENTARY INFORMATION: Section 258 of the Immigration and Nationality Act of 1952 (the ''Act''), 8 U.S.C. 1288, as added by the Immigration Act of 1990, Pub. L. No. 101–649, and subsequently amended, has the effect that alien crewmen may not perform longshore work in the United States. Longshore work is defined to include ''any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.'' The Act goes on, however, to define a number of exceptions to the general prohibition on such work.

Among certain other exceptions, section 258(e), entitled the ''Reciprocity exception,'' allows the performance of activities constituting longshore work by alien crewmen aboard vessels flagged and owned in countries where such activities are permitted by crews aboard U.S. ships. The Secretary of State (hereinafter, ''the Secretary'') is directed to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The Attorney General will use the list to determine whether to permit an alien crewmember to perform an activity constituting longshore work in the United States or its coastal waters, in accordance with the conditions set forth in the Act.

The Department bases the list on reports from U.S. diplomatic posts abroad and submissions from interested parties in response to the notice-and-comment process. On the basis of this information, the Department is hereby issuing an amended list. The list includes 24 countries not previously listed: Albania, Antigua, Barbados, Brunei, Chile, Cook Islands, Grenada, Kazakhstan, Latvia, Lebanon, Macau, Namibia, Nigeria, Oman, Russia, St. Christopher and Nevis, Singapore, Sudan, Syria, Tonga, Turkey, Tuvalu, United Arab Emirates and Vietnam. Two countries were dropped from the list because the most recent information indicates that they do not restrict longshore activities by crewmembers of U.S. vessels: Estonia and Micronesia.

On February 12, 2002, the Department published for comments a Notice of Proposed Rulemaking (67 FR 6447) updating the list of countries ineligible for the reciprocity exception. The comment period closed on March 12, 2002. In response, the Department received one comment from the Lake Carriers' Association (''Association''). Writing as the representative of 12 U.S. corporations operating 58 U.S.-flag vessels on the Great Lakes, the Association confirmed that the crews of its members' vessels do perform certain longshore activities in Canadian ports, including operation of self-unloading equipment, line handling, opening and closing of cargo hold hatches, and shifting the vessel under the loading rigs. The Association believes that it is proper for the Department to continue granting Canada a reciprocity exception and to allow crewmembers on Canadian-flag vessels to perform those duties in U.S. Great Lakes ports.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule after it was published as a proposed rule on February 12, 2002 in public notice 3843 (*see* **SUPPLEMENTARY INFORMATION**).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates 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 million 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 (2 U.S.C. 1531–1538).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100 million 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 import markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency and they are significant regulatory actions.

The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

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 the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore work.

■ For the reasons set out in the preamble, 22 CFR chapter I is amended as follows:

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

■ 1. The authority for part 89 continues to read as follows:

Authority: 8 U.S.C. 1288, Public Law 101–649, Stat.4878.

■ 2. Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on Longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Albania

(a) Cargo loading and discharge.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Algeria

(a) All longshore activities.
(b) Exception: Opening and closing of hatches.

Angola

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Loading and discharge of cargo on board the ship if local labor is paid as if had done the work.

Antigua

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Argentina

(a) All longshore activities.
(b) Exceptions: activities on board ship.

Australia (including Norfolk and Christmas Islands)

(a) All longshore activities.
(b) Exceptions:
(1) When shore labor cannot be obtained at rates prescribed by collective bargaining agreements,
(2) Operation of cargo-related equipment and opening and closing of hatches in small ports where there is insufficient shore labor, and
(3) Rigging of ship's gear.

Bahamas

(a) Longshore activities on the pier.

Bangladesh

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the vessel when there is a shortage of port workers able to operate the equipment and with the permission of the port authority, and
(2) Opening and closing of hatches.

Barbados

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo of less than 10 tons.

Belgium

(a) All longshore activities.
(b) Exception: Rigging of ship's gear.

Belize

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Benin

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Bermuda

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brazil

(a) Cargo handling,
(b) Operation of cargo-related equipment,
(c) Watchmen,
(d) Handling of mooring lines on the pier, and
(e) Other longshore activities on the pier.
(f) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Brunei

(a) All longshore activities.
(b) Exceptions: Longshore activities on board ship.

Bulgaria

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Mooring and line handling on board ship, and
(3) Loading and discharge of supplies for the crew's own needs, spare parts for small repairs and other non-commercial longshore activities.

Burma

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Cameroon

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Canada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized self-loading/unloading log carriers on the Pacific Coast,
(2) Operation of self-loading/unloading equipment and line handling by the crews of bulk vessels calling at private terminals,
(3) Opening and closing of hatches,
(4) Cleaning of holds and tanks,
(5) Loading of ship's stores,
(6) Operation of onboard rented equipment,
(7) Ballasting and deballasting, and

(8) Rigging of ship's gear.
(c) Exceptions in connection with bulk cargo at Great Lakes ports only:
(1) Handling of mooring lines on the pier when the vessel is made fast or let go,
(2) Moving the vessel to place it under shoreside loading and unloading equipment,
(3) Moving the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems, and
(4) Operation of cargo related equipment integral to the vessel.

Cape Verde

(a) All longshore activities.

Chile

(a) Longshore activities on shore.
(b) Transfer of cargo to or from ship.

China

(a) Longshore activities on shore.

Colombia

(a) All longshore activities.
(b) Exceptions: When local workers are unable or unavailable to provide longshore services.

Comoros

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment, and
(2) Opening and closing of hatches.

Congo, Democratic Republic of

(a) All longshore activities.
(b) Exception: Operation of cargo-related equipment, when authorized by the Port Authority.

Cook Islands

(a) Longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Costa Rica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches and
(3) Rigging of ship's gear.

Cote d'Ivoire

(a) All longshore activities.

Croatia

(a) All longshore activities.

Cyprus

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Djibouti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Dominica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Dominican Republic

(a) Local longshore workers get paid if crewmembers operate loading and unloading equipment.

Ecuador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear,

Egypt

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the ship except to load and discharge cargo,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Handling of mooring lines on the ship.

El Salvador

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment belonging to the vessel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Special operations requiring special expertise, provided that local port workers are paid.

Eritrea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Longshore activities for LASH vessels.

Fiji

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Operation of computerized off-loading equipment when local expertise is not available.

Finland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

France (including the French Antilles, French Guiana, French Polynesia, Mayotte, New Caledonia, Reunion, St. Pierre and Miquelon and Wallis and Fortuna)

(a) All longshore activities.
(b) Exceptions:
(1) Loading and discharge of the ship's own material and provisions if done by the ship's own equipment or by the owner of the merchandise using his own personnel,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Operation of cargo-related equipment to shift cargo internally,
(5) Handling operations connected with shipbuilding and refitting, and
(6) Offloading fish by the crew or personnel for the shipowner.

Gabon

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Gambia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear,

Georgia

(a) All longshore activities.
(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Germany

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Ghana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,

(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Greece

(a) Operation of shore-based equipment to load/unload a vessel.

Grenada

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guatemala

(a) All longshore activities.
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Other activities with the prior approval of the port authority.

Guyana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship except to load or discharge cargo,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Haiti

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Honduras

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Hong Kong

(a) Operation of equipment on the pier.

Iceland

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Longshore activities in smaller harbors where there are no local port workers.

India

(a) All longshore activities.
(b) Exception: Operation of shipboard equipment that local port workers cannot operate.

Indonesia

(a) All longshore activities.
(b) Exceptions:
(1) With the permission of the port administrator, when no local port workers with requisite skills are available, and
(2) In the event of an emergency.

Ireland

(a) All longshore activities on pier or on land at port.

Israel

(a) All longshore activities.
(b) Exceptions, other than for loading or discharging cargoes to and from the pier:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Italy

(a) All longshore activities.
(b) Exceptions: Cargo loading, discharge, and transfer upon presentation of the following information:
(1) Documentation listing the vessel's mechanical apparatus for cargo handling,
(2) A list of crewmembers who will perform the longshore activities,
(3) An insurance policy guaranteeing recovery for damages to persons or property in relation to the longshore activities.

Jamaica

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of unusual hatches,
(2) Rigging of unusual ship's gear, and
(3) Longshore activities on foreign government vessels or ships engaged on a community development or humanitarian project.

Japan

(a) All longshore activities.

Jordan

(a) All longshore activities.

Kazakhstan

(a) All longshore activities.

Kenya

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear,
(3) In an emergency declared by the port authority, and
(4) Direct transfer of cargo from one ship to another.

Korea

(a) All longshore activities.
(b) Exceptions, when done in relation to ship safety, ship operation, or supervisory work to ensure that stevedoring is done correctly:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Kuwait

(a) Longshore activities on shore.

Latvia

(a) All longshore activities.
(b) Exceptions: activities on board the vessel.

Lebanon

(a) Longshore activities on shore.

Liberia

(a) Longshore activities on shore.

Lithuania

(a) All longshore activities.

Macau

(a) Longshore activities on the pier.

Madagascar

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Malaysia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of hazardous materials.

Maldive Islands

(a) All longshore activities on shore.

Malta

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Mauritania

(a) Loading and discharge of cargo.

(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mauritius

(a) All longshore activities.
(b) Exceptions, other than for normal cargo handling activities:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Mexico

(a) All longshore activities.
(b) Exception: Preparation of cargo handling equipment to be operated by local port workers.

Morocco

(a) Loading and discharge of merchandise,
(b) Rigging of ship from dockside, and
(c) Other longshore activities not onboard vessel.
(d) Exceptions:
(1) Operation of onboard cargo related equipment, and
(2) Rigging of ship's gear onboard the ship, in coordination with local port workers.

Mozambique

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Namibia

(a) Longshore activities on shore.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Nauru

(a) All longshore activities.
(b) Exceptions, with the authorization of the Harbor Master,
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Netherlands

(a) All longshore activities.
(b) Exception: Regular crew activities on board ship, including operation of cargo-related equipment, opening and closing of hatches, and rigging of ship's gear.

Netherlands Antilles

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

New Zealand

(a) All longshore activities that take longer than 28 days of arriving in territorial waters.

Nicaragua

(a) All longshore activities.
(b) Exception: Opening and closing of hatches and rigging of ship's gear if local workers are paid as if they had done the work.

Nigeria

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Instructing local employees on equipment.

Oman

(a) All longshore activities.
(b) Exceptions:
(1) Assisting in the operation of cargo related equipment if required,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Pakistan

(a) Longshore activities on shore, and
(b) Handling of mooring lines.
(c) Exception: Operation of equipment which pier workers are not capable of operating.

Panama

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Papua New Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Peru

(a) All longshore activities.
(b) Exceptions:
(1) Operation of sophisticated cargo-related equipment on container vessels,
(2) First opening and last closing of hatches and holds, and
(3) Cleaning of holds.

Philippines

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, if not related to cargo handling,
(2) Rigging of ship's gear, if not related to cargo handling,
(3) Longshore activities for hazardous or polluting cargoes, and
(4) Longshore activities on government vessels.

Poland

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Portugal (including Azores and Madeira)

(a) All longshore activities.
(b) Exceptions:
(1) Military operations,
(2) Operations in an emergency, when under the supervision of the maritime authorities,
(3) Security or inspection operations,
(4) Loading and discharge of supplies for the vessel and its crew,
(5) Loading and discharge of fuel and petroleum products at special terminals,
(6) Loading and discharge of chemical products if required for safety reasons,
(7) Placing of trailers and similar material in parking areas when done before loading or after discharge,
(8) Cleaning of the vessel,
(9) Loading, discharge, and disposal of merchandise in other boats, and
(10) Opening and closing hatches.

Qatar

(a) All longshore activities.

Romania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized shipboard equipment, and
(2) Loading and discharge of cargo requiring special operations.

Russia

(a) All longshore activities performed with local port equipment.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Christopher and Nevis

(a) All longshore activities.

(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

St. Lucia

(a) Loading, discharge and handling of general cargo.
(b) Exceptions: activities on board the ship.

St. Vincent and the Grenadines

(a) All longshore activities.
(b) Exceptions: activities on board the ship.

Saudi Arabia

(a) All longshore activities on shore.

Senegal

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Cargo handling when necessary to ensure the safety or stability of the vessel.

Seychelles

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Sierra Leone

(a) All longshore activities.

Singapore

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Slovenia

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Solomon Islands

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

South Africa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Spain

(a) All longshore activities.

Sri Lanka

(a) Longshore activities on shore, and
(b) Operation of cargo related equipment to load and discharge cargo.

Sweden

(a) All longshore activities.

Sudan

(a) All longshore activities.

Syria

(a) All longshore activities on shore.

Taiwan

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches operated automatically, and
(2) Raising and lowering of ship's gear.

Tanzania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Thailand

(a) Longshore activities on shore.

Togo

(a) Loading and discharge of cargo.
(b) Exceptions:
(1) Operation of cargo-related equipment on board the ship,
(2) Opening and closing of hatches, and
(3) Rigging of ships gear.

Tonga

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Trinidad and Tobago

(a) All longshore activities on shore.

Tunisia

(a) All longshore activities.
(b) Exception: Operation of specialized equipment that local port workers cannot operate.

Turkey

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Tuvalu

(a) Longshore activities on shore.

United Arab Emirates

(a) All longshore activities on shore.

Uruguay

(a) All longshore activities.
(b) Exceptions:
(1) Operation of on-board cranes requiring expert operation or at the master's request,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Vanuatu

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Venezuela

(a) Longshore activities on shore, at the discretion of the companies leasing and operating port facilities.

Vietnam

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Loading and discharge of cargo with on-board equipment when the port of call does not have the necessary equipment.

Western Samoa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Yemen

(a) Longshore activities on shore.

Dated: November 18, 2003.

E. Anthony Wayne,

Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in January 2004. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during January 2004, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during January 2004, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during January 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.20 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for December 2003) of 0.50 percent for the first 20 years following the valuation date and of 0.25 percent thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for December 2003.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during January 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 123, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
123	1–1–04	2–1–04	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 123, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
123	1–1–04	2–1–04	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
January 2004	.0420	1–20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of December, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–30947 Filed 12–12–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–030]

RIN 1625–AA09

Drawbridge Operation Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the SR 46 (St. Claude Avenue) bridge, mile 0.5 (Gulf Intracoastal Water Way (GIWW) mile 6.2 East of Harvey Lock), the SR 39 (Judge Seeber/Claiborne Avenue) bridge, mile 0.9 (GIWW mile 6.7 East of Harvey Lock), and the Florida Avenue bridge, mile 1.7 (GIWW mile 7.5 East of Harvey Lock), across the Inner Harbor Navigation Canal in New Orleans, Orleans Parish, Louisiana. New traffic studies indicate that rush hour vehicular traffic has increased congestion across all three bridges. This rule increases the time that the bridges will be closed to vessel traffic by 15 minutes in the morning and afternoon and begin the afternoon closure one hour and 15 minutes earlier.

DATES: This rule is effective January 14, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–03–030 and are available for inspection or copying at 501 Magazine Street, Room 1313, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Wade, Bridge Administration Branch, 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 18, 2003, a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Inner Harbor Navigation Canal, New Orleans, LA was published in the **Federal Register** (68 FR 49393). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard, at the request of a state representative and the owner of two of the three bridges crossing the Inner Harbor Navigation Canal in New Orleans, Orleans Parish, Louisiana, issued a Notice of Proposed Rule Making in the **Federal Register** on August 18, 2003 to change the times of the existing drawbridge operation regulation. Currently, all three bridges remain closed to navigation and open to vehicular traffic during the morning and afternoon commuter rush hours. The SR 46 (St. Claude Avenue) bascule span highway bridge at mile 0.5, the SR 39 (Judge Seeber/Claiborne Avenue) vertical lift span highway bridge at mile 0.9, and the Florida Avenue bascule span highway and railroad bridge at mile 1.7 are governed by 33 CFR 117.458, which states that the draw of these three bridges shall open on signal; except that, from 6:45 a.m. to 8:30 a.m. and from 4:45 p.m. to 6:45 p.m., Monday through Friday, except federal holidays, the draws need not open for the passage of vessels. The draws shall open at any time for a vessel in distress.

In an effort to reassess and accurately determine the needs of the commuters who cross these three bridges in the morning and afternoon en route to and from work in the Lower Ninth Ward area of New Orleans and in St. Bernard Parish, the Port of New Orleans hired

Urban Systems to perform a new traffic study. The March 2003 traffic study revealed the average peak periods for vehicular traffic crossing the SR 46 (St. Claude Avenue) and the Florida Avenue bridges are from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:45 p.m. This marks a shift from the peak traffic times currently reflected in the regulation that was based on a traffic study completed in October 1999.

Traffic counts for the SR 39 (Judge Seeber/Claiborne Avenue) bridge were not conducted. However, the Claiborne Avenue bridge is located in close proximity to the other two bridges and is expected to exhibit similar traffic patterns. The Claiborne Avenue bridge provides a vertical clearance of 40 feet above Mean High Water in the closed to navigation position and is therefore expected to have less impact on vessel traffic than the other two bridges.

A review of the bridge tender logs revealed that adjusting the marine traffic closures to coordinate with vehicular rush hour traffic should not significantly impact the flow of marine traffic.

Allowing the bridges to remain closed to marine traffic during times that coincide with the heaviest vehicular traffic counts would help to relieve the morning and afternoon rush hour commuter traffic congestion across the bridges while having minimal impact on vessel traffic.

Discussion of Comments and Changes

There were no comments received regarding the proposed change; therefore, no changes to the proposal were made and no changes have been incorporated into the Final Rule.

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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This rule adds 15 minutes to the existing drawbridge operating regulation and shifts the afternoon closure time up by one hour and 15 minutes. A review of the bridge logs for these three bridges indicates that minimal requests to open the bridges during these periods have been made in the past, and there is no indication that there will be a future increase.

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.

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. No requests for assistance were received pursuant to this rule change.

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 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 would not create an environmental risk to health or risk to safety that might 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 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 (32)(e) of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this rule will alter the normal operating conditions of the drawbridges, it falls within this exclusion. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

■ 2. In § 117.458, paragraph (a) is revised to read as follows:

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

(a) The draws of the SR 46 (St. Claude Avenue) bridge, mile 0.5 (GIWW mile 6.2 East of Harvey Lock), the SR 39 (Judge Seeber/Claiborne Avenue) bridge, mile 0.9 (GIWW mile 6.7 East of Harvey Lock), and the Florida Avenue bridge, mile 1.7 (GIWW mile 7.5 East of Harvey Lock), shall open on signal; except that, from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:45 p.m., Monday through Friday, except federal holidays, the draws need not open for the passage of vessels. The draws shall open at any time for a vessel in distress.

* * * * *

Dated: December 5, 2003.

R.F. Duncan,

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

[FR Doc. 03–30905 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–199]

RIN 1625–AA00

Safety Zone; Lockwood Folly Inlet, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Atlantic Intra-Coastal Waterway (AICW) in the vicinity of Lockwood Folly Inlet, NC. This action is necessary to ensure public safety. This rule prohibits vessels with a draft greater than 3 feet from entering the safety zone unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Wilmington.

DATES: This rule is effective from 3:30 p.m. on December 3, 2003 through 3:30 p.m. May 8, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–199 and are available for inspection or copying at Coast Guard Marine Safety Office Wilmington, 721 Medical Center Drive, Wilmington, NC 28401 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington, telephone number (910) 772–2207.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest. Immediate action is necessary to minimize potential danger to the public and is required to ensure the safety of persons and vessels operating on the AICW in this area during the period specified.

The shoaling in the AICW at Lockwood Folly Inlet poses a unique and serious risk to any vessel transiting this area with a draft greater than 3 feet. Any grounding of a vessel poses a significant risk of injury to people onboard these vessels. There have been and continue to be groundings in this location and prompt action is required to prevent these incidents from continuing.

Background and Purpose

An area of severe shoaling has been identified in the Atlantic Intracoastal Waterway in the vicinity of Lockwood Folly Inlet and a survey of this area indicates a water depth of 3.5 feet at mean low water. The Captain of the Port is restricting entry of vessels with a draft of greater than 3 feet from transiting this safety zone until dredging has been completed.

Discussion of Rule

The safety zone will cover the AICW extending from Cape Fear River-Little River Buoy 47 (LLNR 40225) to Cape Fear River-Little River Buoy 48 (LLNR 40235). This safety zone will be in effect to ensure the safety of persons and vessels operating on the AICW in this area. Entry into this safety zone by vessels with a draft greater than 3 feet is prohibited at or near low tide unless authorized by the Captain of the Port or his or her 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). The operational restrictions of the safety zone are tailored to provide the maximum safety of mariners and vessels. Further, this Safety Zone is temporary in nature and vessels and persons can appeal to the Captain of the Port for a waiver of the requirements of the Safety Zone. Any hardships experienced by persons or vessels are outweighed by the interest in protecting the public, vessels, and vessel crews.

Small Entities

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

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the AICW from 3:30 p.m. on December 03, 2003 through 3:30 p.m. May 8, 2004. The Coast Guard expects minimal economic impact on a substantial number of small entities due to this rule because little commercial traffic transits this area of the AICW and vessels with compelling interests that outweigh the port's safety needs may be granted waivers from the requirements of the Safety Zone.

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 Entities requesting guidance or exemption from this rule may contact LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington at (910) 772–2207.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T05–199 to read as follows:

§ 165.T05–199 Safety Zone: Atlantic Intra-Coastal Waterway, Lockwood Folly Inlet, NC.

(a) *Location.* The following area is a safety zone: the Atlantic Intra-Coastal Waterway from Cape Fear River-Little River Buoy 47 (LLNR 40225) west to Cape Fear River-Little River Buoy 48 (LLNR 40235). These points are found on Nautical Chart 11534-Intracoastal Waterway, Myrtle Grove Sound and Cape Fear River to Casino Creek.

(b) *Definition.* As used in this section—

Captain of the Port means the Commanding Officer of the Marine Safety Office Wilmington, North Carolina, or any Coast Guard Commissioned, Warrant, or Petty Officer who has been authorized by the Captain of the Port to act on his or her behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels with a draft

greater than 3 feet into the safety zone in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port. Movement of vessels with a draft greater than 3 feet within the safety zone will be prohibited except as specifically authorized by the Captain of the Port. The general requirements of § 165.23 also apply to this section.

(2) The Captain of the Port may waive any of the requirements of this section for any person, vessel or class of vessel upon finding that circumstances are such that application of the safety zone is unnecessary for port safety. The Captain of the Port can be contacted at telephone number (800) 325–4965.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(d) *Effective period.* The safety zone in paragraph (a) of this section will be effective from 3:30 p.m., December 3, 2003 through May 8, 2004.

Dated: December 03, 2003.

Jane M. Hartley,

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

[FR Doc. 03–30906 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NV 050–0073A; FRL–7595–3]

Approval and Promulgation of Implementation Plans; State of Nevada; Designation of Areas for Air Quality Planning Purposes; Lake Tahoe Nevada Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 27, 2003, the State of Nevada requested EPA to redesignate the Lake Tahoe Nevada ''not classified'' carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standards (NAAQS) and submitted a CO maintenance plan for the area as a revision to the Nevada State Implementation Plan (SIP). In this action, EPA is approving the maintenance plan and redesignating the Lake Tahoe Nevada nonattainment area to attainment. EPA is also determining that the maintenance plan is adequate for transportation conformity purposes under the limited maintenance plan policy for CO.

DATES: This direct final rule is effective February 13, 2004, without further notice, unless we receive adverse comments by January 14, 2004. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action. If adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this approval action.

ADDRESSES: Please address your comments to Eleanor Kaplan, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *kaplan.eleanor@epa.gov*, or submit comments at *http://www.regulations.gov*. A copy of the State's submittal is available for public inspection during normal business hours at EPA's Region IX office. Please contact Eleanor Kaplan if you wish to schedule a visit. A copy of the submittal is also available at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, EPA Region IX at (415) 947–4147 or *kaplan.eleanor@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA. This supplementary information is organized as follows.

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I. What Is the Purpose of This Action?

EPA is redesignating the Lake Tahoe, Nevada ''not classified'' CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next ten years.

We originally designated the Lake Tahoe Basin as nonattainment for CO under the provisions of the Clean Air Act (CAA or ''Act''), as amended in 1977. See 43 FR 8962 (March 3, 1978). The Lake Tahoe Basin nonattainment area (''Lake Tahoe Nevada area'') is defined by State hydrographic area 90, which includes the southwestern corner of Washoe County and the western-most portions of Carson City and Douglas counties.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted.[1] Under section 107(d)(1)(C) of the Act, as amended in 1990, the Lake Tahoe Nevada area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. Later, we categorized the Lake Tahoe Nevada area as an unclassified, or ''not classified'', CO nonattainment area because there were no violations of the CO standard during the two calendar years immediately preceding enactment of the 1990 Clean Air Act Amendments. See 56 FR 56694, at 56798 (November 6, 1991), codified at 40 CFR 81.329.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

(i) EPA determines that the area has attained the NAAQS;

(ii) EPA has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(iii) EPA determines that the improvement in air quality is due to

[1] Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(iv) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(v) The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

II. What Is the State's Process To Submit These Materials to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing.

The Nevada Division of Environmental Protection (NDEP),[2] which is the designated air planning agency for the Lake Tahoe Nevada area, developed the CO maintenance plan. On September 18, 2003, the State Environmental Commission, which acts on regulatory initiatives proposed by NDEP, held a public hearing ''video conference'' that was accessible from NDEP offices in Reno and Las Vegas. On September 18, 2003, the State Environmental Commission adopted the Carbon Monoxide Redesignation Request and Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin. On October 27, 2003, NDEP submitted the maintenance plan and redesignation request to EPA. EPA has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's maintenance plan and redesignation request and is approving the maintenance plan as a revision to the Nevada SIP and is approving the request to redesignate the area to attainment consistent with the requirements of CAA section 107(d)(3)(E). The following is a summary of EPA's evaluation and a description of how each requirement is met.

A. The Area Must Have Attained the Carbon Monoxide NAAQS

Section 107(d)(3)(E)(i) requires that EPA determine that the area has attained the applicable NAAQS as a prerequisite to redesignating an area to attainment. The primary NAAQS for CO is 9 parts per million (ppm)(10 milligrams per cubic meter) for an 8 hour average concentration not to be exceeded more than once per year as determined at each monitoring site in the area. See 40 CFR 50.8 and 40 CFR part 50, appendix C. EPA considers an area as attaining the CO NAAQS when all of the CO monitors in the area have an exceedance rate of 1.0 or less each calendar year over a two-calendar year period. EPA's interpretation of this requirement is that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive years (see September 4, 1992, John Calcagni policy memorandum ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni Memorandum'')). In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment in the **Federal Register**.

Nevada's redesignation request for the Lake Tahoe Nevada area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 2001 through 2002 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year at all monitoring sites. These data were collected and analyzed as required by EPA (*see* 40 CFR 50.8 and 40 CFR part 50, appendix C) and have been stored in EPA's Air Quality System (AQS) database, formerly referred to as the Aerometric Information Retrieval System (AIRS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AQS.

Ambient air quality monitoring data at the area's two monitors for past years, at Stateline for the years 2001 through 2002 and at Incline Village for the years 2000 and 2001, are shown in Tables 1 and 2 below. Table 1 shows no violations of the 8 hour CO NAAQS at the Stateline site for the years 2001 and 2002 and a design value of 6.1 ppm. Table 2 shows no violations of the CO NAAQS at the Incline Village monitor for the years 2000 and 2001 and a design value of 1.6 ppm. Additionally, based on data retrieved from AQS, there have been no exceedances of the CO standard from 2002 to the present.

TABLE 1.—CO DESIGN VALUE FOR THE LAKE TAHOE NEVADA AREA FOR 2001 AND 2002 FROM DATA COLLECTED AT STATELINE MONITOR AT HARVEY'S RESORT HOTEL

Year	1st High	2nd High	Federal exceedances
2001	3.7	3.6	0
2002	8.8	6.1	0

TABLE 2.—CO DESIGN VALUE FOR THE LAKE TAHOE NEVADA AREA FOR 2000 AND 2001 FROM DATA COLLECTED AT INCLINE VILLAGE

Year	1st High	2nd High	Federal exceedances
2000	1.1	1.0	0
2001	1.8	1.6	0

Because the area has complete quality assured data showing no exceedance of the standard over at least two consecutive years (2001 and 2002), and has not violated the standard since that time, the area has met the first statutory criterion for designating a nonattainment area to attainment.

B. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets this requirement to mean the State must meet all requirements that applied to the area prior to, or at the time of, the submission of a complete redesignation request.

1. Section 110 Requirements

Section 110(a)(2) of the Act contains the general requirements for State Implementation Plans (SIPs) (*i.e.*, enforceable emission limits, ambient monitoring, permitting of new sources, adequate funding, etc.) Over the years we have approved Nevada's SIP as meeting the basic requirements of CAA section 110(a)(2).

2. Part D Requirements

Part D (of title I of the Act) contains general provisions that apply to all nonattainment plans and certain sections that apply to specific pollutants. Before the Lake Tahoe

[2] As noted above, the Lake Tahoe Nevada area consists of parts of three counties: Carson City, Douglas and Washoe Counties. With respect to air pollution control, Carson City and Douglas Counties are under NDEP's jurisdiction; Washoe County is under the jurisdiction of the Washoe County District Health Department (WCDHD). The WCDHD, in a letter to NDEP dated July 31, 2003, has asked NDEP to integrate their request for redesignation with NDEP's.

Nevada ''not classified'' CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D of the Act.

Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 to part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as not classified. However, the Act did not specify how the requirements of subpart 1 of part D (specifically, those under section 172(c) of the Act) apply to ''not classified'' nonattainment areas for CO. EPA has interpreted the requirements for those areas in the General Preamble to Title I of the Clean Air Act Amendments of 1990. *See* 57 FR 13498 at 13535 (April 16, 1992). According to this guidance, requirements for Lake Tahoe Nevada as a ''not classified'' nonattainment area for CO include the preparation and submittal of an emissions inventory as a SIP revision, adoption of New Source Review (NSR) programs meeting the requirements of section 173 as amended, and programs meeting the applicable monitoring requirements of section 110. The General Preamble also states that certain reasonably available control measures (RACM) beyond what may already be required in the SIP, reasonable further progress (RFP) and attainment demonstration requirements are not applicable to ''not classified'' CO nonattainment areas. *See* 57 FR 13498 at 13535 (April 16, 1992). Also, we interpret subpart 3 of part D, which contains specific requirements for moderate and above CO nonattainment areas, to be inapplicable to ''not classified'' CO nonattainment areas. *See* 57 FR 13498 at 13535 (April 16, 1992).

The remaining applicable requirements of section 172 are discussed below.

(a) Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources. Nevada included a CO emission inventory for the Lake Tahoe Nevada area in the submitted maintenance plan for calendar year 2001. This year corresponds to the year used in calculating the design value contained in the SIP and represents emissions that contributed to the design value in the plan. The design value shows that the area attains the CO standard. Therefore, the emissions are at a level that would maintain the standard.

The emissions inventory prepared by NDEP for the redesignation request and maintenance plan estimates actual emissions during the peak CO season (specifically, the month of January) from mobile sources, including on-road and non-road vehicles. Stationary and area sources were not included in the inventory but are considered *de minimis* considering the lack of industrial activity in the area and the small residential population. Consistent with EPA guidance, NDEP used EPA's MOBILE6 on-road motor vehicle emissions factor model and the most recent planning assumptions for the transportation network, including vehicle miles traveled and vehicle speed, to estimate emissions from on-road sources. NDEP used EPA's emissions model, NONROAD, for nonroad sources. NDEP has provided sufficient documentation for these emissions estimates in appendices A and B of the redesignation request and maintenance plan.

We believe the inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA.

(b) Section 172(c)(5)—New Source Review (NSR)

The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). Consistent with EPA guidance,[3] EPA is not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part D NSR program by Nevada for the Lake Tahoe Nevada area. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. There are no major stationary sources in the Lake Tahoe Nevada area nor is the predominant basis for the economy (recreation and tourism) expected to change over the foreseeable future. Therefore, the area will not need a part D NSR program for CO sources to maintain the CO NAAQS.

EPA guidance indicates that the requirements of a part D NSR program will be replaced by the prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. As explained below, the Federal PSD regulation will become fully effective in the Lake Tahoe Nevada area immediately upon redesignation.

In the Lake Tahoe Nevada area, NDEP administers the stationary source permitting program in the Carson City and Douglas counties portion of the area, and the Washoe County Health Department (WCDHD) administers the stationary source permitting program in the Washoe County portion of the area. We delegated PSD permitting authority to NDEP on May 27, 1983 and to WCDHD on April 5, 1985. NDEP and WCDHD administered the Federal PSD program in their respective jurisdictions under delegation agreements with EPA until March 3, 2003. On that date, EPA withdrew delegations of authority to issue Federal PSD permits from these two agencies as well as many other State and local air pollution control agencies in response to significant changes in the Federal PSD regulations published on December 31, 2002 (67 FR 80186) and the necessity for them to adopt conforming revisions in state and local laws and regulations. See 68 FR 19371 (April 21, 2003). However, EPA has taken action recently to implement a partial delegation of authority for PSD back to NDEP (*see* 68 FR 52837, September 8, 2003) and anticipates doing the same for WCDHD in the near future. Because the Lake Tahoe Nevada area is being redesignated to attainment by this action, the Federal PSD regulations, as administered by EPA and/or NDEP and WCDHD, will be applicable to any new or modified major sources of CO in the area.

(c) Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

EPA interprets section 172(c)(7) to require ''not classified'' CO nonattainment areas to meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA. *See* 57 FR 14498 at 13535 (April 16, 1992).

The State of Nevada currently operates one SLAMS monitor for the 8 hour CO NAAQS at the southern edge of Lake Tahoe at Stateline, Nevada. That monitor was located at the Horizon Casino Resort in Stateline for the years 1989 through June 1999 when it was moved to a site at Harvey's Resort Hotel also in Stateline. The State also operated a monitor at Incline Village but that site was shut down in March, 2002 because the values it recorded were very low.

The State of Nevada operates a monitoring network (including the CO monitoring station at Stateline but also including numerous other monitoring stations located outside the Lake Tahoe Nevada area) in accordance with 40 CFR part 58. The State has committed to continue to maintain that network.

[3] Memorandum from Mary D. Nichols entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' October 14, 1994.

The requirements of section 172(c)(7) are met.

C. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) requires that EPA determine that the area has a fully approved SIP under section 110(k) of the Act. As described below, we have concluded that the Lake Tahoe Nevada area has a fully approved SIP.

On April 30, 1971 (36 FR 8186), pursuant to section 109 of the Clean Air Act, as amended in 1970, EPA promulgated NAAQS for various pollutants, including CO. Within 9 months thereafter, each State was required by section 110 of the Act to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of the NAAQS within each State. Nevada's original SIP was submitted on January 28, 1972. EPA approved this original SIP submittal later that year. *See* 37 FR 10842 (May 31, 1972).

Generally, SIPs were to provide for attainment of the NAAQS within 3 years after EPA approval of the plan. However, many areas of the country did not attain the NAAQS within the statutory period. In response, Congress amended the Act in 1977 to establish a new approach, based on area designations, for attaining the NAAQS, and on March 3, 1978 (43 FR 8962), under paragraph 107(d)(2) of the Act, EPA promulgated attainment status designations for all States. EPA designated the Lake Tahoe Nevada area nonattainment for CO at that time.

The Act, as amended in 1977, required States to revise their SIPs by January 1979 for all designated nonattainment areas. In response, on July 24, 1979, the State of Nevada submitted the Lake Tahoe Basin Nonattainment Area Plan (''1979 NAP'') to EPA as a revision to the SIP. The 1979 NAP was intended to meet the requirements of part D (plan requirements for nonattainment areas) of the Act, as amended in 1977. The 1979 NAP identified a number of measures for adoption, including a motor vehicle inspection and maintenance program, traffic flow improvements, driver advisories, and bike and pedestrian facilities.

In 1980, EPA proposed to fully approve some elements of the 1979 NAP into the Nevada SIP, such as the emissions inventories and the demonstration of reasonable further progress (RFP), but to conditionally approve other elements of the plan, such as the modeling, emission reduction estimates, attainment provision, and legally adopted measures. See 45 FR 59591 (September 10, 1980). In 1982, EPA took final action consistent with the 1980 proposal. See 47 FR 27065 (June 23, 1982). EPA's 1982 action is codified at 40 CFR 52.1470(c)(16)(vii).

On December 9, 1982, December 16, 1982, January 28, 1983, and May 5, 1983, NDEP submitted various supplemental materials intended to satisfy the conditions placed on the approval of the 1979 NAP. Based on those four submittals, EPA proposed to revoke the earlier conditions and to approve these four submittals as revisions to the Nevada SIP. See 48 FR 52093 (November 16, 1983). In 1984, we took final action consistent with this proposal. *See* 49 FR 6897 (February 24, 1984). EPA's 1984 action is codified at 40 CFR 52.1470(c)(27); 40 CFR 52.1470(c)(28), 40 CFR 52.1470(c)(29), and 40 CFR 52.1470(c)(30).

Therefore, based on the approval into the SIP of provisions under the Act as amended prior to 1990, our approval described below of a maintenance plan submitted under the Act as amended in 1990, and our approval of the State's commitment to maintain an adequate monitoring network, EPA has determined that, at the date of this action, Nevada has a fully approved SIP under section 110(k) for the Lake Tahoe Nevada nonattainment area.

D. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) requires that EPA determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions. As described below, we have concluded that the improvement in CO levels in the Lake Tahoe Nevada area is due to permanent and enforceable reductions in CO emissions.

The improvement in air quality in the Lake Tahoe Nevada area is due to implementation of measures contained in the 1979 NAP and to implementation of the Federal Motor Vehicle Control Program. The two control measures that comprised the attainment strategy for the Lake Tahoe Nevada area in the 1979 NAP included traffic flow improvements and improved pedestrian facilities, and in removing the conditions placed on our 1982 approval of the 1979 NAP, we determined that these two measures had been fully implemented. *See* the related proposed rule, 48 FR 52093 (November 16, 1983) and final rule, 49 FR 6897 (February 24, 1984).

The Federal Motor Vehicle Control Program (40 CFR part 86) has contributed to improved air quality through the gradual, continued turnover and replacement of older vehicle models with newer models manufactured to meet increasingly stringent Federal tailpipe emissions standards. In addition, the motor vehicle emission control program enacted by California benefits Nevada as well since the two states converge in the Lake Tahoe Basin. With these measures and programs, we have concluded that actual enforceable emission reductions are responsible for the air quality improvement and that the CO concentrations in the base year (used to document attainment) are not artificially low due to local economic downturn.

E. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) requires that EPA fully approve a maintenance plan for the area as meeting the requirements of section 175A of the Act as a prerequisite to redesignation. As described below, we are approving the maintenance plan for the Lake Tahoe Nevada area in this action.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We have interpreted this section of the Act to require, in general, the following core provisions in maintenance plans: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni Memorandum, September 4, 1992. The purpose of a maintenance plan is to provide for the maintenance of the applicable NAAQS for at least 10 years after redesignation.

For areas such as Lake Tahoe Nevada that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards (OAQPS), dated October 6, 1995 (''Paisie Memorandum''), the maintenance demonstration is considered to be satisfied for ''not classified'' areas if the monitoring data show the design value is at or below 7.65 ppm, or 85 percent of the level of the 8-hour CO NAAQS.

The design value must be based on the 8 consecutive quarters of data. For such areas, there is no requirement to project emissions of air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85% of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled ''Ozone and Carbon Monoxide Design Value Calculations'', from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors.

Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates continued maintenance of the CO NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. The Lake Tahoe Nevada redesignation request and maintenance plan addressed these core provisions, and our evaluation of these provisions follows:

1. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment.

As discussed above in connection with section 172(c)(3), the Lake Tahoe Nevada redesignation request and maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 2001.

2. Demonstration of Maintenance

As described in the Paisie Memorandum, the maintenance demonstration requirement is considered to be satisfied for ''not classified'' CO areas if the design value for the area is equal to, or less than 7.65 ppm. The CO design value for the Lake Tahoe Nevada is 6.1 ppm.

As assurance of maintenance, the NDEP, in an addendum to their SIP submittal letter dated October 27, 2003 has provided projections of CO emissions in tons per day (tpd) from on-road mobile sources for the years 2006, 2011 and 2016 during the peak annual CO season for each forecast year, compared to the baseline year of 2001, as shown in the following table.

TABLE 3.—PROJECTED CO EMISSIONS FROM ON-ROAD MOBILE SOURCES COMPARED TO 2001 BASELINE INVENTORY

[tpd]

Baseline year 2001	Projected 2006	Projected 2011	Projected 2016
17.72	13.00	11.41	10.25

The projections were calculated using EPA model MOBILE6.0, and separate emission factors for the two roadway facility types present in the Lake Tahoe Basin, arterial collector roads and local roads, which is the same approach that was used in calculating the 2001 base year inventory. The emission factors were then multiplied by future VMT estimates for both the arterial/collector and local roadway facilities. Based on these projections, CO emissions from on-road mobile sources show a marked decline from 2001 to 2016 and consequently we find that the NDEP has presented adequate evidence that the Lake Tahoe Nevada area will continue to maintain the CO NAAQS during the maintenance period.

3. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. In the maintenance plan (see page 15 of the maintenance plan), NDEP indicates its intention to continue to operate an air quality monitoring network consistent with 40 CFR 58 and to maintain operation of the current CO monitor at Stateline, located at Harvey's Resort Hotel on Highway 50. NDEP also intends to continue to download monitoring data to EPA's AQS database.

4. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Under section 175A(d), contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event.

The redesignation request and maintenance plan includes a contingency plan. The contingency plan implementation process for the Lake Tahoe Nevada area takes into consideration the fact that while jurisdiction over the Lake Tahoe Basin is divided between California and Nevada, the air quality on one side of the Lake tends to parallel the air quality on the other side. However, the implementation of the control measures for each side of the Basin is the responsibility of either California or Nevada, whichever is relevant.

The Lake Tahoe Nevada contingency plan therefore has several phases. First, the contingency plan provides for a triggering mechanism through which NDEP will determine when a pre-violation action level is reached. Second, the contingency plan spells out the procedures that will be followed if the pre-violation action level is reached, including recommendations for action, and third, the contingency plan contains commitments from NDEP and the local jurisdictions in the Lake Tahoe Nevada [4] area to implement expeditiously any and all measures necessary to achieve

[4] The following local jurisdictions have passed resolutions promising to adhere to the provisions of the contingency plan in the 2003 Lake Tahoe Nevada Limited Maintenance Plan: the Tahoe Metropolitan Planning Organization, the Washoe County District Health Department and the State of Nevada Department of Transportation, which is a participant in the Interagency Consultation Procedures established by the Tahoe Metropolitan Planning Organization. *See* appendix C of the maintenance plan.

the level of CO emissions reductions needed to maintain the CO NAAQS.

The NDEP has selected two verified 8-hour average concentrations in excess of 85% of the CO NAAQS at any one monitor site in the Lake Tahoe Basin in any CO season (November through February) as the pre-violation action level.

The procedures for addressing a pre-violation action level are bi-state and multi-jurisdictional in nature. If the pre-violation action level is reached at any one monitor in the entire Lake Tahoe Basin (*i.e.*, including monitors located in California as well as the monitor at Stateline, Nevada) during the CO season, NDEP will notify the Tahoe Regional Planning Area (TRPA) which will in turn activate the Conformity Task Force, which consists of all of the air quality planning agencies in the Basin, regional planning agencies, state Departments of Transportation (DOTs) and federal agencies.

Under the direction of this Task Force, NDEP will analyze historic and current monitoring data from the Stateline site and California's Sandy Way site in South Lake Tahoe and will conduct studies to determine whether the event is confined to a local hot spot or if it is an area wide phenomenon. The Task Force will review the most recent microscale modeling at known hot-spot locations and conduct field studies at hot spot locations most likely to have high CO concentrations. If it is determined that the event is confined to a local hot spot and local transportation system improvements at that location can be implemented promptly and will fully mitigate the problem, the Task Force will recommend that action to the appropriate jurisdiction. If the problem is area wide, the Task Force will examine, prioritize and recommend general control measures, such as cleaner burning fuel, employer-based trip reduction, non-work trip reduction, parking supply and pricing management, high occupancy vehicle system or transit improvements.

The implementation of the recommended contingency measures for the Lake Tahoe Nevada area will be the responsibility of the NDEP and/or the appropriate local jurisdiction. Both in the transmittal letter (dated October 27, 2003) and in the plan itself, the NDEP has committed to track CO concentrations and to adopt, submit as a SIP revision, and implement expeditiously any and all measures to achieve the level of CO emissions reductions needed to maintain the CO NAAQS in the event of an exceedance of the CO NAAQS. In addition, NDEP has committed to work with the involved jurisdictions to ensure that sufficient measures are adopted and implemented in a timely fashion to cure the violation.

EPA finds that the contingency plan provided in the maintenance plan is adequate to ensure prompt correction of a violation and thereby complies with section 175A(d) of the Act.

IV. Conformity

A. How Is Transportation Conformity Demonstrated to a Limited Maintenance Plan?

Section 176(c) of the Act defines transportation conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Federal Transportation Conformity Rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable state implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with (''conform to'') such established budgets for that area.

In the case of the Lake Tahoe Nevada CO limited maintenance plan, however, the emissions budgets may be treated as essentially not constraining for the length of the initial maintenance period because there is no reason to expect that Lake Tahoe Nevada will experience so much growth in that period that a violation of the CO air quality standard would result. In other words, emissions from on-road transportation sources need not be capped for the maintenance period because it is unreasonable to believe that emissions from such sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period. Therefore, for the Lake Tahoe Nevada CO maintenance area all federally funded and approved transportation actions that require conformity determinations under the transportation conformity rule can already be considered to satisfy the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 of the rule.

However, since Lake Tahoe Nevada is still a maintenance area, transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, for such determinations, transportation plans, transportation improvement programs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in Lake Tahoe Nevada area will still be required to meet the criteria for CO hot spot analyses (40 CFR 93.116 and 40 CFR 93.123) that must incorporate the latest planning assumptions and models that are available.

B. What Is the Adequacy Status of This Limited Maintenance Plan?

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on EPA's third set of transportation conformity revisions in response to a case brought by the Environmental Defense Fund. This decision stated that a conformity determination cannot be made using a submitted motor vehicle emission budget until EPA makes a positive determination that the submitted budget is adequate. In response to the court's decision, EPA issued guidance on our adequacy process on May 14, 1999.

In accordance with our guidance and the court decision, the Lake Tahoe Nevada maintenance plan was posted for adequacy review of the motor vehicle emissions budget on November 10, 2003 on EPA's conformity Web site: *http://www.epa.gov/otaq/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). As a general rule, however, limited maintenance plans, such as the Lake Tahoe Nevada maintenance plan, do not include budgets. Instead, for those areas that qualify under our limited maintenance plan policy for CO, we have concluded that the area will

continue to maintain the CO NAAQS regardless of the quantity of emissions from the on-road transportation sector, and thus there is no need to cap emissions from the on-road transportation sector for the maintenance period.

Therefore, EPA's adequacy review of the Lake Tahoe Nevada maintenance plan primarily focuses on whether the area qualifies for the applicable limited maintenance plan policy for CO. From our review, EPA has concluded that Lake Tahoe Nevada does meet the criteria for a limited maintenance plan, and therefore, finds the Lake Tahoe Nevada maintenance plan adequate for conformity purposes under our limited maintenance plan policy.

C. Are the Requirements for General Conformity Altered Under This Limited Maintenance Plan?

No. Although the requirements to perform a regional emissions analysis and budget test under the transportation conformity rule are altered under a limited maintenance plan, the requirements for general conformity are not changed. Upon today's approval of the Lake Tahoe Nevada limited maintenance plan, the criteria and procedures set forth in 40 CFR part 93, subpart B (Determining Conformity of General Federal Actions to State or Federal Implementation Plans) for those federal actions that are not covered under the transportation conformity rule still apply.

V. Final Action

Under section 110(k)(3) of the Clean Air Act, EPA is approving the Lake Tahoe Nevada CO maintenance plan, and under section 107(d)(3)(E) of the Clean Air Act, EPA is redesignating the Lake Tahoe Nevada area to attainment for the CO NAAQS. As a result, the chart in 40 CFR 81.329 entitled ''Nevada—Carbon Monoxide'' is being modified to change the designation for the Lake Tahoe Nevada area from ''Nonattainment'' to ''Attainment,'' and to delete the ''Not Classified'' classification of the area, effective February 13, 2004. EPA is also determining that the maintenance plan is adequate for conformity purposes under the limited maintenance plan policy for CO.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 13, 2004 without further notice unless the Agency receives adverse comments by January 14, 2004.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 2004. 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 20, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(45) The following plan was submitted on October 27, 2003, by the Governor's designee.

(i) Incorporation by reference.

A. Carbon Monoxide Redesignation Request and Limited Maintenance Plan for the Nevada Side of the Lake Tahoe Basin, dated October 2003, adopted by the State Environmental Commission on September 18, 2003.

(1) Attainment year (2001) emissions inventory, monitoring network and verification of continued attainment, and contingency plan, including commitments to follow maintenance plan contingency procedures by the Nevada Division of Environmental Protection, the Tahoe Metropolitan Planning Organization, the Nevada Department of Transportation, and the Washoe County District Health Department.

B. Letter of October 27, 2003, from the Nevada Division of Environmental Protection, transmitting the redesignation request and maintenance plan for the Lake Tahoe Nevada CO nonattainment area and including a State commitment to track CO concentrations and to adopt, submit as a SIP revision, and implement expeditiously any and all measures to achieve the level of CO emissions reductions needed to maintain the CO NAAQS in the event that an exceedance of the CO NAAQS is monitored, and to work with the involved jurisdictions to ensure that sufficient measures are adopted and implemented in a timely fashion to prevent a violation.

C. Additional material—Addendum to the October 27, 2003 letter of transmittal of the redesignation request and maintenance plan: emissions projections for on-road motor vehicles through 2016.

■ Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.329 the carbon monoxide table is amended by revising the entry for the Lake Tahoe Nevada Area to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Lake Tahoe Nevada Area				
Hydrographic Area 90 Carson City County (part) Douglas County (part) Washoe County (part).	February 13, 2004	Attainment		
* * * * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 03–30369 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 2003–06; FTR Case 2003–308]

RIN 3090–AH89

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned airplane from 95.5 to 99.5 cents per mile, the cost of operating a privately owned automobile from 36.0 to 37.5 cents per mile, and the cost of operating a privately owned motorcycle from 27.5 to 28.5 cents per mile.

DATES: *Effective Date:* January 1, 2004.

Applicability Date: This final rule applies to travel performed on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Devoanna R. Reels, Program Analyst, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–3781. Please cite FTR Amendment 2003–06, FTR case 2003–308.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress, and a copy of the report appears as an attachment to this document. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 99.5 cents for airplanes, 37.5 cents for automobiles, and 28.5 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 37.5 cents effective January 1, 2004. Additionally, based on updated data for the two-tiered reimbursement rates reflecting costs to an agency of operating a Government-furnished vehicle (GFV), the current reimbursement rate for use of a POV when a GFV is authorized decreased from 28.5 cents per mile to 27.0 cents per mile. The current reimbursement rate of 10.5 cents per mile for use of a POV by an employee when committed to use a Government automobile will remain the same.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: December 8, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR part 301–10 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

■ 1. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118.

■ 2. In § 301–10.303 revise the last three entries in the table to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
* * * * *	
Privately owned airplane	[1] 99.5
Privately owned automobile	[1] 37.5
Privately owned motorcycle	[1] 28.5

[1] Cents per mile.

■ 3. Amend § 301–10.310 in paragraph (a) by removing ''28.5'' and adding ''27.0'' in its place.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicle Mileage Reimbursement

Paragraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Paragraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of paragraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 37.5 cents effective January 1, 2004.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 99.5 cents for airplanes, 37.5 cents for automobiles, and 28.5 cents for motorcycles.

I will issue a regulation to increase the current 95.5 to 99.5 cents for privately owned airplanes, 36.0 to 37.5 cents for privately owned automobiles, and 27.5 to 28.5 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

[FR Doc. 03–30849 Filed 12–12–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 52a

RIN 0925–AA24

National Institutes of Health Center Grants

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending its regulations

governing center grants to reflect their applicability to several new grant programs, including research on autism, Alzheimer's disease, fragile X disease, and minority health disparities and other types of health disparities.

EFFECTIVE DATE: This final rule is effective 30 days from the date of publication.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, NIH, Office of Management Assessment, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville MD, 20892, by e-mail (*jm40z@nih.gov*), by fax 301–402–0169, or by telephone 301–496–4607 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 17, 2000, the United States Congress enacted the Children's Health Act of 2000 (Public Law 106–310). Section 101 of Public Law 106–310 amended the PHS Act by adding a new section 409C (42 U.S.C. 284g) concerning research on autism. Section 409C authorizes the Director of the National Institutes of Health, through the Director of the National Institute of Mental Health, to make awards of grants and contracts to public or nonprofit private entities to pay all or part of the costs of planning, establishing, improving, and providing basic operating support for centers of excellence regarding research on autism.

On November 13, 2002, the United States Congress enacted the Public Health Improvement Act (Public Law 106–505). Section 801 of Public Law 106–505 amended the PHS Act by adding a new section 445I (42 U.S.C. 285e–10a) concerning Alzheimer's clinical research and training awards. More specifically, section 445I authorizes the Director of the National Institute on Aging to establish and maintain a program to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care, and treatment of individuals with Alzheimer's disease. Amounts made available under the program must be directed to the support of promising clinicians through awards for research, study, and practice at centers of excellence in Alzheimer's disease research and treatment in environments of demonstrated excellence in neuroscience, neurobiology, geriatric medicine, and psychiatry.

Additionally, section 201 of Public Law 106–310 amended the PHS Act by adding a new section 452E (42 U.S.C. 285g–9) concerning research on the disease known as fragile X. Section 452E authorizes the Director of the National Institute of Child Health and Human Development to make grants or enter into contracts for the development and operation of centers to conduct research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X.

On November 22, 2000, the United States Congress enacted the Minority Health and Health Disparities Research and Education Act of 2000 (Public Law 106–525). Section 102 of Public Law 106–525 amended the PHS Act by adding a new section 485F (42 U.S.C. 287c–32) concerning centers for minority health and health disparities related-research, education, and training. Section 485F authorizes the Director of the National Center on Minority Health and Health Disparities to make awards of grants or contracts to designated biomedical and behavioral research institutions or consortia for the purpose of assisting the institutions in supporting programs of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations. The grants must be expended to train members of minority health disparity populations or other health disparity populations as professionals in the area of biomedical or behavioral research or both; or to expand, remodel, renovate, or alter existing research facilities or construct new research facilities for the purpose of conducting minority health disparities research and other health disparities research.

We are amending § 52a.1, § 52a.2, and § 52a.3 of the regulations governing NIH center grants to reflect these new authorities. Additionally, we are amending § 52a.8 to update the organizational reference for the Public Health Service Policy on Humane Care and Use of Laboratory Animals.

We announced our plans to amend the current regulations in a notice of proposed rulemaking (NPRM) published in the **Federal Register**, November 12, 2002 (67 FR 68548–68551). The NPRM provided for a sixty-day comment period. We received no comments. Consequently, except for various editorial changes, the final rule is the same as the proposed rule published in November 2002.

We provide the following information for the public.

Executive Order 12866

Executive Order 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in section 3(f) of the Order, review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) prior to publication is necessary. The OIRA reviewed this rule under Executive Order 12866 and deemed it not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory proposals be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Secretary certifies that this rule will not have any such impact.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. The NIH Director reviewed this rule as required under the Order and determined that it does not have any federalism implications. The Secretary certifies that the rule will not have an effect on the States or on the distribution of power and responsibilities among various levels of government.

Paperwork Reduction Act

This rule does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35).

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance (CFDA) numbered programs affected by this rule are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers
93.242 Mental Health Research Grants
93.279 Drug Abuse Research Programs
93.397 Cancer Centers Support
93.837 Heart and Vascular Diseases Research
93.838 Lung Diseases Research
93.839 Blood Diseases and Resources Research
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research
93.847 Diabetes, Endocrinology, and Metabolism Research
93.848 Digestive Diseases and Nutrition Research
93.849 Kidney Diseases, Urology and Hematology Research

93.855 Allergy, Immunology and Transplantation Research
93.856 Microbiology and Infectious Diseases Research
93.864 Population Research
93.865 Research for Mothers and Children
93.866 Aging Research
93.981 Alcohol Research Center Grants

List of Subjects

42 CFR Part 52a

Grant programs—health; Medical research.

Dated: May 9, 2003.

Elias A. Zerhouni,

Director, National Institutes of Health.

Approved: September 16, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons set forth in the preamble, subchapter D, chapter 1 of title 42 of the Code of Federal Regulations is amended as set forth below.

PART 52a—NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

■ 1. The authority citation of part 52a is revised to read as follows:

Authority: 42 U.S.C. 216, 284g, 285a–6(c)(1)(E), 285a–7(c)(1)(G), 285b–4, 285c–5, 285c–8, 285d–6, 285e–2, 285e–3, 285e–10a, 285f–1, 285g–5, 285g–7, 285g–9, 285m–3, 285o–2, 286a–7(c)(1)(G), 287c–32(c), 300cc–16.

■ 2. Section 52a.1 is amended by revising paragraph (a) to read as follows:

§ 52a.1 To which programs do these regulations apply?

(a) The regulations of this part apply to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion, and operation of research and demonstration and/or multipurpose centers in health fields described in this paragraph. Specifically, these regulations apply to:

(1) National Institute of Mental Health centers of excellence with respect to research on autism, as authorized by section 409C of the Act (42 U.S.C. 284g);

(2) National cancer research and demonstration centers (including payments for construction), as authorized by section 414 of the Act (42 U.S.C. 285a–3);

(3) National cancer research and demonstration centers with respect to breast cancer, as authorized by section 417 of the Act (42 U.S.C. 285a–6);

(4) National cancer and demonstration centers with respect to prostate cancer, as authorized by section 417A of the Act (42 U.S.C. 285a–7);

(5) National research and demonstration centers for heart, blood vessel, lung, and blood diseases, sickle cell anemia, blood resources, and pediatric cardiovascular diseases (including payments for construction), as authorized by section 422 of the Act (42 U.S.C. 485b–4);

(6) Research and training centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act (42 U.S.C. 285c–5);

(7) Research and training centers regarding nutritional disorders, as authorized by section 434 of the Act (42 U.S.C. 285c–8);

(8) Multipurpose arthritis and musculoskeletal diseases centers (including payments for alteration, but not construction), as authorized by section 441 of the Act (42 U.S.C. 285d–6);

(9) Alzheimer's disease centers, as authorized by section 445 of the Act (42 U.S.C. 285e–2);

(10) Claude D. Peppers Older Americans Independence Centers, as authorized by section 445A of the Act (42 U.S.C. 285e–3);

(11) Centers of excellence in Alzheimer's disease research and treatment, as authorized by section 445I of the Act (42 U.S.C. 285e–10a);

(12) Research centers regarding chronic fatigue syndrome, as authorized by section 447 of the Act (42 U.S.C. 285f–1);

(13) Research centers with respect to contraception and infertility, as authorized by section 452A of the Act (42 U.S.C. 285g–5);

(14) Child health research centers, as authorized by section 452C of the Act (42 U.S.C. 285g–7);

(15) Fragile X research centers, as authorized by 452E of the Act (42 U.S.C. 285g–9);

(16) Multipurpose deafness and other communication disorders centers, as authorized by section 464C of the Act (42 U.S.C. 285m–3);

(17) National drug abuse research centers, as authorized by section 464N of the Act (42 U.S.C. 285o–2);

(18) Centers of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations, as authorized by section 485F of the Act (42 U.S.C. 287c–32); and

(19) Centers for acquired immunodeficiency syndrome (AIDS) research, as authorized by section 2316 of the Act (42 U.S.C. 300cc–16).

* * * * *

3. Section 52a.2 is amended by revising the definition of ''Center'' to read as follows:

§ 52a.2 Definitions.

As used in this part:

* * * * *

Center means:

(a) For purposes of grants authorized by section 409C of the Act, a public or nonprofit private entity which provides for planning and conducting basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of autism, including the fields of developmental neurobiology, genetics, and psychopharmacology;

(b) For purposes of grants authorized by section 414 of the Act, an agency or institution which provides for planning and conducting basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer;

(c) For purposes of grants authorized by section 417 of the Act, an agency or institution which provides for planning and conducting basic, clinical, epidemiological, psychological, prevention and treatment research and related activities on breast cancer;

(d) For purposes of grants authorized by section 417A of the Act, an agency or institution which provides for planning and conducting basic, clinical, and epidemiological, psychosocial, prevention and control, treatment, research, and related activities on prostate cancer;

(e) For purposes of grants authorized by section 422 of the Act, an agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency services) for heart, blood vessel, lung, or blood diseases including sickle cell anemia;

(f) For purposes of grants authorized by section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities and development of model programs in diabetes mellitus and related endocrine and metabolic diseases;

(g) For purposes of grants authorized by section 434 of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research, training, and information programs in nutritional disorders, including obesity;

(h) For purposes of grants authorized by section 441 of the Act, a facility which conducts basic and clinical

research into arthritis and musculosketal diseases; and orthopedic procedures, training, and information programs for the health community and the general public;

(i) For purposes of grants authorized by section 445 of the Act, a public or private nonprofit entity (including university medical centers) which conducts basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease;

(j) For purposes of grants authorized by section 445A of the Act, a single public or private nonprofit institution or entity or a consortium of cooperating institutions or entities which conducts research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals.

(k) For the purposes of section 445I of the Act, a single institution or consortium of cooperating institutions which conducts basic and clinical research on Alzheimer's disease.

(l) For purposes of grants authorized by section 447 of the Act, a single institution or consortium of cooperating institutions which conducts basic and clinical research on chronic fatigue syndrome;

(m) For purposes of grants authorized by section 452A of the Act, a single institution or consortium of cooperating institutions which conducts clinical and other applied research, training programs, continuing education programs, and information programs with respect to methods of contraception, and infertility;

(n) For purposes of grants authorized by section 452C of the Act, an agency or institution which conducts research with respect to child health, and gives priority to the expeditious transfer of advances from basic science to clinical applications and improving the care of infants and children;

(o) For purposes of grants authorized by section 452E of the Act, a single institution or a consortium of cooperating institutions which conducts research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X;

(p) For purposes of grants authorized by section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of, advanced diagnostic, prevention, and treatment methods for disorders of hearing and other communication processes and complications resulting from these disorders;

(q) For purposes of grants authorized by section 464N of the Act, institutions designated as National Drug Abuse Research Centers for interdisciplinary research relating to drug abuse and other biomedical, behavioral, and social issues related to drug abuse;

(r) For purposes of grants authorized by section 485F of the Act, a biomedical or behavioral research institution or consortia that:

(1) Have a significant number of members of minority health disparity populations or other health disparity populations enrolled as students in the institution (including individuals accepted for enrollment in the institution);

(2) Have been effective in assisting such students of the institution to complete the program of education or training and receive the degree involved;

(3) Have made significant efforts to recruit minority students to enroll in and graduate from the institution, which may include providing means-tested scholarships and other financial assistance as appropriate; and

(4) Have made significant recruitment efforts to increase the number of minority or other members of health disparity populations serving in faculty or administrative positions at the institution; or

(s) For the purposes of grants authorized in section 2316 of the Act, an entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency syndrome (AIDS).

■ 4. Section 52a.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 52a.3 Who is eligible to apply?

(a) Any public or private nonprofit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 409C, 414, 417, 417A, 422, 445, 445A, 445I, 447, 452A, and 2316 of the Act.

(b) Any public or private nonprofit or for-profit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 428, 431, 434, 441, 452C, 452E, 464C, 464J, 464N, and 485F of the Act.

* * * * *

■ 5. Section 52a.8 is amended by revising unnumbered paragraphs 21 and 22 to read as follows:

§ 52a.8 Other HHS regulations and policies that apply.

* * * * *

Public Health Service Policy on Humane Care and Use of Laboratory Animals, Office of Laboratory Animal Welfare, Office of Extramural Research, NIH (Revised September 1986).

Note: This policy is subject to change, and interested persons should contact the Office of Laboratory Animal Welfare, Office of Extramural Research, NIH, Rockledge 1, 6705 Rockledge Drive, Bethesda, Maryland 20817, telephone 301–594–2382 (not a toll-free number) to obtain references to the current version and any amendments.

[FR Doc. 03–30757 Filed 12–12–03; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03–249]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service, the Commission modifies the high-cost universal service support mechanism for non-rural carriers and adopts measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.

DATES: Effective January 14, 2004, except for §§ 54.316(a) and 54.316(c) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Remand and Memorandum Opinion and Order in CC Docket No. 96–45 released on October 27, 2003. There was also a Companion Further Notice of Proposed Rulemaking released in CC Docket No. 96–45 on October 27, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554 or at *www.fcc.gov/wcb/universal_service/highcost.html*.

I. Introduction

1. In this Order, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce States to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. We will continue to determine non-rural support by comparing statewide average costs to a national cost benchmark, but we establish a new cost benchmark at two standard deviations above the national average cost. Our action today ties the cost benchmark more closely to the data in the record, consistent with the court's directive, but does not substantially alter the level of non-rural support. Based on analysis of the relevant data, we explain why the modified non-rural mechanism will be sufficient to achieve the statutory principle of making rural and urban rates for non-rural carrier customers reasonably comparable.

2. In addition, we will implement a rate review, through an expanded annual certification process, to induce States to achieve reasonably comparable rates and to assess how successfully the non-rural high-cost support mechanism ensures reasonably comparable rural and urban rates. Consistent with the Joint Board recommendation, States will be required to certify that the basic service rates in their rural, high-cost areas served by non-rural carriers are reasonably comparable to a national urban rate benchmark or explain why they are not. This process will add a dynamic element to the non-rural high-cost support mechanism. By requiring States to review their rates in rural, high-cost areas served by non-rural carriers annually in comparison to a national urban rate benchmark, the Commission will be able to determine whether Federal and State universal service mechanisms are resulting in reasonably comparable rural and urban rates as competition develops and erodes implicit support mechanisms.

II. Executive Summary

1. In this Order, we take the following actions to modify the non-rural high-cost support mechanism and to induce States to ensure reasonably comparable rural and urban rates in areas served by non-rural carriers:

- Consistent with the Joint Board's recommendations, we reaffirm that comparing statewide average costs to a nationwide cost benchmark reflects the appropriate Federal and State roles in determining Federal non-rural high-cost support. We find no evidence in the record either for radically altering the current non-rural mechanism or for establishing a substantially larger Federal subsidy to lower local telephone service rates, as some commenters advocate.
- In response to the Tenth Circuit's remand, we define the relevant statutory terms ''sufficient'' and ''reasonably comparable'' more precisely for purposes of the non-rural mechanism. As recommended by the Joint Board, we define ''sufficient'' in terms of the statutory principle in section 254(b)(3), as enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers. We also agree with the Joint Board that the principle of sufficiency means that non-rural support should be only as large as necessary to achieve the statutory goal. We define ''reasonably comparable'' in terms of a national urban rate benchmark recommended by the Joint Board. As part of the rate review process discussed below, the rate benchmark will be used in determining whether a State's local rates in rural, high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide.
- We modify the non-rural mechanism by basing the cost benchmark, which is used to determine the amount of non-rural high-cost support, on two standard deviations above the national average cost per line. Modifying the cost benchmark ties it more directly to the relevant data, consistent with the court's directive, but does not alter the level of non-rural support in a major way. We agree with the Joint Board that the current level of non-rural support is supported by data from a General Accounting Office (GAO) Report indicating that rural and urban rates generally are reasonably comparable today.
- To induce States to achieve reasonably comparable rates, we adopt with minor changes the rate review and expanded certification process recommended by the Joint Board. Each State will be required to review its rates in rural, high-cost areas served by non-rural carriers annually to assess their comparability to urban rates nationwide, and then to file a certification with the Commission stating whether its rural rates are reasonably comparable to urban rates nationwide or explaining why they are not.
- For purposes of the rate review process, we adopt the Joint Board's recommendation that we establish an annually-adjusted nationwide rate benchmark based on the most recent urban residential rates in the *Reference Book,* the Wireline Competition Bureau's annual rate survey. Specifically, we adopt a rate benchmark of two standard deviations above the average urban rate, which, based on the most recent *Reference Book* survey, is $32.28 or 138 percent of the average urban rate. The rate benchmark will establish a ''safe harbor,'' that is, a presumption that rates in rural, high-cost areas that are below the rate benchmark are reasonably comparable to urban rates nationwide. States with rural rates below the rate benchmark may certify that their rates are reasonably comparable without providing additional information, or rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of their rates.
- For purposes of the rate review process, we also establish a basic service rate template for states to use in comparing rates in rural, high-cost areas served by non-rural carriers to the nationwide urban rate benchmark. In addition, we adopt, with slight modifications, the definition of ''rural area'' already contained in § 54.5 of the Commission's rules for purposes of the rate review process.
- We adopt the Joint Board's recommendation to permit States to request further Federal action, if necessary, based on a demonstration that the State's rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide and that the State has taken all reasonable steps to achieve reasonable comparability through State action and existing Federal support.
- In response to the Tenth Circuit's remand, we review and explain our comprehensive plan for supporting universal service in high-cost areas.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Remand Notice,* 67 FR 10846, March 11, 2002. The Commission sought written public comment on the proposals in the *Remand Notice,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

5. This Order is necessary to respond to the remand by the United States Court of Appeals for the Tenth Circuit of the *Ninth Report and Order,* 64 FR 67416, December 12, 1999, and also to respond to the Joint Board's *Recommended Decision.* Along with fulfilling the court's remand requirements, the objectives of this Order are to implement a non-rural high-cost support mechanism that fulfills the relevant principles in section 254(b) of the Act. The rules we adopt in this Order reflect the Commission's careful and considered determination to implement the mechanism consistently with section 254(b) and with the Joint Board's recommendations.

6. In this Order, we take the following actions in response to the Tenth Circuit's remand and the Joint Board's recommendations to modify the non-rural high-cost support mechanism and to induce States to ensure reasonably comparable rural and urban rates in areas served by non-rural carriers:

• Consistent with the Joint Board's recommendations, we reaffirm that comparing statewide average costs to a nationwide cost benchmark reflects the appropriate Federal and State roles in determining Federal non-rural high-cost support. We find no evidence in the record either for radically altering the current non-rural mechanism or for establishing a substantially larger Federal subsidy to lower local telephone service rates, as some commenters advocate.

• In response to the Tenth Circuit's remand, we define the relevant statutory terms ''sufficient'' and ''reasonably comparable'' more precisely for purposes of the non-rural mechanism. As recommended by the Joint Board, we define ''sufficient'' in terms of the statutory principle in section 254(b)(3), as enough Federal support to enable States to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers. We also agree with the Joint Board that the principle of sufficiency means that non-rural support should be only as large as necessary to achieve the statutory goals. We define ''reasonably comparable'' in terms of a national urban rate benchmark recommended by the Joint Board. As part of the rate review process discussed, the rate benchmark will be used in determining whether a State's local rates in rural, high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide.

• We modify the non-rural mechanism by basing the cost benchmark, which is used to determine the amount of non-rural high-cost support, on two standard deviations above the national average cost per line. Modifying the cost benchmark ties it more directly to the relevant data, consistent with the court's directive, but does not alter the level of non-rural support in a major way. We agree with the Joint Board that the current level of non-rural support is supported by data from the GAO Report indicating that rural and urban rates generally are reasonably comparable today.

• To induce States to achieve reasonably comparable rates, we adopt with minor changes the rate review and expanded certification process recommended by the Joint Board. Each State will be required to review its rates in rural, high-cost areas served by non-rural carriers annually to assess their comparability to urban rates nationwide, and then to file a certification with the Commission stating whether its rural rates are reasonably comparable to urban rates nationwide or explaining why they are not.

• For purposes of the rate review process, we adopt the Joint Board's recommendation that we establish an annually-adjusted nationwide rate benchmark based on the most recent urban residential rates in the Reference Book, the Wireline Competition Bureau's annual rate survey. Specifically, we adopt a rate benchmark of two standard deviations above the average urban rate, which, based on the most recent Reference Book survey, is $32.28 or 138 percent of the average urban rate. The rate benchmark will establish a ''safe harbor,'' that is, a presumption that rates in rural, high-cost areas that are below the rate benchmark are reasonably comparable to urban rates nationwide. States with rural rates below the rate benchmark may certify that their rates are reasonably comparable without providing additional information, or rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of their rates.

• For purposes of the rate review process, we also establish a basic service rate template for States to use in comparing rates in rural, high-cost areas served by non-rural carriers to the nationwide urban rate benchmark. In addition, we adopt, with slight modifications, the definition of ''rural area'' already contained in § 54.5 of the Commission's rules for purposes of the rate review process.

• We adopt the Joint Board's recommendation to permit States to request further Federal action, if necessary, based on a demonstration that the State's rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide and that the State has taken all reasonable steps to achieve reasonable comparability through State action and existing Federal support.

• In response to the Tenth Circuit's remand, we review and explain our comprehensive plan for supporting universal service in high-cost areas.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. The Commission received no comments specifically addressing the IRFA. Nonetheless, the Commission considered the potential impact of the adopted rules on small entities and, based on analysis of the relevant data, determined that the compliance burden for small entities directly impacted will not be significant.

8. We note that the Commission did receive some general small entity-related comments not specifically addressing the rules and policies presented in the IRFA. Some commenters suggested that eligible communications carriers (ETCs) should be treated differently than the incumbent non-rural carriers. CUSC stated that the certification process should apply only to the incumbent non-rural carriers. RICA stated that ETCs and incumbent non-rural carriers should receive support through separate mechanisms. In making the determination reflected in the Order, we have considered the impact of our actions on these small entities. We have determined that any impact on small entities will be negligible.

9. Other small-entity related comments concerned the rural high-cost support mechanism and were not relevant to this Order, which modifies the non-rural high-cost support mechanism only. The Federal non-rural high-cost support mechanism, revised and implemented by this Order,

calculates and distributes Federal support to non-rural carriers providing service in high-cost areas. For purposes of the mechanism, ''non-rural carriers'' are those that do not meet the statutory definition of a rural telephone company. As stated, the rural and non-rural high-cost support mechanisms are separate.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that will be directly affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

11. The Commission has determined that the group of small entities directly affected by the rules adopted in this Order are eligible telecommunications carriers (ETCs) providing service in areas served by non-rural carriers. Within the category of ETCs we find competitive local exchange carriers (CLECs), which are all wired telecommunications carriers, and wireless carriers. Further descriptions of these entities are provided.

12. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 or more. Thus, under this size standard, the great majority of firms can be considered small.

13. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and ''Other Local Exchange Carriers.''* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to ''Other Local Exchange Carriers.'' The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were ''*Other Local Exchange Carriers.*'' Of the 55 ''*Other Local Exchange Carriers,*'' an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''*Other Local Exchange Carriers*'' are small entities that may be affected by the rules and policies adopted herein.

14. *Cellular and Other Wireless Telecommunications Carriers.* The SBA has developed a small size standard for Cellular and Other Wireless Telecommunications Carriers which consists of all such companies having 1,500 or fewer employees. According to the Commission's most recent data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these, 1,761 companies, and estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

15. *Eligible Telecommunications Carriers (ETCs) that Provide Service in Areas Serviced by Non-Rural Carriers.* Neither the SBA nor the Commission has developed a definition of small entities specifically applicable to ETCs. ETC designation allows a carrier to receive universal service support in accordance with section 254 of the Act. An entity is designated as an ETC by a State commission or, if there is no State jurisdiction, by the Commission upon meeting the requirements of section 214(e) of the Act. Any entity offering services supported by Federal universal service mechanisms that uses its own facilities or a combination of its own facilities and resale of another carrier's services and advertises such charges and rates can seek designation as an ETC. ETCs are competitive carriers that are not dominant in the field. The group of ETCs providing service in areas served by non-rural carriers is composed of mostly competitive local exchange carriers (CLECs) and wireless carriers. We have indicated above that, pursuant to SBA standards, ETCs are CLECs or wireless carriers. In addition, we note that the only ETCs affected by this Order are those that provide service in areas served by non-rural carriers. If we had no further information concerning the specific ETCs affected by this rulemaking, we would estimate that numerous ETCs, which are either CLECs or wireless service providers that provide service in areas served by non-rural carriers, are small businesses that may be affected by the rules adopted herein.

16. At this time, however, the Commission is aware of approximately 30 ETCs providing service in areas served by non-rural carriers. We have determined that at least 9 of these ETCs are subsidiaries of public companies—not independently owned and operated—and, therefore, not small businesses under the Small Business Act. We do not have data specifying whether the remaining ETCs, or other ETCs not accounted for, are independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 20 or fewer small entities that may be affected directly by the proposed rules herein adopted.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. This Order does not impose directly any change in projected reporting, record keeping or other compliance requirements on small entities. No changes have been made to the reporting or recordkeeping requirements of carriers receiving Federal non-rural high-cost support.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

19. In this Order, in response to the Tenth Circuit's remand and the Joint Board's *Recommended Decision*, we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. Our actions may affect the amount of support distributed to non-rural carriers and ETCs providing service in areas served by non-rural carriers. Based on our analysis of the relevant data, the Commission believes that there will be minimal, if any, economic impact on small entities in adopting modifications to the Federal non-rural high-cost support mechanism and rate review and expanded certification process. The modifications to the current Federal non-rural high-cost support mechanism, as adopted in the Order, should maintain or increase the current level of non-rural high-cost support to carriers receiving such support. As such, based on the relevant data, we anticipate little, if any, negative economic effects on any small businesses directly affected by the modifications to the non-rural high-cost mechanism implemented by this Order.

6. Report to Congress

20. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

21. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

22. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 218–220, 254, 403 and 405 of the Communications Act of 1934, as amended, this Order on Remand is hereby adopted.

23. Part 54 of the Commission's rules is amended as set forth attached hereto, effective January 14, 2004, except for §§ 54.316(a) and 54.316(c) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

24. Pursuant to § 1.106(j) of the Commission's rules, the Petitions for Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration filed by AT&T Corp., Personal Communications Industry Association, Puerto Rico Telephone Company, and the Wyoming Public Service Commission on January 3, 2000, are denied, and the Petition for Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration filed by SBC Communications Inc. on January 3, 2000, is denied in part and dismissed as moot in part.

25. Pursuant to section 4(i) of the Communications Act of 1934, as amended, and § 1.3 of the Commission's rules, the Petition for Waiver of § 36.631 of the Commission's Rules Governing the Universal Service Fund, filed by the Vermont Department of Public Service and the Vermont Public Service Board, September 21, 1993, AAD 93–103, is dismissed as moot.

26.The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Remand and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citations continue to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.309 by revising paragraph (a)(3) to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

(a) * * *

(3) The national cost benchmark shall equal two weighted standard deviations above the national average FLEC per line.

* * * * *

■ 3. Add § 54.316 to subpart D to read as follows:

§ 54.316 Rate comparability review and certification for areas served by non-rural carriers.

(a) *Certification.* Each state will be required annually to review the comparability of residential rates in rural areas of the state served by non-rural incumbent local exchange carriers to urban rates nationwide, and to certify to the Commission and the Administrator as to whether the rates are reasonably comparable, for purposes of section 254(b)(3) of the Telecommunications Act of 1996. If a state does not rely on the safe harbor described in paragraph (b) of this section, or certifies that the rates are not reasonably comparable, the state must fully explain its rate comparability analysis and provide data supporting its certification, including but not limited to residential rate data for rural areas within the state served by non-rural incumbent local exchange carriers. If a state certifies that the rates are not reasonably comparable, it must also explain why the rates are not reasonably comparable and explain what action it intends to take to achieve rate comparability.

(b) *Safe harbor.* For the purposes of its certification, a state may presume that the residential rates in rural areas served by non-rural incumbent local exchange carriers are reasonably comparable to urban rates nationwide if the rates are below the nationwide urban rate benchmark. The nationwide urban rate benchmark shall equal the most recent average urban rate plus two weighted standard deviations. The benchmark shall be calculated using the average urban rate and standard deviation shown in the most recent annual *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* published by the Wireline Competition Bureau. To the extent that a state relies

on the safe harbor, the rates that it compares to the nationwide urban rate benchmark shall include the access charges and other mandatory monthly rates included in the rate survey published in the most recent annual *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service*. The *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* is available for public inspection at the Commission's Reference Center at 445 12th Street, S.W., Washington, D.C. 20554 and on the Commission Web site at *www.fcc.gov/wcb/iatd/lec.html*.

(c) *Definition of ''rural area.''* For the purposes of this section, a ''rural area'' is a non-metropolitan county or county equivalent, as defined in the Office of Management and Budget's (OMB) Revised Standards for Defining Metropolitan Areas in the 1990s and identifiable from the most recent Metropolitan Statistical Area (MSA) list released by OMB. At a state's discretion, a ''rural area'' may also include any wire center designated by the state as rural for the purposes of this section. In the event that a state designates a wire center as rural, it must provide an explanation supporting such designation in its certification pursuant to paragraph (a) of this section.

(d) *Schedule for certification.* Annual certifications are required on the schedule set forth in § 54.313(d)(3), beginning October 1, 2004. Certifications due on October 1 of each year shall pertain to rates as of the prior July 1. Certifications filed during the remainder of the schedule set forth in § 54.313(d)(3) shall pertain to the same date as if they had been filed on October 1.

(e) *Effect of failure to certify.* In the event that a state fails to certify, no eligible telecommunications carrier in the state shall receive support pursuant to § 54.309.

[FR Doc. 03–30826 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3853, MB Docket No. 03–97, RM–10683]

Digital Television Broadcast Service; Juneau, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Capital Community Broadcasting, Inc., substitutes DTV channel *10 for DTV channel *6 at Juneau, Alaska. *See* 68 FR 19486, April 21, 2003. DTV channel *10 can be allotted to Juneau, Alaska, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 58–18–04 N. and 134–25–21 W. with a power of 0.748, HAAT of -320.3 meters and with a DTV service population of thousand 26. Since the community of Juneau is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective January 20, 2004.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–97, adopted December 2, 2003, and released December 5, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Alaska, is amended by removing DTV channel *6 and adding DTV channel *10 at Juneau.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30880 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3852, MM Docket No. 00–198, RM–9980]

Digital Television Broadcast Service; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KVOA Communications, Inc., substitutes DTV channel 13 for DTV channel 50 at Corpus Christi, Texas. *See* 65 FR 61299, October 17, 2000. DTV channel 13 can be allotted to Corpus Christi, Texas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27–44–28 N. and 97–36–08 W. with a power of 160, HAAT of 291 meters and with a DTV service population of 501 thousand. Since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective January 20, 2004.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–198, adopted December 2, 2003, and released December 5, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 50 and adding DTV channel 13 at Corpus Christi.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30882 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D001]

Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001. Section 1008 requires contractors to submit, and DoD to process, payment requests in electronic form.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2002–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 8450 on February 21, 2003, to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 1008 requires contractors to submit, and DoD to process, payment requests in electronic form. Seventeen sources submitted comments on the interim rule. A discussion of the comments is provided below. Differences between the interim and final rules are discussed in the DoD response to Comment 9 below. In addition, DoD has revised the language at 232.7002(a)(6)(ii) and 252.232–7003(c) to further address the involvement of the contract administration office in decisions to permit exceptions to the rule.

1. *Comment:* The rule should permit agencies to implement procedures identifying criteria for exemptions, incorporation of the DFARS clause in existing contracts, and the method for documenting an alternate payment method between the contracting officer, the Defense Finance and Accounting Service (DFAS), and the vendor when the vendor cannot comply with the DFARS policy.

DoD Response: Concur in part. The DFARS rule does not preclude agencies from providing guidance to contracting officers to address the particular situations of the agency that may warrant an exemption from the policy. DoD believes the language at DFARS 232.7002(a)(1) through (6) provides sufficient flexibility for agencies to implement this policy without needing specific additional exemption authority.

As for existing contracts, DoD does not believe it is necessary to specify whether the clause applies retroactively. Policy on the applicability of DFARS changes is provided in DFARS 201.304(6), which states, ''* * * Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.'' This rule does not deviate from the policy in DFARS 201.304(6) and, therefore, requires no additional instructions regarding applicability.

2. *Comment:* The rule should provide leeway to exclude classified procurement systems from any mandated changes implemented.

DoD Response: Concur. Classified invoices are exempt from the electronic submission requirement in accordance with DFARS 232.7002(a)(3).

3. *Comment:* How will DoD know that contracting offices are fully functional? Comments were submitted in response to the proposed rule published on May 31, 2002, which expressed concerns regarding the ability of agency software to comply with the electronic submission requirements.

DoD Response: In response to a comment received on the proposed rule published at 67 FR 38057 on May 31, 2002, DFARS 232.7002(a)(6) was added to the interim rule. This paragraph permits the contracting officer to authorize a contractor to submit a payment request in other than electronic form until such time as the agency is able to process payments electronically. Knowing which contracting offices are fully functional is an internal DoD implementation issue, which is outside the scope of this case. DoD anticipates that agencies will implement internal controls to monitor progress in complying with this policy.

4. *Comment:* One company indicated that it was not set up to send electronic invoices or accept electronic purchase orders. The company does not accept e-mail or FAX orders, and does not accept credit cards. Changing to all electronic payments would be a hardship to a small company such as itself that does limited Government business.

DoD Response: DoD believes this situation is adequately addressed at DFARS 232.7002(a)(6), which permits an exception to the policy if the contractor is unable to submit a payment request in electronic form.

5. *Comment:* There is a concern that one DoD payment office may be implementing a policy stating that, once it begins paying under contract via Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA), there shall be no invoices on that contract that will be paid manually.

DoD Response: DoD believes it should be a rare instance where manual payments are needed after payment has been made electronically under a contract. However, DoD believes this situation is adequately addressed at DFARS 232.7002(a)(6), which permits submission of a payment request in other than electronic form if the contractor is unable to submit or DoD is unable to receive a payment request in electronic form, and the parties (contracting officer, payment office, contract administration office, and contractor) agree on an alternative method. While a particular payment office may have a general policy such as the one described by the respondent, DoD anticipates that such a policy would be flexible enough to accommodate unique circumstances that may arise during contract performance.

6. *Comment:* How will vendors know what DFAS payment systems are available to accept invoicing through WAWF–RA and whether there will be staff available for testing of different payment systems for electronic invoicing? In addition, will purchasing agencies have all the required information to give vendors for electronic invoicing when orders are called in for supplies?

DoD Response: Information regarding DFAS and electronic payment is available at *www.dfas.mil/ecedi.* If the required information is not available on that web site, the cognizant contracting officer should be able to assist the contractor.

7. *Comment:* There should be a 6-month grace period during which paper invoices will continue to be acceptable

after a new electronic submission has been added.

DoD Response: Do not concur. DoD believes the language at DFARS 232.7002(a)(6) provides sufficient flexibility to address implementation concerns. This policy permits submission of a payment request in other than electronic form if the contractor is unable to submit or DoD is unable to receive a payment request in electronic form, and the parties agree on an alternative method.

8. *Comment:* The rule should consider that not every company or Government representative is located in an area with relatively inexpensive high-speed broadband internet access.

DoD Response: Concur in principle. DoD agrees that not every company or Government agency currently has high-speed broadband internet access. However, DoD believes this is adequately addressed at DFARS 232.7002(a)(6), which permits exceptions to the policy if the contractor is unable to submit or DoD is unable to receive a payment request in electronic form.

9. *Comment:* The second sentence of 252.232–7003(a)(2) should be revised to state that scanned documents are acceptable. Many contractors scan their data into a file and then attach it to the WAWF–RA program, which is part of the system.

DoD Response: Concur. The language at 252.232–7003(a)(2) was included in the interim rule to address a concern that scanned documents, by themselves, are not acceptable electronic forms for submission of payment requests. However, DoD recognizes that this may be misinterpreted to preclude scanning documents and then including them within the WAWF–RA program. Therefore, the language at 252.232–7003(a)(2) has been revised to state that scanned documents are not acceptable unless they are part of a submission using one of the forms of acceptable electronic transmission. Currently, neither ANSI X12 nor WInS can accept attachments. These are electronic data interchanges (EDI), so the only information flowing is data.

The language at 232.7002(b) has also been revised to specify that scanned documents are acceptable electronic forms for processing supporting documentation. DoD believes this change is necessary to clarify what constitutes electronic form for the processing of supporting documentation, and to be consistent with the language at 252.232–7003(a)(2).

10. *Comment:* Everyone should use WAWF–RA to electronically process invoices.

DoD Response: Do not concur. The rule identifies three acceptable electronic forms for transmission of payment requests, including but not limited to WAWF–RA. DoD does not believe it would be beneficial to limit transmission to WAWF–RA only.

11. *Comment:* It should be made explicit that it is the contracting officer's responsibility to approve an exemption as part of payment administration.

DoD Response: Concur in part. This responsibility is addressed at DFARS 232.7003(b), which states, ''If the payment office and the contract administration office concur, the contracting officer may authorize a contractor to submit a payment request using an electronic form other than those listed.* * *''

12. *Comment:* One company stated that it was set up to receive orders/releases through EDI, but was unsure if this would be sufficient to satisfy the requirements of the new DFARS policy.

DoD Response: As stated in DFARS 252.232–7003(b), EDI format is an acceptable form of electronic submission. However, the respondent should ensure that the submission is in one of the American National Standards Institute (ANSI) formats, in accordance with the DFARS policy. If the respondent is not using an ANSI format, it may adopt one of the ANSI formats or may request that its current electronic form be authorized by the contracting officer.

13. *Comment:* The clause at DFARS 252.232–7003 should be clarified, because some DoD officials and contractors believe the clause requires the contractor to electronically submit receiving reports.

DoD Response: Do not concur. DFARS 252.232–7003 requires contractors to submit payment requests electronically. Unless a contractor submits a receiving report as a payment request, the requirements of DFARS 252.232–7003 do not apply. DoD believes that the clause clearly limits the electronic submission requirement to payment requests.

14. *Comment:* DFARS 252.246–7000, Material Inspection and Receiving Report, should be clarified if contractors are required to distribute material inspection and receiving reports submitted in WAWF–RA to non-active WAWF–RA users by some other means.

DoD Response: Concur in part. DoD agrees that, if contractors were required to distribute these documents to non-active WAWF–RA users, the rule would need to specifically state this requirement. However, DoD does not believe the rule should have such a requirement, because such additional distribution would be redundant and costly to both DoD and industry. The policy does not require contractors to otherwise distribute material inspection and receiving reports submitted in WAWF–RA, because the distribution recipients have access to WAWF–RA.

15. *Comment:* There is not adequate training for vendors as to the type of invoicing document they are required to submit for payment. In the paper world, payment offices pay off of any type of document, *e.g.*, commercial invoice, public voucher, 2-in-1.

DoD Response: Do not concur. Whether submitting an invoice electronically or by paper, the vendor must submit the proper document. For example, a commercial invoice submitted under a contract that requires submission of public vouchers will not constitute an acceptable submission, regardless of whether that submission is made electronically or non-electronically.

Training is readily available for contractors and DoD personnel from numerous Internet sources, including the WAWF–RA site at *http://www.wawftraining.com;* for DCMA at *www.dcma.mil* (click on Electronic Invoicing); for DFAS at *www.dfas.mil/ecedi;* and for DISA at *www.disa.mil/acq/wawf/index.html* and *https://wawf-ra.slidell.disa.mil.*

16. *Comment:* Detailed guidance and training should be provided to all DoD payment staff regarding the payment request types for which payment invoicing is permitted.

DoD Response: Concur in principle. DoD believes adequate training is available, as discussed in the response to Comment 15 above.

17. *Comment:* While the training information is available on the Internet and by the military departments and defense agencies, there remains an urgent need to inform the contracting community about the requirement to invoice electronically.

DoD Response: Concur. To ensure the widest dissemination possible, an information release will be issued informing the public when the final rule is published.

18. *Comment:* The final rule should be clear with regard to the applicability date for the policy.

DoD Response: The interim rule became effective on March 1, 2003, and the final rule will become effective on the date of publication in the **Federal Register**. The DFARS changes in these rules apply to solicitations issued on or after the effective date of the change. (Also see the DoD response to Comment 1 above.)

19. *Comment:* One respondent was interested in the outcome of interfaces from the WAWF–RA Program Office referred to in Comment #36 of the February 21, 2003, **Federal Register** publication.

DoD Response: This comment is outside the scope of this case.

20. *Comment:* WAWF–RA does not currently accommodate third parties providing DD Form 250 processing as a service to contractors. An interface with a third party should be built into the WAWF–RA application.

DoD Response: While this recommendation is outside the scope of this case, the WAWF–RA Program Office has indicated that a future version of WAWF–RA will accommodate third parties providing DD Form 250 processing.

21. *Comment:* All options for electronic submission should include both the FTP and EDI batch solution to accommodate contractors that have high transaction counts and a simple web solution for contractors with low transaction counts.

DoD Response: While this recommendation is outside the scope of this case, the WAWF–RA Program Office has indicated that WAWF–RA does allow electronic submission in both FTP and EDI batch solution.

22. *Comment:* DoD should maintain a detailed schedule of electronic solutions available. The schedule should include a list of available solutions by invoice type, payment system, and payment office. The schedule should also show all system limitations, invoice types for which paper submission is acceptable, and the date when compliance with electronic submission for newly deployed solutions is required.

DoD Response: This comment is outside the scope of this case.

23. *Comment:* In migrating to one common electronic commerce system, existing electronic commerce solutions permitted by statute should be remapped into the specification required by the common system rather than requiring contractors to incur the significant cost of remapping.

DoD Response: This comment is outside the scope of this case.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because any start-up costs that contractors will incur to comply with the rule are expected to be minimal, and should be offset by the reduced administrative costs that are expected to result from the electronic submission and processing of invoices. In addition, the rule provides for exceptions to electronic submission requirements in cases where the contractor is unable to submit a payment request in electronic form.

C. Paperwork Reduction Act

This rule does not impose any additional information collection requirements that require approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements for contractors to provide non-electronic payment requests already have been approved by OMB as indicated below:

FAR clause number	FAR clause title	OMB control number	Expiration date
52.216–7	Allowable cost and payment	9000–0069	12/31/2005
52.232–7	Payments under time-and-materials and labor-hour contracts	9000–0070	7/31/2005
52.232–12	Advance payments	9000–0073	7/31/2005
52.232–16	Progress payments	9000–0010	9/30/2005
52.232–29	Terms for financing of purchases of commercial items	9000–0138	9/30/2004
52.232–30	Installment payments for commercial items	9000–0138	9/30/2004
52.232–32	Performance-based payments	9000–0138	9/30/2004

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Accordingly, the interim rule amending 48 CFR parts 232 and 252 which was published at 68 FR 8450 on February 21, 2003, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.7002 is amended by revising paragraphs (a)(6)(ii) and (b) to read as follows:

232.7002 Policy.

(a) * * *

(6) * * *

(ii) The contracting officer, the payment office, the contract administration office, and the contractor mutually agree to an alternative method.

(b) DoD officials receiving payment requests in electronic form shall process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also shall be processed in electronic form. Scanned documents are acceptable forms for processing supporting documentation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(DEC 2003)''; and

■ b. In entry ''252.232–7003'', by removing ''(MAR 2003)'' and adding in its place ''(DEC 2003)''.

■ 4. Section 252.232–7003 is amended by revising the clause date and paragraphs (a)(2) and (c) to read as follows:

252.232–7003 Electronic Submission of Payment Requests.

* * * * *

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (DEC 2003)

(a) * * *

(2) *Electronic form* means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using one of the electronic forms provided for in paragraph (b) of this clause.

* * * * *

(c) If the Contractor is unable to submit a payment request in electronic form, or DoD is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor, the Contracting Officer, the contract administration office, and the payment office.

* * * * *

[FR Doc. 03–30764 Filed 12–12–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D017]

Defense Federal Acquisition Regulation Supplement; Payment Withholding

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide additional flexibility when determining the need to withhold payments under time-and-materials and labor-hour contracts. The rule clarifies that normally there should be no need to withhold payment for a contractor with a record of timely submittal of a release discharging the Government from all liabilities, obligations, and claims under a contract.

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2002–D017.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, requires the contracting officer to withhold 5 percent of the amounts due, up to a maximum of $50,000, unless otherwise specified in the contract Schedule. The Government retains the withheld amount until the contractor executes and delivers, at the time of final payment, a release discharging the Government from all liabilities, obligations, and claims arising under the contract. This rule adds DFARS 232.111(b) and DFARS 252.232–7006, Alternate A, to specify that, normally, there should be no need to withhold payment for a contractor with a record of timely submittal of such a release.

DoD published a proposed rule at 68 FR 9627 on February 28, 2003. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below. Differences between the proposed and final rules are addressed in the DoD Response to Comments 5, 6, 7, and 8 below.

1. *Comment:* The rule should specify whether the clause applies retroactively or from a specific date forward to all time-and-materials and labor-hour contracts.

DoD Response: Do not concur. Policy on the applicability of DFARS changes is provided in DFARS 201.304(6), which states, ''* * * Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.'' This rule does not deviate from the policy in DFARS 201.304(6) and, therefore, requires no additional instructions regarding applicability.

2. *Comment:* FAR 52.232–7(a)(2) should be eliminated. If it is not eliminated, there should be a graduated scale for the rate of withholding and the total to be withheld. For instance, the ceiling amount for very small businesses should be reduced to $5,000 and the withholding rate should be reduced to 2 percent so that the effects are spread over a longer time.

DoD Response: Do not concur. DoD believes the withhold is an important tool for the Government to use when the contractor does not have a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims. The withhold protects the Government in these circumstances while also providing the contractor with an incentive to submit the discharges in a timely manner.

3. *Comment:* In addition to continuing forward with this DFARS revision, the FAR should be revised at the earliest possible date to make withholding optional.

DoD Response: The Defense Acquisition Regulations Council is presently working with the Civilian Agency Acquisition Council to incorporate similar policy into the FAR.

4. *Comment:* The language at 232.111(b)(ii) should be revised to indicate that timely submittal of release is only one example where there is no need to withhold payment. There are other circumstances when the withholding may not be necessary, such as when the contractor has demonstrated a satisfactory accounting and billing system and is determined to be eligible for direct billings by the Defense Contract Audit Agency.

DoD Response: Do not concur. A satisfactory accounting and billing system and eligibility for direct billings indicate that the contractor has the necessary internal controls to address periodic billings during contract performance. However, they are not determinative as to whether the contractor submits timely releases discharging the Government from all liabilities, obligations, and claims upon completion of the contract. If the contractor does not have a record of submitting these discharge documents in a timely manner, the fact that the accounting and billing systems are adequate is not sufficient to warrant removing the withhold requirement.

5. *Comment:* The language at 232.111(b)(iii) should be revised to refer to the withholding as ''five percent up to a maximum of $50,000'' of the amounts due until a sufficient reserve is established. This maximum amount of coverage is addressed properly in the contract clause. In addition, 232.111(b)(iii) should be amended to authorize the ACO to establish an administrative mechanism for holding contractor funds that does not require the withholding of funds on each invoice so as to reduce the administrative burden on both the Government and the contractor.

DoD Response: Partially concur. DoD agrees that the $50,000 maximum withhold amount should be stated in 232.111(b)(iii) and, accordingly, has replaced ''until a sufficient reserve is set aside'' with ''up to a maximum of $50,000.''

As to the suggestion to provide for alternative mechanisms, DoD believes that determining whether alternative administrative mechanisms are feasible and/or practical is beyond the scope of this case.

6. *Comment:* The rule should instruct the contractor to forward all vouchers to the Defense Finance and Accounting Service (DFAS) through the ACO for approval, until such time that the ACO considers sufficient reserves to be set aside to adequately protect the Government interests. The ACO must inform DFAS when funds will be withheld from a contract, and there must be a process to link the modification with the vouchers being submitted to DFAS for payment. The modification should specify the percentage of the amounts due up to a maximum dollar amount.

DoD Response: Partially concur. DoD recognizes the need for coordination among all parties in the payment process to ensure that withholds are

appropriately made without significantly impacting the payment process. However, DoD does not believe requiring ACO approval of each voucher is the proper solution for this issue. Requiring the contractor to submit all vouchers requiring withholds through the ACO for approval would place an unnecessary administrative burden on the ACO and could impact the timeliness of payment.

DoD agrees that the ACO should ensure that the contract specifies the percentage and total amount of the withhold, and accordingly, has added the following language to DFARS 232.111(b)(iii): ''The ACO shall ensure that the modification specifies the percentage and total amount of the withhold.''

DoD also agrees that the ACO should provide DFAS with written payment instructions regarding if and when withholds are needed. However, DoD does not believe these instructions should be included as part of this DFARS rule.

7. *Comment:* There is a concern that the rule shifts responsibility for withholding from the Government to the contractor. It is important that this responsibility remain with the Government.

DoD Response: Partially concur. While there was no intent to shift the burden to the contractor, DoD recognizes that the proposed language could be misinterpreted. Therefore, 232.111(b)(iii) and 252.232–7006 have been revised to clarify that the ACO must issue a modification requiring the contractor to withhold amounts from its billings.

8. *Comment:* The language 232.111(b)(iii) should be amended to state ''If the ACO determines that it is necessary to withhold payment to protect the Government's interests, written direction should be issued to the contractor by modification of the contract directing the withholding of 5 percent of amounts due until a sufficient reserve is set aside.'' This revised language would be consistent with the language in Defense Contract Management Agency Information Memorandum 03–121 issued on January 14, 2003. Requiring withholds to protect the interests of the Government alters the contract terms and conditions and, therefore, should be documented through a contract modification.

DoD Response: Concur in principle. The language at 232.111(b)(iii) has been revised to state that the ACO must issue a modification requiring the contractor to withhold the amounts due.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule applies only to time-and-materials and labor-hour contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 232 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.111 is added to read as follows:

232.111 Contract clauses for non-commercial purchases.

(b) Use the clause at FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, with 252.232–7006, Alternate A, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(i) Alternate A permits the administrative contracting officer (ACO) to withhold 5 percent of the amounts due until a reserve is set aside in an amount the ACO considers to be necessary, but not to exceed $50,000, to protect the Government's interests.

(ii) Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims.

(iii) If the ACO determines that it is necessary to withhold payment to protect the Government's interests, the ACO shall unilaterally issue a modification requiring the contractor to withhold 5 percent of amounts due, up to a maximum of $50,000. The ACO shall ensure that the modification specifies the percentage and total amount of the withhold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.232–7006 is added to read as follows:

252.232–7006 Alternate A.

Alternate A (Dec 2003)

As prescribed in 232.111(b), substitute the following paragraph (a)(2) for paragraph (a)(2) of the clause at FAR 52.232–7:

(a)(2) The Administrative Contracting Officer (ACO) may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the ACO considers necessary to protect the Government's interests. The ACO may withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

[FR Doc. 03–30763 Filed 12–12–03; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 68, No. 240
Monday, December 15, 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 39

[Docket No. 2003–NE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG, Models Spey 555–15, 555–15H, 555–15N, and 555–15P Turbojet Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd. & Co KG (RRD), models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines, with magnesium split low pressure (LP) compressor case, part number (P/N) EU.73418A installed. This proposed AD would require replacement of the magnesium split LP compressor case with a serviceable compressor case that is a combination of a steel front LP compressor case and a shortened split compressor case. This proposed AD results from several reports of bird ingestion and LP stage 1 rotor blade failures that have resulted in penetration of the magnesium LP compressor case, and damage to the airplane. We are proposing this AD to prevent possible uncontained LP stage 1 rotor blade failures that could result in damage to the airplane.

DATES: We must receive any comments on this proposed AD by February 13, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany, telephone +49 (0) 33–7086–1768; fax +49 (0) 33–7086–3356.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–51–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on RRD models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines. The LBA advises that several reports of bird ingestion and LP stage 1 rotor blade failures have resulted in penetration of the current design magnesium split LP compressor case, and damage to the airplane.

Relevant Service Information

Rolls-Royce Deutschland Service Bulletin (SB) No. Sp72–893, Revision 3, dated August 25, 2003, describes procedures for replacing the magnesium split LP compressor case, P/N EU.73418A, by reworking the front bearing housing and reworking certain affected brackets necessary, and installing Modification Kit Spey 5515. The kit contains a new design steel front case and shortened split compressor case.

FAA's Determination and Requirements of the Proposed AD

These RRD models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines, manufactured in Germany, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require replacing the current design magnesium split LP compressor case with a serviceable compressor case that is a combination of a steel front case and a shortened split case, within 60 months after the effective date of the AD. The AD compliance time is based on comprehensive Rolls-Royce

investigation and risk assessment results.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 184 RRD models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines of the affected design in the worldwide fleet. We estimate that 34 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 6 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $37,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,271,260.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–51–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd. & Co KG: Docket No. 2003–NE–51–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by February 13, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD), models Spey 555–15, 555–15H, 555–15N, and 555–15P turbojet engines, with magnesium split low pressure (LP) compressor case, part number (P/N) EU.73418A installed. These engines are installed on, but not limited to, Fokker F.28 Mark 1000, Mark 2000, Mark 3000, and Mark 4000 series airplanes.

Unsafe Condition

(d) This AD is prompted by several reports of bird ingestion and LP stage 1 rotor blade failures that have resulted in penetration of the magnesium split LP compressor case and damage to the airplane. We are issuing this AD to prevent possible uncontained LP stage 1 rotor blade failures that could result in damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 60 months after the effective date of this AD, unless the actions have already been done.

Replacement of Magnesium Split LP Compressor Case With a Serviceable Compressor Case

(f) Remove the magnesium split LP compressor case, P/N EU.73418A, from the engine and install a serviceable compressor case. Information on removing and replacing this P/N case can be found in RRD Service Bulletin (SB) No. Sp72–893, Revision 3, dated August 25, 2003.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(h) None.

Related Information

(i) LBA airworthiness directive 2003–261, dated August 25, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on December 5, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–30851 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) proposes to revise its regulations governing the collection of claims owed to the United States arising from activities under the Commission's jurisdiction. The proposed revision implements the administrative wage garnishment provisions of the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to collect money from a debtor's disposable income by means of administrative wage garnishment. Prior to enactment of the DCIA, a court order was required for an agency to garnish a debtor's wages. In accordance with the requirements of the DCIA, the procedures being proposed by the Commission to garnish wages administratively are based upon, and consistent with, implementing regulations issued by the Department of the Treasury.

DATES: Comments must be received by January 14, 2004.

ADDRESSES: Comments should refer to ''Proposed Administrative Wage Garnishment Rules'' and be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Stephen Mihans, Esq., Office of General Counsel, Commodity Futures Trading Commission, at (202) 418–5399 or *smihans@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Part 143 of the Commission's regulations, 17 CFR part 143, sets forth the Commission's policies and procedures for collecting debts owed to the United States arising from activities under the Commission's jurisdiction. At present, the part 143 rules, which apply to debts owed by persons not employed by the Federal government, authorize collection by (1) administrative offset against obligations owed to the debtor by the United States, (2) compromise (if the debt owed is not more than $100,000), or (3) referral to the Department of Justice for litigation.[1] The part 143 rules were first published in 1985 (50 FR 5383) to implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701, *et seq.* They were amended in 1992 (57 FR 61291) to increase the maximum dollar amount of claims that the Commission itself may settle, and again in 1996 (61 FR 55564) and 2000 (65 FR 45709) to adjust for inflation the maximum dollar amount of civil penalties assessable for violations of the Commodity Exchange Act and the Commission's regulations and orders.[2]

As a result of the Department of the Treasury's issuance of regulations implementing the administrative wage garnishment provisions of the DCIA, the Commission is proposing to further amend its part 143 rules. Under the DCIA, the head of a Federal agency administering a program that gives rise to a delinquent non-tax debt owed to the United States by an individual may garnish the individual's disposable pay to collect the amount owed. *See* 31 U.S.C. 3720D. On May 6, 1998, the Financial Management Service (FMS),[3] a bureau of the Department of the Treasury, promulgated regulations (63 FR 23156) establishing rules and procedures governing administrative wage garnishment by Federal agencies. *See* 31 CFR 285.11. Agencies that wish to use administrative wage garnishment to collect delinquent debts must comply with all of the requirements set forth in 31 CFR 285.11. They are permitted, however, to prescribe their own rules for the conduct of administrative wage garnishment hearings, so long as the rules are consistent with criteria set forth in 31 CFR 285.11(f).

The Commission's proposal would revise existing Rule 143.1 by adding administrative wage garnishment to the list of available debt collection procedures. Existing Rules 143.2 through 143.8, which address the collection of delinquent debt through administrative offset, compromise, or referral to the Department of Justice for litigation, would be grouped together as subpart A, ''General Provisions.'' To address the collection of delinquent debt through garnishment of the debtor's wages, a new subpart B, ''Administrative Wage Garnishment,'' would be added to part 143. In addition to these changes, the Commission's proposal would correct citations in part 143 to the Federal Claims Collections Standards to reflect their transfer from part 4 to part 31 of the Code of Federal Regulations and make other editorial changes of a non-substantive nature.

II. Overview of Proposed Wage Garnishment Procedures

Under proposed Rule 143.9, administrative wage garnishment proceedings initiated by the Commission would be governed by the FMS regulations codified at 31 CFR 285.11.[4] Those regulations allow the Commission to garnish the disposable pay of any individual, other than an employee of the Federal government, who owes a delinquent non-tax debt to the United States arising from an activity within the Commission's jurisdiction. 31 CFR 285.11(d). At least 30 days before a garnishment proceeding is initiated, the Commission (or FMS, acting on the Commission's behalf) will send the debtor written notice informing him or her of the nature and amount of the debt and the Commission's intention to collect it through deductions from the debtor's pay, and explaining the debtor's rights with respect to the proposed action. 31 CFR 285.11(e)(1).

The debtor will be given an opportunity to inspect and copy Commission records related to his or her debt, to enter into a written repayment agreement on terms acceptable to the Commission, and to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule. 31 CFR 285.11(e)(2). If a hearing request is received within 15 business days after the Commission's notice is mailed to the debtor, a hearing must be held before a garnishment order can be issued. 31 CFR 285.11(f)(4). For hearing requests not received within 15 business days, the Commission need not delay the issuance of the garnishment order prior to conducting a hearing. 31 CFR 285.11(f)(5). The Commission may not garnish the pay of a delinquent debtor who has been involuntarily separated from employment until he or she has been reemployed continuously for at least 12 months. 31 CFR 295.11(j). The debtor bears the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

Within 30 days after a delinquent debtor fails to make a timely request for a hearing or, if a timely request is received, within 30 days after a final decision is made to proceed with garnishment, the Commission (or FMS, acting on the Commission's behalf) will mail a wage garnishment order, in a form prescribed by the Department of the Treasury, to the debtor's employer. 31 CFR 285.11(g). The order will direct that the employer pay a specified portion of the debtor's wages to the Federal government. Along with the order, the Commission (or FMS, acting on the Commission's behalf) will send a certification form, to be executed by the employer, addressing such matters as the debtor's current employment status and the amount of disposable income available for garnishment. 31 CFR 285.11(h). Although the employer must promptly pay all amounts that are required to be withheld from the debtor's pay, the employer will not be required to alter its normal pay cycle in order to do so.

As provided by the DCIA, no more than 15 percent of a delinquent debtor's disposable income may be garnished for each pay period. A debtor may, at any time, seek review by the Commission of the amount being withheld under an administrative wage garnishment order, based on materially changed circumstances (such as disability, divorce, or catastrophic illness) which result in financial hardship. The DCIA makes it unlawful for an employer to take disciplinary action against an employee based on the fact that the employee's pay is subject to administrative wage garnishment. In addition, it authorizes the Commission to sue an employer for amounts that are

[1] The collection of debts owed to the Commission by its current employees or by the employees of other Federal agencies, and of debts owed to other Federal agencies by current Commission employees, is separately governed by part 141 of the Commission's regulations, 17 CFR part 141.

[2] The 1996 and 2000 amendments to the Commission's part 143 rules implemented the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the DCIA. The FCPIAA and the relevant amendments made to the FCPIAA by the DCIA, are codified at 28 U.S.C. 2461 note.

[3] On August 27, 1999, the Commission entered into a cross-servicing agreement with the FMS, which allows the FMS to undertake debt collection activities on behalf of the Commission. It is anticipated that, pursuant to that agreement, the FMS also will assist the Commission in collecting delinquent debts through administrative wage garnishment.

[4] The Commission's use of other debt-collection measures set forth in subpart A of the part 143 rules would not preclude it from initiating an administrative wage garnishment proceeding against a delinquent debtor.

not withheld under a garnishment order.

III. Administrative Wage Garnishment Hearings

If a delinquent debtor requests a hearing concerning the existence or amount of his or her debt or the terms of repayment set forth in the garnishment order, the hearing will be conducted by the Commission in accordance with the requirements of 31 CFR 285.11(f). Under proposed Rule 143.10, the Commission would authorize its Executive Director (or any Commission employee designated by the Executive Director) to decide whether the hearing will be oral or in writing, and to select a qualified and impartial employee of the Commission to conduct the hearing and render a decision. Consistent with the requirements of 31 CFR 285.11(f)(10), the Commission's proposed rules require that a decision be issued within 60 days after the Commission's receipt of the debtor's request for a hearing. The hearing official's decision would be the final agency action for purposes of judicial review under the Administrative Procedure Act, 7 U.S.C. 701, *et seq.*

The proposed rules state that, at the hearing, the Commission has the burden of going forward to prove the existence and amount of the debt. Depending on his or her claims, the debtor then would have to establish, by a preponderance of the evidence, that no debt exists or the amount of the debt is incorrect, that the terms of the repayment schedule are either unlawful or would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to the operation of law. Although the FMS regulations require only that a ''summary record'' of the hearing be maintained, proposed Rule 143.10 would require that all testimony adduced at an oral hearing be transcribed on the record and under oath or affirmation, and that all documents presented for consideration by the hearing official be marked as exhibits and retained in the record.

IV. Related Matters

A. Administrative Procedure Act

The proposed amendments to the Commission's part 143 rules governing debt collection relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and opportunity for public comment, are not applicable. Moreover, because the rules implement a definitive statutory scheme established by the DCIA, notice and an opportunity for public comment are not required. However, since the proposed amendments represent an additional tool in the Commission's debt-collection efforts, the Commission has determined that it would be useful to receive comments from any interested members of the public before proceeding to final rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that, in proposing rules, agencies consider the impact of those rules on small businesses. Since the proposed rules are not being effected pursuant to 5 U.S.C. 553, the analysis and certification process mandated by the RFA do not apply. In any event, the Chairman, on behalf of the Commission, certifies that the proposed rules will not have a significant economic impact on a substantial number of small businesses. Although an employer of a delinquent debtor will have to certify certain information about the debtor, such as the debtor's employment status and current earnings, this information is already contained in the employer's payroll records. Moreover, an employer would not be required to vary its normal payroll cycle to accommodate an administrative wage garnishment order.

C. Paperwork Reduction Act

The proposed part 143 rules do not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Cost-Benefit Analysis

Section 15(a) of the Commodity Exchange Act, 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing a new regulation. The Commission understands that, by its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission can, in its discretion, give greater weight to any one of the five enumerated areas of concern and can, in its discretion, determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions, or accomplish any of the purposes, of the Commodity Exchange Act.

The proposed administrative wage garnishment rules are not related to the marketplace and thus should not affect the protection of market participants; the efficiency, competitiveness, and financial integrity of futures markets; price discovery; or sound risk management practices. These proposed rules, however, do address other public interest considerations, namely, the collection of debts owed to the United States arising from activities under the Commission's jurisdiction. The costs associated with implementing administrative wage garnishment, which are mandated by the DCIA and 31 CFR 285.11, will be small. On the other hand, the benefits include providing an additional means to prevent persons who have been found liable for violating the Commodity Exchange Act or the Commission's regulations or orders from avoiding payment of monetary sanctions lawfully imposed on them.

List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

In consideration of the foregoing, the Commission proposes to amend chapter 1 of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a-1(d), and 13(a); 31 U.S.C. 3701–3720E; 28 U.S.C. 2461 note.

2. Section 143.1 is revised to read as follows:

§ 143.1 Purpose.

This part provides procedures that the Commission will use to collect debts owed the United States arising from activities under the Commission's jurisdiction. As applicable, these procedures are based upon, and conform to, the Federal Claims Collection Act, as amended, 31 U.S.C. 3701–3720E; the Federal Claims Collection Standards, 31 CFR parts 900–905, issued by the Department of the Treasury and the Department of Justice;

administrative wage garnishment regulations issued by the Department of the Treasury, 31 CFR 285.11; and other laws applicable to the collection of non-tax debts owed to the United States arising from activities under the Commission's jurisdiction. Subpart A describes procedures for collection by offset against obligations of the United States to the debtor, by compromise, and by referral to the Department of Justice for litigation. It also sets forth the Commission's policy on collecting interest on unpaid claims, the method used in calculating such interest, and the maximum inflation-adjusted civil monetary penalties that may be assessed and enforced for each violation of the Commodity Exchange Act or regulations or orders of the Commission promulgated thereunder. Subpart B describes procedures for collection by administrative garnishment of the debtor's wages.

3. Sections 143.2 through 143.8 are designated as subpart A of part 143, and a new heading, ''Subpart A—General Provisions,'' is added above section 143.2 to read as follows:

Subpart A—General Provisions

4. Section 143.2 is amended by revising paragraph (c) to read as follows:

§ 143.2 Notice of claim.

* * * * *

(c) If no response or an unsatisfactory response is received by the date indicated in the notice, the Commission may take further action as appropriate under the Commodity Exchange Act or regulations thereunder, or under 31 CFR parts 900–905 or the Federal Claims Collection Act, as amended, 31 U.S.C. 3701–3720E.

5. Section 143.7 is amended by revising paragraph (a) to read as follows:

§ 143.7 Delegation of authority to the Executive Director.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director or to any Commission employee under the Executive Director's supervision as he or she may designate, authority to take action to carry out subpart A and subpart B of this Part and the requirements of 31 CFR parts 900–905 and 31 CFR 285.11.

* * * * *

6. A new subpart B consisting of §§143.9 and 143.10 is added to part 143, to read as follows:

Subpart B—Administrative wage garnishment

§ 143.9 Administrative wage garnishment orders.

Whenever an individual owes the United States a delinquent non-tax debt arising from activities under the Commission's jurisdiction, the Commission, or another federal agency collecting the debt on behalf of the Commission, may initiate administrative proceedings to garnish the disposable income of the delinquent debtor in accordance with the requirements of, and the procedures set forth in, 31 CFR 285.11. The Commission's use of other debt-collection measures set forth in subpart A of this part does not preclude the initiation of an administrative wage garnishment proceeding against a delinquent debtor.

§ 143.10 Garnishment hearings.

Any oral or written hearing required to establish the Commission's right to collect a delinquent debt through administrative wage garnishment will be presided over by a hearing official designated by the Executive Director. Any qualified and impartial employee of the Commission designated by the Executive Director may serve as a hearing official. All documents presented to the hearing official for his or her consideration shall be marked as exhibits and retained in the record. All testimony given at an oral hearing, either in person or by telephone, shall be under oath or affirmation. A transcript of the hearing shall be prepared and made part of the record.

Issued in Washington, DC, on December 9, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–30877 Filed 12–12–03; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ65–269, FRL–7599–1]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to approve a revision to the State Implementation Plan (SIP) for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M rules to comply with EPA regulations and to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments EPA is proposing to approve is New Jersey's On-Board Diagnostic (OBD) program. EPA is proposing to approve New Jersey's latest I/M rule changes. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

DATES: Comments must be received on or before January 14, 2004. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket No. NJ65–269, by email to *Werner.Raymond@epa.gov*, online at *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA; mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866; or by hand delivery or courier to the same address.

Copies of the state submittal(s) are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, and

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Reema Persaud, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, *persaud.reema@epa.gov*.

SUPPLEMENTARY INFORMATION: If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information

provided in the body of a comment will be included as part of the comment that is made available to the public. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

If you send an electronic mail (e-mail) comment to the EPA e-mail address for this rulemaking, *Werner.Raymond@epa.gov*, your e-mail address is automatically captured and included as part of the comment that is made available to the public. Regulations.gov is an alternative method of submitting electronic comments to EPA. In contrast to EPA's e-mail system, Regulations.gov is an ''anonymous access'' system, which mean EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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1. Background

The Clean Air Act (CAA) requires certain states to implement an enhanced inspection and maintenance (I/M) program to detect gasoline-fueled motor vehicles which exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based national ambient air quality standards (NAAQS) for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. New Jersey is required to have an enhanced I/M program pursuant to the CAA, and consequently has adopted, and has been implementing an enhanced I/M program statewide since December 13, 1999. In the January 22, 2002 **Federal Register** (67 FR 2811), EPA fully approved New Jersey's enhanced I/M program, including the State's performance standard modeling, as meeting the applicable requirements of the CAA. Additional information on EPA's final approval of New Jersey's enhanced I/M program can be found in EPA's January 22, 2002 final approval notice.

On April 5, 2001, EPA's revised I/M program requirements rule was published in the **Federal Register** (Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check; Final Rule (66 FR 18156)). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system of applicable 1996-and-newer motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause the vehicle emissions to exceed allowable limits. The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure (FTP) standards, then the Malfunction Indicator Light (MIL) is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible thus reducing the harmful emissions contributed by that vehicle.

This revised OBD I/M rule applies only to those areas required to implement an I/M program under the CAA. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996-and-newer model OBD-equipped vehicles, and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

The revised I/M rule also provided several options to states to delay implementation of OBD testing, under certain circumstances. An extension of the deadline for states to begin conducting mandatory OBD checks is permissible provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents ''the best the state can reasonably do.'' EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to the EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay request that are listed in EPA's rule include: contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

On April 24, 2002, New Jersey submitted a SIP revision to formally request an extension of the OBD I/M test deadline, per EPA's I/M requirement rule. New Jersey's SIP revision lists many of the same factors that are listed in EPA's I/M rule in order to justify the State's request for extension of the OBD testing deadline. These include the hybrid nature of the inspection network in New Jersey of both centralized and decentralized inspection facilities. The hybrid network system makes the software upgrades and programmatic changes more complicated. It requires the modification of two distinct software applications while assuring compatibility with a common vehicle inspection database (VID). All upgrades are required to conform with State specifications and pass stringent acceptance testing protocols before installation in testing facilities. Based on these and other reasons listed by New Jersey, EPA believes that the State's delayed implementation is justified.

2. What Action Is EPA Taking Today?

The EPA is proposing approval of several submittals by the State of New Jersey pertaining to its enhanced I/M SIP. The content of those SIP submittals is described below and summarized in Table 1.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO TODAY'S ACTION

Date	Content
April 22, 2002	Request to delay implementation of OBD testing.
February, 10, 2003	(1) Implementation of On-board Diagnostic Inspections and Schedule.
	(2) Continuation of ''Initial'' Standards for the ASM5015 Exhaust Emission Test.
	(3) Removal of the Requirements for ''Final'' Standards for the ASM5015 Exhaust emission test.
	(4) Removal of the requirements for the evaporative pressure and purge tests.
May 28, 2003	(1) Requirements for issuance of temporary inspection decals.
	(2) Exemption of gasoline-fueled school buses.
	(3) Allowance of an on-road inspection to substitute for a biennial Inspection.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO TODAY'S ACTION—Continued

Date	Content
August 4, 2003	NJMVC [1] adopted regulations for OBD inspections.

[1] New Jersey Motor Vehicle Commission (NJMVC) formerly New Jersey Department of Motor Vehicles.

A. What Are the OBD Requirements and How Does New Jersey's Program Address Them?

The OBD program requires scan tool equipment to read the vehicle's built-in computer sensors in model year 1996 and newer vehicles. The OBD-I/M check consists of two types of examination: A visual check of the dashboard display function and status and an electronic examination of the OBD computer itself. The failure criteria for OBD testing is any Diagnostic Trouble Code (DTC) or combination of DTCs that results in the Malfunction Indicator Light (MIL) to be commanded on. A DTC is a code that indicates an emission control system or component which may cause emissions to increase to 1.5 times the limit due to malfunction. New Jersey has incorporated this OBD component into the I/M program.

If the OBD scan reveals DTCs that have not commanded the MIL on, the motorist should be advised of the issue, but the vehicle should not be failed unless other non-DTC-based failure criteria has been met. Vehicles may fail inspection if the vehicle connector is missing, tampered with or otherwise inoperable, if the MIL is commanded on and is not visually illuminated, and if the MIL is commanded on for 1 or more DTCs as defined in Society of Automotive Engineering (SAE) J2012 guidance document.

Vehicles are rejected from testing if the scan of the OBD system reveals a ''not ready'' code for any OBD component. The States have the flexibility to permit model year 1996 to 2000 vehicles with 2 or fewer unset readiness codes, and model year 2001 and newer with 1 unset readiness code to complete OBD-I/M inspection without being rejected. Vehicles would still fail if the MIL was commanded on or if other failure criteria were met, or be rejected if 3 or more unset readiness codes were encountered. If the MIL is not commanded to be illuminated the vehicle shall pass the OBD inspection even if DTCs are present.

There are several reasons why a vehicle may arrive for testing without the required readiness codes set. These reasons include the following: (1) Failure to operate the vehicle under the conditions necessary to evaluate the monitors in question; (2) a recent resetting of the OBD system due to battery disconnection or replacement, or routine maintenance immediately prior to testing; (3) a unique, vehicle-specific OBD system failure; (4) an as-of-yet undefined system design anomaly; or (5) a fraudulent attempt to avoid I/M program requirements by clearing OBD codes just prior to OBD-I/M testing. Once the cause for rejection has been corrected, the vehicle must return for reinspection. New Jersey has incorporated these OBD program factors into its I/M program.

The EPA believes that for an OBD-I/M test program to be most effective, whether centralized or decentralized, it should be designed to allow for: (1) Real-time data link connection to a centralized testing database; (2) quality-controlled input of vehicle and owner identification information; and (3) automated generation of test reports. New Jersey has incorporated these OBD program elements into its I/M program.

New Jersey has structured its On-Board Diagnostic (OBD) program to be implemented as outlined by EPA. New Jersey outlined the procedure for its OBD inspection program at N.J.A.C. 7:27B–5.7. The State requires that the procedures required to implement the OBD program should be performed in accordance with the procedures set forth by EPA. For this reason, and as detailed above, EPA is proposing that New Jersey's OBD program meets federal requirements and is approvable.

New Jersey has gone through the phase-in period of Beta testing, and all the systems have been updated with the appropriate software and hardware. The inspectors at both centralized and decentralized inspection facilities have been trained and licensed to operate the OBD scan tools and recognize the basis for failure or rejection. New Jersey has also taken steps to limit potential inspection fraud at centralized and decentralized inspection stations. A motor vehicle emission inspector license may be suspended or revoked if any fraudulent vehicle emission inspection is conducted. Also, no person licensed as an emission inspector shall own or be employed by any motor vehicle repair facility while employed by a centralized inspection facility. An emission inspector may be employed by a private inspection facility only if the facility is licensed by the Division in accordance with N.J.A.C 13:20–44.

B. What Are the Additional I/M Changes Being Incorporated?

In addition to the OBD programs, this proposal addresses a number of submissions from the New Jersey Department of Environmental Protection (NJDEP) concerning revisions to the I/M SIP for New Jersey. The State believes following the proposed revisions are necessary to enhance New Jersey's I/M program, and these elements of the program are approvable by EPA. The content of those submissions is described below.

The State requested a revision to its SIP to exempt new cars from inspection for four years, as opposed to two years, and to include a change in the minimum cost expenditure value for the issuance of a waiver, from $200 to $450. Subsequent to the first inspection, the inspection cycle is biennial (every two years). The EPA approved the State's new motor vehicle four-year exemption SIP revision on February 18, 2003 (68 FR 7704). New Jersey conducted I/M performance standard modeling using MOBILE6 to model emissions related to a 4 year exemption from inspection of new vehicles. The modeling also included other program details reflective of the State's current I/M program, for example, the removal of evaporative purge and pressure tests, and modifications listed below. The results of the MOBILE6 modeling indicated that the emission levels were still below the levels of emissions when EPA defaults are assumed.

The April 2002 submittal requested the exemption from dynamometer testing any motor vehicle ''with a chassis height that has been modified so as to make its operation on a dynamometer either impractical or hazardous, as will be determined by the discretion of the Director of the New Jersey Motor Vehicle Commission (NJMVC).''

On February 10, 2003, a letter was transmitted by New Jersey requesting approval of the following revisions. A request was made for the end date of ''initial'' emission standards for ASM5015 exhaust emission tests to be eliminated in order to allow for continued use of these standards, and for the ''final'' emission standards for

the ASM5015 exhaust emission test to be removed. EPA received a request for the removal of all references to the evaporative pressure and purge test, while retaining the evaporative fuel cap leak test.

On May 28, 2003, EPA received a request from New Jersey to allow the substitution of an on-road inspection certification for the biennial inspection. The on-road inspection must comply with the testing that is required for the motor vehicle as part of a regular inspection, and must be within the two-month period prior to its regularly scheduled biennial inspection.

This letter also requested the exemption of OBD-eligible gasoline-fueled and bi-fueled school buses from I/M enhanced inspection purposes. All school buses must meet the Department emission standards and be inspected biannually using a 2,500 RPM test, not with an ASM5015 test, (*see* 34 N.J.R. 829(a) February 19, 2002). The school buses will be inspected under the MVC School Bus Inspection Unit regulation in accordance with N.J.S.A. 39:3B–18 et seq. The State also requested that leasing companies and out-of-state dealerships be allowed to issue temporary inspection decals, which would permit the motorist to present the vehicle at the exit of any centralized inspection facility and be issued a valid inspection decal.

In addition to restructuring the rule, amendments were made to: clarify the meaning of vehicles primarily operated in the area; clarify existing definitions and include new definitions; clarify fleet vehicle testing requirements, set fee payment methods, station testing procedures, emission test standards and waiver requirements; clarify the vehicle test report requirement for vehicles that fail the OBD test, reinspection, the clean screening test report requirements and the fleet vehicle reporting requirements; clarify the issuance of inspection certificates of approval or rejection; clarify the test methods for the OBD and the visual test methods, and clarify licensing of inspection agents and definitions of fraud. All of the factors of New Jersey's I/M program detailed above are approvable by the EPA.

3. Summary of Conclusions and Proposed Action

EPA's review of the materials submitted indicates that New Jersey has revised the I/M program in accordance with the requirements of the Clean Air Act (CAA), and all of EPA's technical requirements for an approvable OBD program. The CAA gives States the discretion in program planning to implement programs of the State's choosing as long as necessary emission reductions are met. EPA is approving the proposed actions and revisions in addition to adding the OBD program described earlier, because New Jersey has successfully demonstrated through performance standard modeling that these modifications would not adversely affect emission reductions that the State is counting on from the program. The performance standard modeling, which reflects the State's enhanced I/M program as it is currently implemented, shows that the State's program meets the low enhanced performance standard. EPA's authority to approve New Jersey's enhanced I/M program is set forth at section 110 and 182 of the CAA.

4. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed 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 proposes to approve 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 proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 25, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–30887 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NV 050–0073B; FRL–7595–4]

Approval and Promulgation of Implementation Plans; State of Nevada; Designation of Areas for Air Quality Planning Purposes; Lake Tahoe Nevada Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 27, 2003, the State of Nevada requested EPA to redesignate the Lake Tahoe Nevada ''not classified'' carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standards (NAAQS) and submitted a CO maintenance plan for the area as a revision to the Nevada State Implementation Plan (SIP). In this action, EPA is proposing to approve the redesignation request and the maintenance plan. EPA is also proposing to find that the maintenance plan is adequate for conformity purposes under the limited maintenance plan policy. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's redesignation request and SIP revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 14, 2004.

ADDRESSES: Please address your comments to Eleanor Kaplan, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *kaplan.eleanor@epa.gov,* or submit comments at *http://www.regulations.gov.* A copy of the State's submittal is available for public inspection during normal business hours at EPA's Region IX office. Please contact Eleanor Kaplan if you wish to schedule a visit. A copy of the submittal is also available at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, EPA Region IX at (415) 947–4147 or *kaplan.eleanor@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information see the direct final rule, of the same day, published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: November 20, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–30370 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03–249]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment to further develop the record on specific issues that relate to the rate review and expanded State certification process recommended by the Joint Board. The Commission also seeks comment on a proposal to further encourage States to preserve and advance universal service by making available additional targeted Federal support for high-cost wire centers in states that implement explicit universal service mechanisms.

DATES: Comments are due on or before January 14, 2004. Reply comments are due on or before February 13, 2004. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget OMB), and other interested parties on or before February 13, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov* or by fax to 202–395–5167. Parties should also send three paper copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Heman@fc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on October 27, 2003. A companion Order on Remand and Memorandum Opinion and Order was also released in CC Docket No. 96–45 on October 27, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554 or at *www.fcc.gov/wcb/universal_service/highcost.html.*

This Further Notice of Proposed Rulemaking (FNPRM) contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The FNPRM contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments on the proposed information collections discussed in this Further Notice of Proposed Rulemaking are due on or before February 13, 2004. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and

clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit; not for profit institutions.

Title	Number of respondents	Frequency of response	Total annual burden
1. Collection of Additional Rate Data *Total Annual Burden:* 52 *Total Annual Costs:* $0	52	1	52
2. Procedures for Filing And Processing any State Requests for further Federal Action *Total Annual Burden:* 4 *Total Annual Costs:* $0	1	4	1

Grand Total Annual Burden: 52 + 4 = 56.

Needs and Uses: In the Further Notice of Proposed Rulemaking, we seek further comment on issues related to the rate review and expanded certification process that we adopt in the Companion Remand Order. The Commission seeks comment on whether it should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, rate data for non-rural areas served by non-rural carriers, and rate data from States that would not otherwise be required to file data under the rules we adopt in the Companion Remand Order. The Commission also seeks comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests, required showings by requesting States, and how to calculate any additional targeted Federal support. The additional rate data, along with the expanded certifications filed by all States, will aid the Commission in its review of rate comparability nationwide. Further, the information that State commissions will file to support requests for further Federal action will enable the Commission to determine if action is necessary.

I. Further Notice of Proposed Rulemaking

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek further comment on issues related to the rate review and expanded certification process that we adopt in the Companion Remand Order. First, we seek comment on whether we should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, rate data for non-rural areas served by non-rural carriers, and rate data from States that would not otherwise be required to file data under the rules we adopt in the Companion Remand Order. Second, we seek comment on the role of calling scopes in the rate review process. Third, we seek comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests, required showings by requesting States, and how to calculate any additional targeted Federal support. In addition, we propose a method for calculating additional targeted Federal support on a wire-center basis using forward-looking model cost estimates. Finally, we seek comment on a proposal to further encourage States to advance the Act's universal service goals by making available additional targeted Federal support to States that implement explicit universal service mechanisms, without regard to their achievement of rate comparability.

A. Collection of Additional Rate Data

2. We seek comment on whether all States should submit rate data to the Commission in connection with the rate review and expanded certification process, in order to establish a more complete picture of State efforts to achieve rate comparability. In the Companion Remand Order, we adopt rules that require a State to file, in connection with its expanded certification, rate data for rural areas served by non-rural carriers only if its rural rates exceed the nationwide urban rate benchmark or if it certifies that its rural rates are not reasonably comparable to urban rates nationwide, despite being within the safe harbor established by the nationwide urban rate benchmark. These data, along with the expanded certifications filed by all States, will aid the Commission in its review of the reasonable comparability of rural and urban rates nationwide. We seek comment on whether collecting additional rate data from a larger number of States, either on a mandatory or voluntary basis, would provide the Commission with a better basis for its review. To what extent would collecting additional rate data from all States improve the Commission's ability to assess the reasonable comparability of rural and urban rates nationwide through the rate review and expanded certification process? To what extent would the availability of this additional rate data improve the ability of each State to analyze its own rate comparability issues? To what extent would the availability of this additional rate data improve the ability of other interested parties to monitor the reasonable comparability of rural and urban rates nationwide? We anticipate that each State will have assembled much of the additional data in the course of performing its rate review. Would it be unduly burdensome if all States were to file such data?

3. We seek comment on whether we should require States to file data related to business rates, in addition to residential rates. A meaningful comparison of rates across different States may necessarily include business rates in addition to residential rates. For example, because Wyoming, unlike many other States, has rebalanced its single-line business rates to levels equivalent to residential rates, Wyoming's residential rates no longer rely on implicit support flows from its business rates, and its business customers pay lower rates than they would in a State that relied on such implicit support flows. Collecting data only on residential rates, therefore, may not permit the Commission to identify the specific nature of any problems with reasonable comparability. Would collecting data on business rates provide

the Commission with a more useful picture of the local rates charged in rural areas? Would requiring States to file business rate data unduly increase the administrative burdens on States associated with the rate review and expanded certification process? Is there any reason why the Commission should or should not concentrate solely on residential rates in assessing the state of rate comparability nationwide?

4. We also seek comment on whether we should collect data related to rates in non-rural areas served by non-rural carriers. While the rules we adopt today will result in the collection of some data regarding the rates in rural areas served by non-rural carriers, collecting non-rural rate data would provide the Commission with more complete data. To what extent would collecting rate information for non-rural areas in addition to rural areas provide the Commission with useful data to assess the reasonable comparability of rural and non-rural rates nationwide? To what extent would the collection of such data permit the Commission to assess the reason for high rural rates? For example, if a State's rates in areas other than rural areas were also above the benchmark, would it indicate that an adjustment to the Federal support mechanism was warranted? To what extent would collecting non-rural rate information aid the Commission in assessing whether States are fulfilling their obligations to promote the Act's goals? To what extent would requiring States to file non-rural rate data unduly increase the administrative burdens on the States associated with the rate review process?

5. With additional rate data, should states be required to file information annually related to their efforts to advance universal service by adopting explicit universal service mechanisms, such as the establishment of explicit State universal service funds? To what extent would such information aid the Commission in assessing the sources of any problems with rate comparability to determine whether additional actions are necessary at the Federal level? If we conclude that such information should be collected, what specific information should each State be required to file? For example, should each State be required to file data related to the existence and size of any explicit universal service support mechanisms established in the State? Should States be required to identify implicit support flows in the rate structure, including implicit support flowing from business line rates to residential line rates, from geographically averaged rates, and from intrastate access charges? Commenters should identify any other information related to the establishment of explicit universal service policies that would assist the Commission in refining our comprehensive plan for supporting universal service in high-cost areas over time.

B. Calling Scopes

6. We seek comment on the role of calling scopes in the rate review process. The foregoing Order permits a State to consider the calling scopes available in rural areas served by non-rural carriers when reviewing whether rates in those areas are comparable to urban rates nationwide. Calling scopes are not included in the rate template, however, and States need not consider them if they choose to certify based on the safe harbor. To what extent should States be encouraged to consider the calling scopes available in rural areas served by non-rural carriers in assessing rate comparability? Should the Commission incorporate calling scopes into the safe harbor? If so, how would the Commission do so? To what extent would consideration of calling scopes increase the burdens associated with the rate review process? Commenters should describe in detail any proposed methodologies for normalizing the impact of calling scopes on rates. Alternatively, should the Commission provide States with additional guidance as to how calling scopes may be factored into their rate comparability analyses, if States decide that this is appropriate? What data would be useful for analyzing the calling scopes available in rural and urban areas?

C. Procedures for Filing and Processing Any State Requests for Further Federal Action

7. Consistent with the Joint Board's recommendation, we recognize that the procedures for filing and reviewing State requests for further Federal action should be as specific and predictable as possible, while also providing the necessary flexibility for each State to demonstrate the unique circumstances involved in its request. We also note that the Joint Board did not recommend a specific method for calculating any additional targeted Federal support, if necessary, and the present record does not provide an adequate basis for us to determine an appropriate method. Accordingly, we seek comment below on several interrelated issues. First, we seek comment on the timing of State requests for further Federal action. Second, we seek comment on the showing that a State should be required to make in order to demonstrate a need for further Federal action. Third, we seek comment on the types of further Federal action that may be provided to requesting States if the Commission determines that further Federal action is necessary in a particular instance, including possible methods of calculating any additional targeted Federal support.

1. Timing of Requests for Further Federal Action

8. The Joint Board recommended that the Commission develop exact procedures to be used in the filing and processing of requests for further Federal action. We propose that a State should be permitted to make a request for further Federal action only concurrently with the filing of its expanded certification regarding the comparability of its rural rates in areas served by non-rural carriers. We anticipate that any State request for further Federal action will arise from the State rate review process and the expanded certification, and any State requests for further Federal action are likely to rely on the same data. Therefore, we believe that requiring the filing of any State requests at the time of the expanded certification will promote administrative simplicity. We seek comment on this proposal.

9. We also seek comment on how frequently a State should be required to seek further Federal action if the State's request is granted the first time. Should a State be required to seek further Federal action every year? Should further Federal action be provided for a specified period of years? If so, should that period be dependent on the specific circumstances of a particular request?

2. Required Showings

10. We seek comment on the showings that a State should be required to make in support of a request for further Federal action, in the interest of making the process as specific and predictable as possible. The Joint Board's *Recommended Decision* suggests that two showings should be required: (1) A demonstration that rural rates in non-rural carrier service areas in the State are not reasonably comparable to urban rates nationwide, including an analysis of the rates in the basic service template and other relevant factors; and (2) a demonstration that the State has taken all reasonable actions to achieve reasonable comparability of its rural rates to urban rates nationwide, including an explanation of how the requesting State has used any Federal support currently received to achieve comparable rates and whether it has implemented a State universal service fund. We propose that these showings

should be required in support of a State's request for further Federal action. We further propose that each State should bear the responsibility of fully explaining the basis for each element of its showing. As discussed in the Companion Remand Order, each State has rate-setting jurisdiction and primary responsibility for ensuring rate comparability within its border and, therefore, is in the best position to explain any problems it may have in achieving rate comparability and the actions it has taken to address those problems. In addition to these showings, are there any additional types of showings that a State should be required to make in support of a request for further Federal action? Should different showings be required for different types of further Federal action (*e.g.*, Commission action to address calling areas or quality of service where the State lacks jurisdiction)?

11. We also seek comment on what a State should be required to show to satisfy the first element of the Joint Board's recommended test, a demonstration that rural rates within the State are not reasonably comparable to urban rates nationwide. In making the required showing, to what extent should a State be permitted to rely on the presumption created by the nationwide urban rate benchmark? Should the Commission consider residential and business rates or only residential rates? What weight, relative to the presumption created by the rate benchmark, should the Commission accord additional non-rate factors that the State contends are relevant in determining whether rural rates in a State are reasonably comparable to urban rates nationwide?

12. Consistent with the Joint Board's recommendation, we also seek comment on what State actions should be considered reasonable and, therefore, necessary to support a request for further Federal action for purposes of the second element of the Joint Board's recommended showing. In particular, we seek comment on the extent to which States must reform their universal service support mechanisms in order to be able to demonstrate that they have taken all reasonably possible actions to achieve rate comparability. In this regard, we note that the Act strongly favors explicit support mechanisms, which are less vulnerable to erosion in competitive markets than implicit support mechanisms. Although States are not required to adopt explicit mechanisms to support universal service, we propose that a State that has not done so cannot be deemed to have taken all reasonably possible steps to support rate comparability within the State, the requirement recommended by the Joint Board. We seek comment on this proposal.

13. We further propose that, in order to enable the Commission to determine whether a State has made its universal service mechanisms explicit, a State requesting further Federal action should be required to explain the extent to which it has made its universal service mechanisms explicit, and file supporting data, including rate data for residential and business lines in rural and urban areas served by non-rural carriers. We seek comment on these proposals. We also seek comment on the extent of reform that should be required for further Federal action. Some commenters argue that it is necessary for States to rebalance their residential and business rates in order to eliminate implicit support flows. For example, Wyoming has rebalanced its residential and business rates, while other States have not rebalanced rates. As a result, Wyoming's residential rates presumably will be higher than a State with comparable resources that has chosen to maintain implicit support flows through higher business rates. Should the rebalancing of residential and business rates be required in support of a request for further Federal action?

3. Types of Further Federal Action

14. We seek comment on the types of further Federal action that should be available to a requesting State if the Commission determines that further Federal action is appropriate. The Joint Board recommended that further Federal action could include additional targeted Federal support, as well as Commission action to address scope of local calling areas or quality of service where the State commission lacked the authority to do so. Are there any other types of further Federal action that the Commission should consider in addition to the Joint Board's recommendations? Should the Commission specify in advance all possible forms of further Federal action, or, in light of the Joint Board's recommendation that the Commission provide maximum flexibility for States, should the Commission retain the ability to develop additional types of further Federal action in response to the specific circumstances underlying a particular State's request? Are there any reasons that the Commission should not consider making certain types of Federal action available on request?

15. We propose that any additional targeted Federal support should equal a set percentage of estimated forward-looking wire-center costs in excess of two standard deviations above the average cost per line. We believe that a method for calculating any additional targeted Federal support based on forward-looking wire-center cost estimates would be specific and predictable, and provide consistency with the non-rural support mechanism, which also uses model cost estimates to calculate and target support. We also believe that such a method would provide a fair and equitable means of determining any additional targeted Federal support and avoid inappropriate incentives that might be created if we were to base any additional targeted Federal support on rate levels in a particular area. Furthermore, a forward-looking cost estimate-based method would permit any additional support to be targeted specifically to high-cost wire-centers, consistent with the Joint Board's recommendation. We seek comments on this proposal. Is there another proposed method that, based on some measure other than forward-looking cost estimates, would provide a more appropriate basis for calculating any additional targeted Federal support? If so, a commenter should describe the method with specificity and provide any relevant supporting data. If any commenters contend that a rate-based method would be more appropriate, they should support their contentions with a detailed explanation of how rate-based support would be calculated under their proposal and any relevant supporting data.

16. To determine any additional targeted Federal support based on forward-looking cost estimates, we propose that any additional Federal support should be provided to wire centers in qualifying States with costs per line exceeding a benchmark of two standard deviations from the average cost per line among all non-rural carrier wire centers nationwide. Based on recent forward-looking high-cost model results, a wire center with per-line costs that are two standard deviations above the average wire center would have an average cost per line of $40.85, or 189 percent of the nationwide average cost per line. Wire centers with costs per line exceeding the proposed nationwide average cost per loop would be very high cost wire centers in which it is likely to be more difficult to achieve rate comparability, despite otherwise sufficient State resources and Federal support. Because most States have wire centers that exceed two standard deviations from the national average wire center cost per line, we believe that this benchmark would provide an effective means of calculating any

additional targeted Federal support for any qualifying State in a specific, predictable and consistent manner. We seek comment on this proposed method for calculating additional targeted Federal support. Is two standard deviations an appropriate threshold for this purpose?

17. We also propose that any additional targeted Federal support for eligible wire centers in qualifying States should be calculated as a set percentage of costs in excess of the benchmark. For example, if the Commission were to set the percentage at 5 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify for additional targeted Federal support, it would be eligible for approximately $546,000. If the Commission were to set the percentage at 25 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify, it would be eligible for approximately $2,731,000 in additional targeted Federal support.

18. We believe that this proposal is consistent with the current and past methodologies for determining high-cost support for non-rural carriers and would provide meaningful support to assist States in resolving any rate comparability issues that combined Federal and State action have failed to resolve. Under the non-rural support mechanism, a non-rural carrier in a State with an average cost per loop for areas served by non-rural carriers that exceeds the cost benchmark of two standard deviations above the average is eligible for support for 76 percent of its costs in excess of the benchmark. This percentage represents an estimate of the costs above the benchmark that are assigned to the intrastate jurisdiction. Because any additional targeted Federal support would supplement the non-rural support mechanism in order to address exceptional problems, we do not believe that it would be necessary that such support be provided for the same percentage of costs in excess of the benchmark as covered by the non-rural support mechanism. We seek comment on what percentage of costs in excess of the benchmark should be supported for purposes of additional targeted Federal support. Is there another proposed method of calculating any additional targeted Federal support based on forward-looking cost estimates that would better address the purpose for which the support would be intended?

D. Additional Inducements for State Action

19. Finally, we seek comment on whether we should make additional targeted Federal support available for high-cost wire centers in States that implement explicit universal service mechanisms. The purpose of this proposal is to create a positive incentive for States to reform their implicit universal service mechanisms. Under this proposal, as discussed below, any additional targeted Federal support would be determined using a methodology similar to that proposed above in connection with State requests for further Federal action. Unlike State requests for further Federal action, States would not be required to demonstrate that combined State and Federal efforts had failed to achieve rate comparability.

20. As discussed, section 254 states a clear preference for explicit, rather than implicit, support, but the 1996 Act does not require States to adopt explicit universal service support mechanisms. In the foregoing Order, therefore, we decline to adopt measures to require or induce all States to immediately remove implicit subsidies from intrastate rates through substantial increases in Federal support. Nevertheless, we agree with commenters that States should be encouraged to replace implicit support with explicit support mechanisms that will be sustainable in a competitive environment. To what extent should the Commission encourage States to replace their implicit universal service support mechanisms with explicit mechanisms? We seek comment on whether the Commission has an interest, other than the aspirational provisions of the Act, in States' decisions to adopt explicit mechanisms or to rely on implicit support flows. How do State universal service mechanisms, explicit and implicit, interact with the Federal universal service support mechanisms? We note that some States have made progress in making explicit their universal service support mechanisms. Can we expect States to adopt, in advance of or concurrently with the local development of competition, reforms that will reduce the vulnerability of the States' universal service mechanisms to competition? If States have not yet taken action to adopt explicit universal service mechanisms, can we assume that they will do so?

21. We seek comment on whether providing additional targeted Federal support to States that replace implicit universal service mechanisms with explicit universal service mechanisms would be an appropriate means of inducing reforms of State universal service support mechanisms. The availability of additional targeted Federal support would provide each State with a direct incentive to make its universal service support mechanisms explicit, rather than implicit. This method of inducement would pose less risk to our universal service goals than conditioning receipt of existing non-rural high-cost support on State action. Moreover, providing States that implement universal service reforms with additional targeted Federal support might mitigate possible transitional issues associated with the replacement of implicit support with explicit support and encourage States to adopt a long-term approach to universal service. To what extent are there transitional issues associated with moving from implicit support mechanisms to explicit support mechanisms? If such transitional issues are a significant deterrent to State adoption of universal service reforms, should any additional targeted Federal support be limited for the period of time during which the transition takes place? If commenters contend that another form of inducement would be better suited for achieving the Commission's goals, the commenters should provide a detailed explanation of their inducement.

22. We further propose that any additional targeted Federal support that is provided to induce States to adopt explicit universal service mechanisms should be based on forward-looking wire-center cost estimates. Basing any additional targeted Federal support on forward-looking cost estimates will make such support specific and predictable, consistent with the Act, and would target the support to high-cost areas, which may ease a State's implementation of explicit universal service mechanisms. Similar to the additional targeted Federal support proposed above with respect to State requests for further Federal action to achieve rate comparability, we propose that any additional targeted Federal support provided for inducement purposes should be calculated based on a percentage of forward-looking costs in excess of a particular threshold for high-cost wire centers.

23. Specifically, we propose that, if a State meets the necessary conditions, it should receive additional targeted Federal support equal to a specific percentage of costs in excess of two standard deviations above the average cost wire center. We seek comment on this proposed method of calculating additional targeted Federal support for inducement purposes. We specifically seek comment on the appropriate percentage of costs in excess of the threshold that we should support with additional targeted Federal support. We note that 48 States and Puerto Rico would have at least one wire center with costs per loop above the benchmark of

the average cost per loop plus two standard deviations. We estimate that if the support amount were set at 10 percent of costs exceeding the proposed high-cost wire center benchmark, the 48 States and Puerto Rico would be eligible to receive a total of approximately $116 million if they met the conditions for additional targeted Federal support, in addition to the support provided under the rules we adopt today.

24. Would the proposed methodology provide significant inducement to each State to reform its universal service mechanisms? Would the benefits of inducing State action to reform State universal service mechanisms outweigh the cost of the additional contributions to the universal service fund that this additional targeted Federal support could entail? Commenters should address how this proposal relates to the Act's requirement that universal service should be sufficient to achieve the Act's goals and, specifically, that sufficiency requires that support should not exceed the amount necessary to achieve the Act's goals.

25. We also seek comment on what showings a State should be required to make in order to receive any additional targeted Federal support, if such an inducement mechanism were adopted. Above, we seek comment on what showings a State must make in support of a request for further Federal action, in addition to showing the failure to achieve rate comparability. To what extent should the showings that a State is required to make in order to receive additional targeted Federal support for inducement purposes differ from the showings the State should be required to make in order to demonstrate that it has taken all reasonably possible actions to achieve rate comparability? Should a State be required to show that it has established an explicit support mechanism of a particular size relative to the number of lines in the State or some other measure? Should a State be required to demonstrate that it has rebalanced its residential and business rates? Should a State be required to demonstrate that it has eliminated geographic rate averaging through implicit support flows? Are there any specific actions reasonably calculated to eliminate or reduce implicit support in intrastate rates that a State should be required to show?

II. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel of Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for and Objectives of the Proposed Rules

27. Consistent with the Tenth Circuit's remand of the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, and the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce States to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers in the Companion Remand Order. As discussed, the FNPRM is necessary to develop the record on specific issues that relate to the rate review and expanded State certification process recommended by the Joint Board. The rate review and expanded State certification process will fulfill the requirement of the Tenth Circuit remand by inducing State action to ensure that rates in rural and high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide in compliance with section 254(b) of the Act.

28. First, in this FNPRM, we seek comment on whether we should require States to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and State actions to achieve comparability of urban and rural rates, including business rate data, urban rate data, and rate data from States that would not otherwise be required to file data under the rules we adopt. Second, we seek comment on the role of calling scopes in the rate review process. Third, we seek comment on how to treat any State requests for further Federal action, including procedures for States to submit any such requests; how to review required showings by requesting States; and how to calculate any additional targeted Federal support. In addition, we propose a method for calculating additional targeted Federal support on a wire-center basis using forward-looking model cost estimates. Finally, we also seek comment on a proposal to further encourage States to advance the Act's universal service goals by making available additional targeted Federal support to States that implement explicit universal service mechanisms, without regard to their achievement of rate comparability.

2. Legal Basis

29. The legal basis as proposed for this *FNPRM* is contained in sections 4(i), 4(j), 201–205, 218–220, 254, 403 and 410 of the Communications Act of 1934, as amended.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

31. We have described in detail, in the Companion Order in the Final Regulatory Flexibility Analysis, the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service contribution system. For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. Should the Commission decide that modifications must be made to the rate review and expanded certification process implemented, the associated rule changes will only modify the reporting requirements of the State commissions. Based on our review of the process, such State reporting requirements have no direct effect on the Federal reporting and recordkeeping

requirements of telecommunications service providers regulated under the Communications Act, including any small business entities directly affected by the Order. No questions posed in the FNPRM consider any changes to the rules that would directly impose additional reporting, recordkeeping, and other compliance requirements on small business entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

34. The Commission does not foresee that any modifications to the rate review and expanded certification process resulting from this FNPRM will have a direct impact on any small business entities. Furthermore, based on the current data, we do not believe that the result in any area of the proposals under consideration will have a differential impact on small entities. In this FNPRM, however, the commenters may present the Commission with various proposals that may have varying impacts on small businesses. We seek comment on whether any proposals, if implemented, may result in an unfair burden. If there is such an unfair burden, we seek comment on how best to mitigate or eliminate it, as appropriate.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

35. None.

B. Initial Paperwork Reduction Act of 1995 Analysis

36. This *FNPRM* contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due February 13, 2004. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Comment Filing Procedures

37. We invite comment on the issues and questions set forth in the FNPRM and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before January 14, 2004, and reply comments on or before February 13, 2004. All filings should refer to CC Docket No. 96–45. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

38. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

39. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

40. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

III. Ordering Clauses

41. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 218–220, 254, and 403 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking is adopted.

42. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30827 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3854, MB Docket No. 02–222, RM–10491]

Digital Television Broadcast Service; Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, by this document, dismisses a petition for rule making filed by KSKN Television, Inc., requesting the substitution of DTV channel 48 for station KSKN–TV's assigned DTV channel 36. *See* 67 FR 52923, August 14, 2002. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–222, adopted December 2, 2003, and released December 8, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30881 Filed 12–12–03; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register

Vol. 68, No. 240

Monday, December 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, January 22, 2004 and March 25, 2004. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held January 22, 2004 and March 25, 2004.

ADDRESSES: The meetings will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 6, 2003.

Forrest Cole,

Forest Supervisor.

[FR Doc. 03–30850 Filed 12–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Cooperative Home-Based Health Care Demonstration Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $1 million of grant funds through the Rural Community Development Initiative (RCDI) Home-Based Health Care Demonstration Program through the Rural Housing Service (RHS), herein referred to as the Agency, USDA. These grant funds are split into two forms: Pre-development grants and revolving loan grants. The pre-development grants will not exceed $50,000 each and will be made to qualified public bodies or nonprofit organizations to establish a home health care cooperative. The revolving loan grants will be made to qualified nonprofit or public organizations that will provide start-up funds and technical assistance to pre-planning grant recipients and home health care cooperatives established through this program. The intermediary recipients for the revolving loan funds will be required to provide matching funds at least equal to the grant funds awarded. This is a demonstration project intended to result in the establishment and operation of home-based health care cooperatives. As such, pre-development grants will be linked with a revolving loan grant, to the same community, in order that the full operation of the cooperative will occur. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. e.s.t. on February 13, 2004. The application date and hour are firm. The Agency will not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this notice from the RCDI Web site at ww*w.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: Stephen Wetherbee, Rural Housing Service, 1400 Independence Avenue, SW., STOP 0787, Washington, DC 20250–0787, Telephone: (202) 720–1503, E-mail: *stephen.wetherbee@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Wetherbee, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0787, Telephone: (202) 720–1503, Facsimile (202) 690–0471, E-mail: *stephen.wetherbee@usda.gov.* You may also obtain information from the RCDI Web site at *www.rurdev.usda.gov/rhs/rcdi/index.htm.*

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collection of information'' by the Rural Housing Service. The Act defines ''collection of information: as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A).) Because this NOFA will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Background

Congress created the Rural Community Development Initiative (RCDI) Rural Cooperative Home-Based Health Care demonstration project in fiscal year 2003 with an appropriation of $1 million under the Rural Community Advancement Program. These funds are to be used solely to develop and establish home-based health care cooperatives. Pre-development grants, not to exceed $50,000 each, will be made available to qualified public bodies or nonprofit-based community development organizations. Revolving loan grants will be made available to qualified public or nonprofit intermediary organizations (including tribal) proposing to carry out a program of financial and technical assistance.

National Environmental Policy Act (NEPA)

This program has been reviewed under the agency's environmental regulations. It has been determined that the provision of financial assistance for these types of grants are properly designated as categorical exclusions, which require no further documentation. This is based upon the finding that the purposes of these grants do not individually or cumulatively have a significant effect upon the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Definitions for RCDI Purposes

Agency—the Rural Housing Service (RHS) or its successor.

Beneficiary—home-based health care cooperatives that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient organization to provide pre-development planning services, manage revolving loan funds, or provide technical assistance towards establishing home-based health care cooperatives.

Cooperative—incorporated associations, at least 51 percent of whose members are rural residents having one vote each, that conduct such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

Federally recognized tribes—tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the notice in the **Federal Register** published on March 13, 2000, volume 65, number 49, page 13298.

Financial assistance—funds used by the recipient to pay for the start-up cost of the home-based health care cooperative. Funds that the recipient lends to the beneficiary home-based health care cooperative for eligible home-based health care cooperative demonstration project purposes.

Fund—the Home-Based Health Care Demonstration Program grant.

Intermediary—a qualified private nonprofit or public (including tribal) organization recipient for the revolving loan grant that provides technical assistance to the pre-planning grant recipient. The intermediary will also provide financial and technical assistance to the home-based health care cooperative(s) formed through this program.

Matching Funds—cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible home-based health care cooperative demonstration grant purposes. In-kind contributions cannot be used as matching funds. Matching funds must be committed prior to release of RCDI Rural Cooperative Home-Based Health Care grant funds to the revolving loan grant recipient.

Nonprofit organization—a private, community-based development entity with a valid letter from the Internal Revenue Service (IRS) designating their tax exempt status.

Recipient—a public or community development based nonprofit organization receiving pre-development grant funds or a public or private non-profit intermediary organization receiving revolving loan grant funds for the establishment of a home-based health care cooperative.

Revolved funds—the cash portion of a revolving loan fund that is not composed of Agency revolving loan grant funds, including funds that are repayments of loans to the home-based health care cooperatives from the revolving loan grant funds, including fees and interest collected on such loans. Revolved funds shall not be considered Federal funds.

Revolving fund—a group of assets obtained through, or related to, an Agency revolving loan grant and recorded by the recipient in a bookkeeping account, or set of accounts, and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the recipient's other assets or financial activities.

Rural and rural area—a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than urbanized areas immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants. Urbanized area data will be based on the 2000 census.

Technical assistance—skilled help in improving the beneficiary's abilities in the areas of establishment and operation of a cooperative and home-based health care service. The Agency will determine whether a specific activity qualifies as technical assistance.

Eligibility Requirements

1. The recipient for the pre-planning grant and the beneficiary cooperative, but not the revolving loan grant recipient, must be located in an eligible rural area. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this notice.

2. The recipient for the pre-development grants must be a nonprofit community development based organization, or qualified public bodies. The recipient for the revolving loan grant funds must be nonprofit organizations or public bodies, including federally recognized tribes, based on the RCDI definitions of these groups.

3. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient. A letter from the IRS verifying tax exempt status, or valid evidence that the entity is a public body, is required for nonprofit recipients. For federally recognized tribes, the Agency requires the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (*see* the definition of federally recognized tribes for details on this list).

4. Individuals cannot be recipients.

5. The revolving loan grant recipient must provide a program of technical assistance to the pre-planning grant recipient and financial and technical assistance to the beneficiary cooperative.

6. The intermediary must provide matching funds at least equal to the amount of the grant.

7. The revolving loan grant recipient organization must have at least 3 years prior experience working with cooperatives.

8. Proposals must be structured to utilize the grant funds within 1 year from the date of the award (this time requirement can be extended with the concurrence of the agency).

9. The recipient for the pre-development grant cannot be the same as the recipient for the revolving loan grant. Pre-development grants must be made to local public bodies or nonprofit groups located in the community to be served by the home-based health care cooperative. Revolving loan grants can be made to nonprofit or public bodies that are not located in the community where the cooperative is located, but who have the capacity to provide the required financial and technical services locally.

10. A nonprofit entity must already have a determination of tax-exempt status letter from the IRS when the recipient applies for the RCDI Rural Cooperative Home-Based Health Care Demonstration Program grant. Organizations with pending requests for this designation are not considered eligible.

Eligible Fund Uses

Fund uses must be consistent with the RCDI Home-Based Health Care Cooperative Demonstration Program purpose (see ''Background'' section of this notice). Pre-planning grant funds will be used to retain a demonstration project organizer to accomplish the following:

1. Provide outreach to home-based health care providers, and assess worker needs,
2. Work with local level human service providers,
3. Build community support among those who have contact with the elderly (social workers, physicians, pharmacists, clergy, hospitals, hospice, meals on wheels, etc.),
4. Select and train membership for the steering committee,
5. Conduct a survey of potential members,
6. Analyze market for home-based health care services,
7. Prepare a business plan,
8. Assist in the incorporation of the cooperative,
9. Assist the cooperative in the preparation and adoption of bylaws and the election of a board of directors, and
10. Hire a local cooperative service administrator and set up office.

At the conclusion of the work by the organizer, all planning elements should be in place for the formal creation of a home-based health care cooperative.

Revolving loan grant funds will be used by the recipient organization to:

1. Fund and administer a revolving loan program to provide start-up and operating funds to newly created home-based health care cooperatives.
2. Provide technical assistance to pre-planning grant recipients and the home-based health care cooperatives, including development of financial plans for the cooperative, establishing the cooperative's financial records process, and providing follow-up as the cooperative progresses from implementation to full operation. A maximum of ten percent of the grant funds and matching funds may be used by the revolving loan grant recipient to provide technical assistance to the pre-planning grant recipient and the newly formed home based health care cooperative.

Ineligible Fund Uses

1. Construction (in any form).
2. Funding illegal activities.
3. Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.
4. Paying obligations incurred before the beginning date, or after the ending date, of the grant agreement.
5. Improvement or renovation of the recipient's office space or for the repair or maintenance of privately owned vehicles.
6. Payment of the recipient's administrative costs or expenses.
7. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.
8. Funds cannot be used for recipient's general operating costs.

Interest Rates

Interest rates charged by the recipient to the beneficiary cooperative on loans made from the revolving loan fund shall be negotiated by the recipient and the beneficiary cooperative. The rate should be the lowest rate sufficient to cover the loan's proportional share of the revolving fund's debt service and administrative costs. Rural Development reserves the right to review the interest rate being charged.

Any cash in the revolving fund from any source that is not needed for servicing or administrative costs must be available for additional loans to beneficiary home health care cooperatives.

Application Selection Process

Rating and ranking. Applications will be rated and ranked by a review panel based on the ''Evaluation Criteria and Weights'' contained in this Notice. If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Capacity.'' The applicant with the highest score in that category will receive a higher ranking. If the scores for Capacity are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection to help prospective applicants prepare a better application. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected by the RCDI program.

1. Applicants for the pre-planning grants are not located in eligible rural areas based on the definition in this Notice.
2. Applicants failed to provide required evidence of recipient's status, *i.e.*, documentation supporting nonprofit designation.
3. Applicants are individuals.
4. Applicants failed to address the Evaluation Criteria and were unable to compete.
5. The purpose of the proposal did not qualify as an eligible RCDI project purpose.
6. Funds are intended to be used for construction.
7. Financial and technical assistance is being provided directly to individuals.

The State Office will review their copy of the application and provide the State Director's written comments and recommendations to the National Office.

Evaluation Criteria and Weights—Pre-Planning Grant

This information should be presented in narrative form. Documentation must be limited to three pages per criterion.

1. Capacity—Maximum 60 Points

The applicant for the pre-development planning grant must demonstrate how they will accomplish the required goals for the grant, including their experience in establishing a new organization, experience with the function and organization of cooperatives, experience in the community where the home-based health care cooperative will be established, experience in the health care services industry, and experience in working with diverse organizations in establishing set goals. All applications will be competitively ranked. The applications providing the most comprehensive information about establishing a new home-based health care cooperative will be ranked the highest.

2. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion.

a. Has the applicant demonstrated their ability to provide the proposed financial and technical assistance based on prior accomplishments?

b. A description that the basic elements for the establishment of a home health care cooperative are already available in the community where the services will be provided, *i.e.*, a pool of home health care workers already in the area, demonstrated demand for these services, and the possible availability of a source of reliable income for the new cooperative.

c. The proposed financial and technical assistance program is clearly stated and the applicant has defined

how this proposal will be implemented. The plan for implementation is viable.

d. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount should be utilized to maximize the capacity to establish home-based health care cooperatives.

e. How closely the proposal fits the objectives for which applications were invited.

3. Innovative Approach—Maximum 20 Points

The applicant must demonstrate that they have developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing home-based health care services. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by home-based health care cooperatives,

b. Uniqueness of proposal.

Evaluation Criteria and Weights—Revolving Loan Grant

This information should be presented in narrative form. Documentation must be limited to three pages per criterion.

1. Capacity—Maximum 60 Points

The applicant for the revolving loan grant must demonstrate their capacity to provide technical assistance to the pre-development planning grant recipient organizations and the newly established home-based health care cooperative in the areas of organizing a cooperative, financial planning, financial management, recordkeeping, establishment of payroll systems, and determination of employee benefits. The applicant must also demonstrate the capacity to set up, administer, and maintain a revolving loan grant program. The applications will be competitively ranked with the applications providing the most comprehensive information about providing technical, financial, and revolving loan services being ranked the highest.

2. Soundness of Approach—Maximum 50 Points

The overall proposal will be considered under this criterion.

a. Has the applicant demonstrated their ability to provide the proposed financial and technical assistance based on prior accomplishments?

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable.

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount should be utilized to maximize the capacity to establish home-based health care cooperatives.

d. How closely the proposal fits the objectives for which applications were invited.

3. Experience With Cooperatives

The applicant must document demonstrated expertise in understanding the unique structure of cooperatives, and provide indications of the organization's capability to assist a cooperative during the organizational and the critical start-up phase of their organization.

Program Requirements

1. A Civil Rights Impact Analysis Certification must be completed by the Agency prior to grant approval.

2. A pre-award compliance review will be conducted by the Agency prior to closing the grant.

3. The recipient must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250.

4. The grantee must comply with the applicable requirements of 7 CFR part 3015, ''Uniform Federal Assistance Regulations''; part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments''; and part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

Program Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI Home-Based Health Care Cooperative Demonstration Program grant funds cannot be used for these meeting-related expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI Home-Based Health Care Cooperative Demonstration Program funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem.* Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 36.5 cents per mile.

Grantee Requirements

Grantees will be required to do the following:

1. Execute an RCDI Grant Agreement Rural Cooperative Home-Based Health Care Program Pre-Planning Grant Agreement or RCDI Community Development Initiative Grant Agreement Rural Cooperative Home-Based Health Care Demonstration Program Revolving Loan Grant Agreement (depending on which grant is being requested). Copies of these agreements are published at the end of this NOFA.

2. Execute Form RD 1940–1, ''Request for Obligation of Funds.''

3. Use Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI Home-Based Health Care Cooperative Demonstration Program grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Forms RD 442–2, ''Statement of Budget, Income, and Equity,'' and 442–3, ''Balance Sheet,'' or other similar financial reporting documents, that utilize generally accepted accounting practices, depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin, and ensure that their recipients collect and maintain the same data on their beneficiaries.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a form provided by the Agency.

11. Verify a Dun and Bradstreet Data Universal Numbering System (DUNS) number. A DUNS number may be received by calling the dedicated toll-free request line at 866–705–5711.

Contents of Application Package

A complete application for RCDI Home-Based Health Care Cooperative Demonstration Program funds must include the following:

1. A summary page listing the following items: (This information should be double-spaced between items and not in narrative form.)

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person, telephone number, and e-mail address

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request,

i. Number of recipients, and

j. DUNS number.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. Each of the Evaluation Criteria must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion.

4. A detailed project budget that includes the RCDI Home-Based Health Care Cooperative Demonstration Program grant amount and matching funds when applicable for the duration of the grant. This should be a line-item budget by category. Categories such as salaries, administrative, other, and indirect costs must be clearly defined. Supporting documentation listing the components of these categories must be included.

5. Form SF–424, ''Application for Federal Assistance.'' (Do not complete Form SF–424A, ''Budget Information.'' A separate line-item budget should be presented as described in No. 4 of this section.)

6. Form SF–424B, ''Assurances—Non-Construction Programs.''

7. Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

8. Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

9. Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

10. Certification of Non-Lobbying Activities.

11. Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

12. Form RD 400–1, ''Equal Opportunity Agreement,'' for the applicant and each recipient.

13. Form RD 400–4, ''Assurance Agreement,'' for the applicant and each recipient.

14. Identify and report any association or relationship with Rural Development employees.

The required forms and certifications can be downloaded from the RCDI Web site at *www.rurdev.usda.gov/rhs/rcdi/index.htm*.

What and Where to Submit

The original application package must be submitted to: Stephen Wetherbee, Rural Housing Service, STOP 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0787. A copy of the application must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this notice. Applications sent electronically or by facsimile will not be accepted.

When to Submit

The deadline for receipt of an application is 4 p.m. eastern time on February 13, 2004. The application date and hour deadlines are firm and apply to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, James B. Harris.

Alaska State Office, 800 West Evergreen, suite 201, Palmer, AK 99645, (907) 761–7705, TDD (907) 761–8905, Dean Stewart.

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700, TDD (602) 280–8705, Leonard Gradillas.

Arkansas State Office, 700 W. Capitol Ave., rm. 3416, Little Rock, AR 72201–3225, (501) 301–3200, TDD (501) 301–3279, Jesse Sharp.

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800, TDD (530) 792–5848, Janice Waddell.

Colorado State Office, 655 Parfet Street, room E100, Lakewood, CO 80215, (720) 544–2903, TDD (720) 544–2976, Leroy W. Cruz.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 4607 South Dupont Highway, P.O. Box 400, Camden, DE 19934–0400, (302) 697–4300, TDD (302) 697–4303, James E. Waters.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400, TDD (352) 338–3499, Janet Droz (Acting).

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162, TDD (706) 546–2034, Jerry M. Thomas.

Guam, Served by Hawaii State Office.

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8380, Thao Khamoui.

Idaho State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600, TDD (208) 378–5644, Daniel H. Fraser.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200, TDD (217) 403–6240, Gerald A. Townsend.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100, TDD (317) 290–3343, Gregg Delp.

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858, Dorman Otte.

Kansas State Office, 1303 SW First American Place, suite 100, Topeka, KS 66604–4040, (785) 271–2700, TDD (785) 271–2767, Gary L. Smith.

Kentucky State Office, 771 Corporate Drive, suite 200, Lexington, KY 40503, (859) 224–7300, TDD (606) 224–7422, Vernon Brown.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920, TDD (318) 473–7655, Danny H. Magee.

Maine State Office, 967 Illinois Ave., suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9106, TDD (207) 942–7331, Alan C. Daigle.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–7068, Daniel R. Beaudette.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5100, TDD (517) 337–6795, Philip H. Wolak.

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–3799.

Mississippi State Office, Federal Building, suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, suite 235, Columbia, MO 65203, (573) 876–0976, TDD (573) 876–9480, D. Clark Thomas.

Montana State Office, 900 Technology Blvd., suite B, Bozeman, MT 59715, (406) 585–2530, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5551, TDD (402) 437–5093, Denise Brosius-Meeks.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222, TDD (775) 885–0633, Mike Holm.

New Hampshire State Office, Concord Center, suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6037, TDD (603) 223–6083, William W. Konrad.

New Jersey State Office, 8000 Midlantic Drive, 5th Floor North, suite 500, Mt. Laurel, NJ 08054, (856) 787–7700, Michael P. Kelsey.

New Mexico State Office, 6200 Jefferson St., NE., room 255, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938, Clyde F. Hudson.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447, Gail Giannotta.

North Carolina State Office, 4405 Bland Road, suite 260, Raleigh, NC 27609, (919) 873–2000, TDD (919) 873–2003, Phyllis Godbold.

North Dakota State Office, Federal Building, room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530–2037, TDD (701) 530–2113, Donald Warren.

Ohio State Office, Federal Building, room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400, TDD (614) 255–2554, David M. Douglas.

Oklahoma State Office, 100 USDA, suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007, Michael W. Schrammel.

Oregon State Office, 101 SW., Main, suite 1410, Portland, OR 97204–3222, (503) 414–3300, TDD (503) 414–3387, Joe Sahlfeld (Acting).

Pennsylvania State Office, One Credit Union Place, suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, TDD (717) 237–2261, Gary Rothrock.

Puerto Rico State Office, IBM Building—suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095, TDD (787) 766–5332, Pedro Gomez.

Rhode Island, served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, room 1007, Columbia, SC 29201, (803) 765–5163, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office, Federal Building, room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147, Roger Hazuka.

Tennessee State Office, suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, Keith Head.

Texas State Office, Federal Building, suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712, Francesco Valentin.

Utah State Office, Wallace F. Bennett Federal Building, P.O. Box 11350, 125 S. State Street, room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320, TDD (801) 524–3309, Bonnie Carrig.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000, TDD (802) 223–6365, Rhonda Shippee.

Virgin Islands, served by Florida State Office.

Virginia State Office, Culpeper Building, suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, TDD (804) 287–1753, Carrie Schmidt.

Washington State Office, suite B, 1835 Black Lake Boulevard, SW., Olympia, WA 98512–5715, (360) 704–7740, TDD (360) 704–7760, Sandi Boughton.

Western Pacific Territories, served by Hawaii State Office.

West Virginia State Office, Federal Building, 75 High Street, room 320, Morgantown, WV 26505–7500, (304) 284–4860, TDD (304) 284–4836, Dianne Crysler.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614, Mark Brodziski.

Wyoming State Office, 100 East B, Federal Building, room 1005, P.O. Box 820, Casper, WY 82602, (307) 261–6300, TDD (307) 261–6333, Jack Hyde.

Dated: December 1, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

Rural Cooperative Home-Based Health Care Demonstration Program

Pre-Planning Grant

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI). BETWEEN _____ _____ a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____(Grant Funds). The Grantee and Grantor will execute Form RD 1940–1, ''Request for Obligation of Funds.'' Grantee will provide a program of organizational, and technical assistance to organize a home health care cooperative.

NOW, THEREFORE, in consideration of said grant; According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Grantee agrees that Grantee will:

A. Provide the initial organizing effort and technical assistance in establishing a home health care cooperative in accordance with the proposal outlined in the application, (*see* Attachment A), the terms of which are incorporated with this NOFA and Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the

Agency, including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at http://policyworks.gov/perdiem;

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, ''Request for Advance or Reimbursement,'' will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. A summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, will be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that where there are non-English speaking populations that materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets, and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by Title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of this Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's that are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of a State

are not held accountable for interest earned on grant funds pending their disbursement;

O. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds.

B. At its sole discretion and, at any time, may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: Provided, however, That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250;

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250. Each recipient must sign Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement'';

F. The provisions of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,'' and the fiscal year 2003 ''Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)'' are incorporated herein and made a part hereof by reference; and

G. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

_____

Attest

By _____

(Grantee)

(Title) _____

Date _____

UNITED STATES OF AMERICA

RURAL HOUSING SERVICE

By _____

(Grantor) (Name) (Title)

Date _____

ATTACHMENT A

[Application proposal submitted by grantee.]

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

Rural Cooperative Home-Based Health Care Demonstration Program

Revolving Loan Grant

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI). BETWEEN _____

_____

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, ''Request for Obligation of Funds.''

WHEREAS,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of home health care cooperative organizations,

NOW, THEREFORE, in consideration of said grant;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Grantee agrees that Grantee will:

Q. Provide a program of financial and/or technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this NOFA and Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

R. Use Grant Funds only for the purposes and activities specified in the

application package approved by the Agency, including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

S. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at *www.http://policyworks.gov/perdiem;*

T. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

U. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, ''Request for Advance or Reimbursement,'' will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement.

V. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

7. Describe the activities that the funds reflected in the financial status report were used for;

8. A comparison of actual accomplishments to the objectives for that period;

9. Reasons why established objectives were not met, if applicable;

10. Problems, delays, or adverse conditions that will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

11. Objectives and timetables established for the next reporting period;

12. A summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(e) What have been the most challenging or unexpected aspects of this program?

(f) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(g) Are there any post-grant plans for this project? If yes, how will they be financed?

(h) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

W. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability;

X. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, will be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that where there are non-English speaking populations that materials are provided in the language that is spoken;

Y. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets, and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

Z. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

AA. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of this Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

BB. Provide Financial Management Systems that will include:

4. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

5. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

6. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation.

CC. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's that are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

DD. Provide an A–133 audit report if $300,000 or more of Federal funds are expended in a 1-year period. If Federal funds expended during a 1-year period are less than $300,000, and there is an

outstanding loan balance of $300,000 or more, an audit in accordance with generally accepted government auditing standards is required. If Federal funds expended during a 1-year period are less than $300,000, and there is an outstanding loan balance of less than $300,000, a management report may be submitted on Forms RD 442–2, ''Statement of Budget, Income and Equity,'' and 442–3, ''Balance Sheet'';

EE. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of a State are not held accountable for interest earned on grant funds pending their disbursement;

FF. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

GG. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

C. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds.

D. At its sole discretion, and at any time, may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

3. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

4. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

H. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

I. The Grantor must approve any changes in recipient or recipient composition;

J. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: PROVIDED, HOWEVER, That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

K. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250;

L. The Grantee will ensure that the recipients comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Equal Credit Opportunity Act (ECOA) and Executive Order 12250. Each recipient must sign Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement'';

M. The provisions of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,'' and the fiscal year 2003 ''Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)'' are incorporated herein and made a part hereof by reference; and

N. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

_____

Attest

By _____

(Grantee)

_____

Date _____

UNITED STATES OF AMERICA

RURAL HOUSING SERVICE

By _____

(Grantor) (Name) (Title)

Date _____

ATTACHMENT A

[Application proposal submitted by grantee.]

[FR Doc. 03–30862 Filed 12–12–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

BEA Customer Satisfaction Survey

ACTION: Proposed information collection; comment request.

SUMMARY: The U.S. Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Interested persons are invited to submit comments on or before February 13, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Vanessa Clark, U.S. Department of Commerce, Bureau of Economic Analysis, BE–53, Washington, DC 20230, or by telephone at 202–606–9697.

SUPPLEMENTARY INFORMATION:

I. Abstract

As one of the nation's leading statistical agencies, the Bureau of Economic Analysis (BEA) provides reliable and consistent measures of economic activity that are essential to intelligent decision making of business people and policy makers and to the efficient operations of financial markets.

The purpose of the BEA Customer Satisfaction Survey will be to obtain feedback from customers on the quality of BEA products and services. The results of the information collected will serve to assist BEA in improving the quality of its data products and its methods of dissemination.

II. Method of Collection

The survey and a cover letter with instructions on how to complete the survey will be mailed to about 5,000 potential respondents, BEA will request that responses be returned 30 days after the mailing. It will also reside on BEA's Web site for 2,000 potential respondents. The survey will be designed so that all responses are anonymous and therefore eliminates the necessity for record keeping of respondents.

III. Data

OMB Number: 0691–0001.

Type of Review: Reinstatement, without change of a previously approved collection.

Affected Public: Individuals from profit and non-profit organizations and individuals from other Federal, State, and local government agencies.

Estimated Number of Respondents: 500.

Estimated Response Time: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Estimated Total Annual Cost: The only cost to the respondents is that of their time.

Legal Authority: Executive Order 12862, section 1(b), of September 11, 1993.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will be come a matter of public record.

Dated: December 9, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30845 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–051. *Applicant:* National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401. *Instrument:* Electron Microscope, Model Tecnai G^2 20 TWIN. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument is intended to be used to study the structure and physical chemistry of biomass samples. The goal of these investigations is to better understand the structural and chemical properties and relate them to the susceptibility of biomass to enzyme digestion, and to characterize a variety of nano-structured materials such as quantum dot protein conjugates and polymeric supports for syngas conversion. *Application accepted by Commissioner of Customs:* November 13, 2003.

Docket Number: 03–052. *Applicant:* National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. *Instrument:* Dual Beam Scanning Electron and Focused Ion Beam Microscope System, Model Nova 600 NanoLab. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument is intended to be used to study solid state materials and devices researched, used and produced by the microelectronics industry and emerging nanotechnology. The research objectives are to accurately measure small-size structures and to develop research and calibration methods. *Application accepted by Commissioner of Customs:* November 20, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–30900 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Whitehead Institute for Biomedical Research, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–048. *Applicant:* Whitehead Institute for Biomedical Research, Cambridge, MA 02142. *Instrument:* Electron Microscope, Model JEM–2200FS. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 68 FR 61189, October 27, 2003. *Order Date:* May 17, 1999.

Docket Number: 03–049. *Applicant:* National Institutes of Health, Bethesda, MD 20892–8008. *Instrument:* Electron Microscope, Model Tecnai G^2 Polara. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 61189, October 27, 2003. *Order Date:* June 18, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of

application by the U.S. Customs Service.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–30901 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Honey From Argentina: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2001 through December 31, 2002. If the final results remain the same as the preliminary results of this review, we will instruct the U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Administrative Review'' section of this notice. Interested parties are invited to comment on the preliminary results of this administrative review. (*See* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Addilyn Chams-Eddine, Office of AD/CVD Enforcement VII, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4236 or (202) 482–0648, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** the countervailing duty order on honey from Argentina. *See Notice of Countervailing Duty Order: Honey From Argentina*, 66 FR 63673. In response to requests for an administrative review of the countervailing duty (CVD) order on honey from Argentina from the Government of Argentina (GOA) and the American Honey Producers Association and Sioux Honey Association (petitioners), the Department initiated an administrative review for the period January 1, 2001 through December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003) (*Initiation Notice*).

In its request for review, the GOA requested ''that the period of review be extended to include calendar year 2002.'' In the *Initiation Notice*, the Department stated that it was considering the GOA's request. On January 24, 2002, the Department solicited comments from the parties regarding the GOA's request. On February 3, 2003, the GOA submitted comments in support of its request to extend the POR to include calendar year 2002. On February 6, 2003, the petitioners submitted comments arguing against the GOA's request for extension. On February 10, 2003, the GOA submitted additional comments. In addition, on February 10, 2003, the Department offered a final opportunity for both parties to submit final comments on this issue by February 14, 2003. (*See* memorandum to file from Barbara E. Tillman regarding ''Countervailing Duty Order on Honey from Argentina; Telephone Calls to Petitioner and Respondent Concerning Comments on the Period of Review Issue in the first Administrative Review,'' dated February 13, 2003.) No additional comments were received from either party.

Based on our analysis of the GOA's request and of the comments received on this issue from both the petitioners and the GOA, the Department expanded the POR to include 2002. As such, the instant review covers calendar years, January 1, 2001 through December 31, 2001 and January 1, 2002 through December 31, 2002.[1] (*See* memorandum from Thomas Gilgunn to Joseph A Spetrini ''Honey from Argentina: Expansion of the Period of Review in the First Administrative Review of the Countervailing Duty Order,'' dated February 21, 2003.)

On February 21, 2003, we issued a questionnaire to the GOA. On April 14, 2003, the GOA submitted its questionnaire response. On June 10, 2003 and August 15, 2003, the Department issued supplemental questionnaires to the GOA. The GOA submitted responses to those supplemental questionnaires on July 14, 2003 and September 22, 2003, respectively. The GOA also submitted additional information regarding certain provincial programs on August 20, 2003 and September 11, 2003. On July 23, 2003, we extended the period for the completion of the preliminary results pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act). *See Notice of Extension of Time Limit for the Preliminary Results of Countervailing Duty Administrative Review: Honey from Argentina*, 68 FR 43492 (July 23, 2003).

Verification

As provided in section 782(i) of the Act, the Department conducted on-site verification of the GOA's questionnaire responses from October 14 through October 21, 2003. The Department's findings at verification are detailed in two reports: ''First Administrative Review of Honey from Argentina: Verification Report for the Argentine Internal Tax Reimbursement/ Rebate Program (Reintegro); Honey Production, and Export Data,'' dated November 13, 2003 (*Reintegro Verification Report*); and ''First Administrative Review of Honey from Argentina: Verification Report for the Government of Argentina,'' dated November 20, 2003 (*Honey Verification Report*). Public versions of both reports are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

Scope of the Order

The merchandise covered by this order is artificial honey containing more than 50 percent natural honeys by weight, preparations of natural honey containing more than 50 percent natural honeys by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, combs, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Bureau of Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise covered by this order is dispositive.

Subsidies Valuation Information

A. Aggregation

Under section 777A(e)(2)(B) of the Act, the Department may calculate a

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[1] For the purposes of these preliminary results, we have analyzed data for the period January 1, 2001 through December 31, 2001 to determine the countervailable subsidy rate for exports of subject merchandise made during the periods in 2001 when liquidation of entries was suspended. In addition, we have analyzed data for the period January 1, 2002 through December 31, 2002 to determine the countervailable subsidy rate for exports during that period and to establish the cash deposit rate for subsequent exports of subject merchandise.

single country-wide rate applicable to all exporters if the Department determines it is not practicable to determine individual countervailable subsidy rates due to the large number of exporters or producers involved in the investigation or review.

In the countervailing duty investigation of honey from Argentina, the Department solicited information from the GOA on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters, due to the large number of producers and exporters of honey in Argentina. *See* Memorandum to the File, Countervailing Duty Investigation of Honey from Argentina: Conducting the Investigation on an Aggregate Basis, dated November 22, 2000. As noted above, in accordance with 19 CFR § 351.213(b)(2), both the GOA and the petitioners requested an administrative review of this countervailing duty order. (*See Initiation Notice.*) No individual exporters requested the review pursuant to 19 CFR § 351.213(b). Accordingly, the Department has conducted this review of the order on an aggregate basis and will calculate a single country-wide subsidy rate for 2001 and 2002 to be applied to all exports of the subject merchandise. *See* Section 777A(e)(2)(B) of the Act.

Allocation Period

In the underlying investigation, we identified the allocation period in accordance with 19 CFR § 351.524(d)(2) which directs us to rely on the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury. No parties provided information or argument about the AUL issue. Therefore, we will continue to use the 10-year AUL as reported in the IRS tables to allocate any non-recurring subsidies under review.

Benchmark Interest Rates and Discount Rates

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, we would normally look for the interest rate a borrower had received on a comparable commercial loan. *See* 19 CFR 351.505(a)(3)(i). However, since we are conducting this review on the aggregate level, and we are not examining individual companies, we have sought information on the national average interest rates for comparable commercial loans. *See* 19 CFR 351.505(a)(3)(ii). The GOA provided information compiled by the Central Bank of Argentina showing the national average interest rates for various types of financing: long-term, fixed-rate, denominated in Argentine Peso and in foreign currency. For each loan program found to be countervailable, we have selected a benchmark from the information provided depending upon the terms and characteristics of the particular loan program.

We are directed by 19 CFR 351.524(d)(3) regarding the selection of a discount rate for the purposes of allocating non-recurring subsidies over time. Since we are conducting this investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, we are using, as the discount rate, the average cost of long-term fixed-rate loans in Argentina as reported by the GOA. *See* 19 CFR 351.524(d)(3)(i)(B).

Denominator Issues

The GOA has provided information for 2001 and 2002 relating to the total volume of honey produced in Argentina, the volume and value in U.S. Dollars, of total honey exports, and the volume and value in U.S. Dollars, of exports of honey to the United States. The GOA has also broken down, where possible, the export volumes and values according to the province in which the honey was produced. However, the GOA was unable to provide information relating to total domestic sales of honey for 2001 and 2002. As a proxy for total sales information, the GOA provided data showing the volume of honey production by province during 2001 and 2002. However, the GOA stated that it could not provide the value of production for 2001 and 2002. Consistent with the investigation, we calculated a proxy for the value of the total production reported by the GOA using the volume and value data provided for exports to the United States. *See Notice of Final Affirmative Countervailing Duty Determination: Honey from Argentina,* 66 FR 50613 (October 4, 2001) (*Honey Final Determination*), and the accompanying Issues and Decision Memorandum (*Honey Issues Memo*), at ''Denominators.'' We divided the value of Argentine honey exports to the United States by the volume of those exports to calculate a per kilogram value in U.S. Dollars. We then multiplied this per kilogram value by the provincial production data provided to arrive at the value of total Argentine honey production during 2001 and 2002. We have used this total production value as our denominator when calculating the subsidy from domestic subsidy programs provided by the GOA, and we have used the relevant provincial production value as our denominator when calculating the subsidy from domestic subsidies provided at the provincial level. We have used the total or provincial export values, as appropriate, as our denominators when calculating the subsidy from programs we have determined to be export subsidies.

To determine the final subsidy from each provincial program that is attributable to exports of honey to the United States, we applied the following methodologies: (1) For provinces for which we have reported data on the volume and value of honey production that was exported, we weight-averaged the subsidies from each provincial program by multiplying each subsidy by the province's share of total honey exports, by value, to the United States during the POR; and (2) for provincial domestic subsidy programs in provinces that do not have reported exports of honey to the United States during the POR, but do have reported honey production during the POR, and for which the GOA did not specifically report that the province had no exports to the United States, we divided the benefits by the value of total value of Argentine honey production during the POR.

As noted above, Argentine honey production and exports have been valued in U.S. Dollars. As detailed below, certain Argentine Peso-denominated loan programs provided benefits to Argentine honey producers and exporters in Argentine Pesos. In such instances, we converted those Argentine Peso-denominated benefits into U.S. Dollars using the official exchange rate data provided by the GOA.

Analysis of Programs

I. Programs Preliminarily Determined to be Countervailable

A. Federal Programs

1. Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)

The Reintegro program entitles Argentine exporters to a rebate of many internal domestic taxes levied during the production, distribution, and sales process on many exported products. The Reintegro program provides a cumulative stage tax rebate paid upon export, calculated as a percentage of the ''free on board'' (FOB) invoice price of an exported product.

In the underlying investigation, the Department found the Reintegro to be

countervailable. (*See Honey Issues Memo,* at ''Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)).''

In its April 14, 2003, questionnaire response, the GOA stated that it did not ''intend to provide a full defense of the reintegro program in this review.'' Rather, the GOA stated that Resolution 220/2001, enacted on June 18, 2001, reduced the Reintegro rate for all products by 7 percent thereby lowering the reintegro on bulk honey to zero and for processed honey to 5.4 percent. The GOA also maintains that Resolution 470/2001, enacted on September 17, 2001, specifically set the Reintegro rate for processed honey to zero. The GOA further noted that the Reintegro level for both bulk and processed honey ''has remained at zero since this time, including the remainder of the 2001 and the entire 2002 POR.''

Since the GOA did not provide new information regarding the countervailability of the Reintegro, we continue to find the entire amount of the Reintegro for bulk and processed honey to confer a countervailable benefit. *See* 19 CFR § 351.518(a)(4). However, we did verify that in June 2001, the Reintegro rate applicable to bulk honey was set to zero while the rate for processed honey was decreased to 5 percent. We further verified that the Reintegro rate for processed honey was then set to zero in September 2001. As such, for the purposes of establishing the countervailable subsidy rate for 2001, we weight-averaged the Reintegro rates in effect during that year (5.4 percent for bulk honey and 12 percent for processed honey through June 18, 2001 and 5 percent for processed honey from June 18, 2001 through September 16, 2001) by the FOB value of exports of bulk and processed honey to the United States during these distinct periods in 2001. Therefore, the countervailable subsidy rate for 2001 exports to the United States applicable to this program is 5.352 percent *ad valorem*.

We verified the Reintegro rate was zero throughout 2002 for both bulk and processed honey. Thus, both the countervailable subsidy rate for 2002 and the cash deposit rate applicable to this program are zero.

2. Factor de Convergencia (Convergence Factor)

After the completion of verifications in both the instant review and the concurrent antidumping duty administrative review, we learned that on the record of the administrative review of the antidumping duty order, there was verified information relating to a GOA program called the *factor de convergencia* (Convergence Factor). Under this program, as described in public information provided by several of the respondents in the antidumping duty administrative review, exporters could claim a payment from the GOA for a percentage of the FOB value of the exports. According to this public information on the record, the rate of payment was determined according to a formula accounting for the exchange rate between the U.S. Dollar and the Euro. *See* memorandum to the file placing public information regarding the Convergence Factor from the antidumping review on the record of this review dated December 8, 2003 (*CF Public Information Memo*).

Our review of the record in the countervailing duty administrative review shows that the GOA did not report the existence of this program. The public information in the antidumping review identified a resolution which addressed the operational interaction between the Reintegro and the Convergence Factor. Resolution 470/2001, dated September 17, 2001, had been submitted, in Spanish, as Exhibit 8 to the GOA's April 14, 2003 countervailing duty questionnaire response. Resolution 470/2001 consists of numerous articles: one directly addressing the Reintegro rates for honey; another addressing the interaction between Reintegro and the Convergence Factor. However, the only article for which a translation was provided and discussed in the questionnaire response was the article pertaining directly to the Reintegro rates for honey.

In addition, the GOA provided no information about this program in response either to questions regarding changes in Reintegro or to questions regarding ''any other forms of assistance to producers and exporters of subject merchandise.'' *See* the GOA's April 14, 2003 questionnaire response. Furthermore, in response to questions at verification regarding whether the GOA implemented any additional forms of assistance for exporters in lieu of Reintegro payments at the time of or since the reduction of the Reintegro rates, officials of the Production Ministry indicated that the GOA had implemented no such measures. (*See Reintegro Verification Report.*)

On November 14, 2003, we requested that the GOA provide an explanation of why it did not report the Convergence Factor to the Department either in the questionnaire responses or at verification. On November 20, 2003, the GOA stated that the Convergence Factor was not a government subsidy program but an exchange rate mechanism that applied to all foreign trade, both imports and exports. The GOA cited earlier cases in which the Department made clear that exchange rate policies that apply equally to imports and exports are not countervailable (citing to *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela; Final Affirmative Countervailing Duty Determination,* 53 FR 24763 (June 30, 1988); *Carbon Steel Wire Rod from Czechoslovakia; Preliminary Negative Countervailing Duty Determination,* 49 FR 6773 (February 23, 1984); and *Carbon Steel Wire Rod from Poland; Preliminary Negative Countervailing Duty Determination,* 49 FR 6768 (February 23, 1984)). Moreover, the GOA maintained that since the Convergence Factor had nothing to do with the concept of rebating indirect taxes, the Convergence Factor cannot reasonably be understood to be a replacement for the Reintegro program. As such, given that the Convergence Factor operated as an exchange rate mechanism for imports and exports wholly unrelated to the rebate of indirect taxes, the GOA maintained that it did not report the Convergence Factor to the Department because it had no reason to believe that the Department might consider the Convergence Factor to be a subsidy program much less a replacement of the Reintegro program.

In addition to stating that the Convergence Factor should not be considered a subsidy program, the GOA stated that it was willing to answer any additional questions that the Department had regarding the operation of the Convergence Factor. The GOA argued that it would rather the Department request specific information regarding the Convergence Factor than have the Department draw any adverse inferences from a perceived lack of response. The GOA contended that the Department's general questions seeking information on new subsidy programs or replacement programs for the reintegro could not reasonably have been interpreted by the GOA to be seeking information on an exchange rate mechanism like the Convergence Factor. Moreover, the GOA argued that it would be unreasonable for the Department to draw any adverse inferences from the record with regard to the Convergence Factor without providing the GOA with an opportunity to respond to specific questions regarding the Convergence Factor.

On December 2, 2003, the petitioners submitted comments and information regarding the GOA's November 20, 2003 letter. On December 8, 2003, the GOA submitted additional comments

regarding the petitioner's December 2, 2003 letter. These comments and information were submitted too late for consideration in these preliminary results.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required.

The GOA provided no information about the Convergence Factor in response either to questions regarding changes in the Reintegro or questions regarding any other forms of assistance provided to producers and exporters of subject merchandise. (*See* the GOA's April 14, 2003 response to the Department's initial questionnaire.) Moreover, the record also shows that when questioned at verification regarding whether the GOA implemented any additional forms of assistance for exporters in lieu of Reintegro payments at the time of or since the reduction of the Reintegro rates, GOA officials stated that there were no such measures. (*See* the *Reintegro Verification Report.*) Therefore, because the GOA failed to provide information on the Convergence Factor, the Department must resort to facts otherwise available.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability.

The GOA's stated position for not providing information on the Convergence Factor appears to be the following: (1) The Convergence Factor was an exchange rate mechanism that was not an additional subsidy which provided assistance to exporters; (2) exchange rate mechanisms have nothing to do with the Reintegro; and (3) the Department has found exchange rate policies which apply to imports and exports to be not countervailable.

We disagree with the GOA's contention that it could not reasonably be expected to provide information regarding the Convergence Factor in response to the Department's question regarding any other forms of assistance provided to producers and exporters of subject merchandise. Clearly, the Convergence Factor is a form of assistance that was provided to exporters of the subject merchandise during the POR. (*See CF Public Information Memo.*) As such, it is reasonable to conclude that the GOA was obligated to provide information regarding the Convergence Factor in response to questions regarding other forms of assistance provided to exporters of the subject merchandise. Moreover, it is reasonable to conclude that the GOA was aware of its obligation to provide information regarding the Convergence Factor in response to questions regarding other forms of assistance provided to exporters of the subject merchandise.

We note that, in response to the Department's question regarding any other forms of assistance provided to producers and exporters of subject merchandise, the GOA did provide information regarding a provincial loan program called ''Convenio Programa MIPyMES Agropecuarios Bonaerenses 2000'' which the GOA maintained was not countervailable. (*See* ''Program Preliminarily Determined to be Not Countervailable,'' below.) Since the GOA did report information on one program which it believed to be not countervailable, the Department can reasonably conclude that the GOA was aware of its obligation to report programs like the Convergence Factor even though it may believe that the Department should find a program such as the Convergence Factor to be not countervailable.

We also disagree with the GOA's contention that it could not reasonably be expected to provide information regarding the Convergence Factor in response to the Department's questions regarding possible replacements to the Reintegro program. In response to questions regarding the Reintegro program, the GOA provided a Spanish version of Resolution 470/2001 with a translation of Article 6 which set the reintegro rate for processed honey to zero. In response to the Department's November 14, 2003 letter which mentioned Article 2 of Resolution 470/2001, the GOA stated that Article 2 provides that ''companies accruing a credit from the difference in exchange rates would receive less of a reintegro rebate.'' Based even on this partial translation of Resolution 470/2001, it is clear that the operation of the Convergence Factor and the Reintegro were interrelated.

Moreover, a more complete translation of Article 2 shows that in cases where the Convergence Factor is larger than the corresponding Reintegro, only the Convergence Factor should be paid in lieu of the Reintegro. (*See Memorandum placing translation of Resolution 470/2001, Article 2 on the record of this review,* dated December 8, 2003.) As such, the record shows that both the Convergence Factor and the Reintegro program provided credits to exporters and the amount of credits provided by the Convergence Factor and the Reintegro program were limited by Article 2 of Resolution 470/2001. Since the GOA enacted Resolution 470/2001, and Article 2 of said resolution governed the interrelationship of the Convergence Factor and the Reintegro, it is reasonable to conclude that the GOA was obligated to provide information regarding the Convergence Factor in response to questions regarding possible replacements to the Reintegro.

Finally, we disagree with the GOA's contention that the existence of the cases it cited shows that the Department will not find a multiple exchange rate countervailable. There are several administrative cases where the Department has found multiple exchange rates countervailable. (*See, e.g., Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod From Venezuela,* 53 FR 24763 (June 30, 1988).) The Department's decisions regarding multiple exchange rates like the Convergence Factor are fact specific. Since the GOA failed to provide information on the Convergence Factor, we must resort to facts otherwise available to make our decision regarding the countervailability of the Convergence Factor.

The GOA was aware of its obligation to report information regarding the Convergence Factor and had the ability to report its own program. Therefore, the Department preliminarily concludes that the GOA failed to cooperate to the best of its ability. Accordingly, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act.

An analysis of the public information from the companion antidumping duty review shows the following. On June 19, 2001, GOA Decree 803/2001 modified the relationship between the Argentine Peso and the U.S. Dollar, as applied to import/export transactions. The Central Bank established a ''factor de convergencia'' or convergence factor (CF) for import/export transactions. The CF did not affect the convertibility plan for other types of U.S. Dollar transactions. The CF mechanism acted as an export promotion instrument. Concurrent with implementation of the CF, the GOA reduced the Reintegro for all products by seven percent. GOA Decree 191/2002 apparently suspended the CF on January 29, 2002. (*See CF Public Information Memo.*)

Public information from the companion antidumping duty review indicates the GOA calculated the CF for

exporters on a daily basis using a formula accounting for the exchange rate between the U.S. Dollar and the Euro (*i.e.*, exporters exchanged their U.S. Dollars into Argentine Pesos at a rate of one Peso equals 1 U.S. Dollar + (1 U.S. Dollar + 1 Euro)/2). (*See CF Public Information Memo.*) As such, Argentine exporters ultimately converted their U.S. Dollar payments to Argentine Pesos at a rate more advantageous than the one-to-one parity established by the Convertibility Law. In making CF claims, exporters apparently applied the officially published CF from the date of their export declaration to the FOB value of the goods exported. The GOA then paid the CF proceeds directly to the exporter.

The CF program provides a payment to exporters, calculated as a percentage of the ''free on board'' (FOB) invoice price of an exported product. These CF payments are issued by the GOA directly to exporters and therefore, constitute a financial contribution to recipients under section 771(5)(D)(I) of the Act. The CF program also provides a benefit because the exchange rate established through this program allowed exporters to convert U.S. Dollars to Argentine Pesos at a rate more advantageous than the official one-to-one exchange rate mandated by the GOA's Convertibility Law. Further, since receipt of CF payments is contingent upon export performance, CF payments are specific under section 771(5A)(D) of the Act.

In order to calculate the countervailable subsidy for the CF program applicable to honey exports from June 19, 2001 through December 31, 2001, we obtained the official daily CF data through a search of GOA websites, and we calculated an average CF for the period.[2] We then multiplied that average CF by the FOB value of honey exports to the United States for the same period and divided that total by the total FOB value of honey exports to the United States in 2001. As such, the countervailable subsidy rate for the CF program applicable to 2001 is 0.060 percent *ad valorem.*

For the purposes of establishing the countervailable subsidy rate for 2002 and the cash deposit rate of estimated countervailing duties, we obtained the official daily CF data for the period January 1, 2002 through January 29, 2002 (the date on which Resolution 191/2002 apparently suspended the Convergence Factor) and calculated an average CF for that period. We then applied that average CF to the total FOB value of honey exports to the United States for the same period. We estimated the total FOB value of honey exports to the United States for the period January 1, 2002 through January 29, 2002 by dividing the total FOB value of honey exports to the United States in 2002 by 365 days and multiplying the daily FOB value by 29 days. We then divided the total CF accrued during 2002 by the total FOB value of honey exports to the United States in 2002. Therefore, we preliminarily determine that the countervailable subsidy rate applicable to exports in 2002 and the rate of cash deposit of estimated countervailing duties applicable to this program is 0.477 percent *ad valorem.*

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action,* H.R. Doc. 103–316 (SAA), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In the instant review, we have relied on verified public information from the companion antidumping duty review to calculate countervailable subsidy and cash deposit rate applicable to the CF. Since this public information obtained from the companion antidumping duty proceeding was contemporaneous to the instant review and verified in the context of the companion antidumping duty review we consider it to be reliable and to have probative value. (*See CF Public Information Memo.*) We also used public information obtained from a GOA Web site: *http://www.afip.gov.ar/*. Because this is information issued by the GOA independent of this administrative review, we consider it to be reliable and to have probative value.

3. Regional Productive Revitalization Program

The GOA established the ''Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative'' (Regional Productive Revitalization Program) to strengthen the economies of small and medium-sized towns in the Argentine interior. The program was established in 1995 with funds from the national treasury allocated for use by the provinces. Although the program was administered at the national government level, its objective was to address financial emergencies and regional economic devastation in the provinces. The program discontinued granting new credits in the beginning of 1999. However, it remains operational as long as the loans granted are outstanding and continue to be serviced. The Regional Productive Revitalization Program provided credit for the acquisition of capital goods, technology, working capital, training needs, and technical assistance. During the time the program was fully operational, two Argentine Peso-denominated loans were made to honey producers. Those loans were outstanding during both 2001 and 2002. The GOA reported that under Resolution 0324, dated September 16, 2002, borrowers were permitted to refinance their loans under this program at terms which differed for companies that had remained current in their payment of interest and principal and for companies which had not remained current with their loan repayment obligations.

In the *Honey Final Determination,* we determined that the Regional Productive Revitalization Program was countervailable as a regional subsidy. *See Honey Issues Memo,* at ''Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative.'' There is no new information or evidence of changed circumstances which would warrant reconsidering this finding.

Consistent with our approach in the *Honey Final Determination*, we are treating these two loans differently for the purposes of calculating the benefit. For the first loan, we calculated the Argentine Peso-denominated benefit for the loan by multiplying the average loan balance outstanding during 2001and 2002 by the difference between the loan interest rate charged and the benchmark interest rate. For our benchmark interest rate, we selected from the information provided by the Central Bank of Argentina, a rate for the type of loans that most closely resembled the terms of this program. *See* ''Benchmark Interest Rates and Discount Rates'' above.

For the second loan, in the *Honey Final Determination*, we considered that this loan had been forgiven during 1999, the period of investigation POI, and treated the amount of debt forgiven as a grant conferred in that year. *See* 19 CFR § 351.508. There is no new information or evidence of changed circumstances which would warrant treating this loan differently for purposes of these preliminary results of

[2] The official CF data is available from the following GOA website: *http://www.afip.gov.ar/factor/inter_consulta.asp.*

review. Therefore, we continue to treat this loan as debt forgiven in 1999. To calculate the benefit, we have allocated the resulting Argentine Peso-denominated grant amount over the AUL of 10 years. See section entitled ''Allocation Period'' above. We have used an appropriate discount rate, as discussed in the ''Benchmark Interest Rates and Discount Rates'' section, above. Separately for 2001 and 2002 we summed the Argentine Peso-denominated benefit amounts attributable to each loan and converted the benefit amounts to U.S. Dollars using the official exchange rate data provided by the GOA. We then divided the U.S. Dollar-denominated benefits by the U.S. Dollar-denominated value of honey produced in Argentina during 2001 and 2002, as appropriate, to calculate a countervailable subsidy rate of 0.089 percent *ad valorem* for 2001 and 0.005 percent *ad valorem* for 2002. The cash deposit rate of estimated countervailing duties for this program is 0.005 percent *ad valorem*.

4. BNA Financing for the Acquisition of Goods of Argentine Origin

The financing for the Acquisition of Goods of Argentine origin program was established by the Banco de la Nación Argentina (BNA), a bank owned by the GOA, pursuant to Annex B to the BNA Circular No. 10715/I. This line of credit is offered by BNA to companies purchasing capital equipment manufactured in Argentina (defined as having a maximum foreign component of 40 percent). Financing is provided for up to five years, in an amount equal to 80 percent of the purchase price of the equipment not to exceed US$500,000. There was one loan under this program to a honey producer or exporter which was outstanding during 2001 and 2002.

A program that is ''contingent upon the use of domestic goods over imported goods, alone, or as 1 of 2 or more conditions,'' is an import substitution subsidy under section 771(5A)(c) of the Act. Because this financing is available only for the purchase of Argentine origin goods, the BNA Financing for the Acquisition of Goods of Argentine Origin is specific as an import substitution subsidy under section 771(5A)(c) of the Act.

Loans under this program provide a financial contribution under section 771(5)(D) of the Act in the form of a transfer of funds. To determine whether there is a benefit, we compared the interest rate charged on the loan provided under this program to the commercial interest rate for loans that most closely resemble loans under this program. (*See* ''Benchmark Interest Rates and Discount Rates'' above.) Based on this comparison, the amount that the recipient pays is less than the amount the recipient would have paid on a comparable commercial loan that could actually be obtained on the market. Thus, this line of credit provides a benefit under section 771(5)(E) of the Act.

The Republic of Argentina followed a currency board system under its Convertibility Law of maintaining parity between the Argentine peso and the U.S. dollar until January 2002. Thus, the exchange rate for the year 2001 was one Argentine Peso to one U.S. dollar. On January 6, 2002, Emergency Law No. 25,561 (Law 25,561) ended the one Argentine peso-one U.S. dollar relationship. In addition, Article 6, paragraph 2 of Law 25,561 and Decree 214/2002 established the mandatory restructuring of foreign currency-denominated debts [3] at a relationship of one U.S. Dollar-one Argentine Peso. This loan was converted from U.S. Dollars to Argentine Pesos under Law 25,567 and Decree 214/2002.

Because this is a long-term fixed-rate loan, the benefit is calculated by multiplying the average outstanding loan balance during 2001 by the difference between the interest rate charged under the program and the benchmark interest rate in accordance with 19 CFR § 351.505(c). We then divided this benefit amount by the U.S. Dollar value of total honey production in Argentina during 2001. Thus, for 2001, we preliminarily determine that the value of any countervailable benefits to honey producers or exporters under this program would have no measurable impact on the overall subsidy rate (*i.e.*, the rate is less than 0.001 percent ad valorem).

Because this loan was converted from U.S. Dollars to Argentine Pesos on January 29, 2002 pursuant to Law 25,567 and Decree 214/2002, we consider that there was, in effect, a new long-term fixed rate Argentine Peso-denominated loan made in 2002. We calculated the countervailable subsidy for 2002 in five steps: (1) We multiplied the average U.S. Dollar-denominated outstanding loan balance which existed from January 1, 2002 through January 28, 2002 by the difference between the interest rate for loans charged under the program and the benchmark interest rate for U.S. Dollar-denominated loans; (2) we multiplied the average Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for Argentine Peso-denominated loans made during 2002; (3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official annual average exchange rate data provided by the GOA; (4) we summed the two U.S. Dollar-denominated benefits from the two periods in 2002; and (5) we divided this U.S. Dollar-denominated amount by the U.S. Dollar value of total honey production in Argentina during 2002. We thus preliminarily find the countervailable subsidy from this program to be 0.001 percent *ad valorem* for 2002. The cash deposit rate of estimated countervailing duties is 0.001 percent *ad valorem.*

B. Provincial Programs

1. Province of San Luis Honey Development Program

The San Luis Honey Development Program (SLHDP) promoted honey production to supplement the income of disadvantaged people in underdeveloped areas in the province of San Luis through credit lines. These long-term, fixed rate, and Argentine Peso-denominated loans were made as part of a series of annual campaigns which took place from 1994 through 1999.

In the underlying investigation, the Department found the Province of San Luis Honey Development Program to be countervailable. *See Honey Issues Memo,* at ''Province of San Luis Honey Development Program.'' There is no new information or evidence of changed circumstances which would warrant reconsideration of this finding.

In the underlying investigation we treated loans made under this program as loans that had been forgiven during the 1999, the POI. *See* 19 CFR 351.508(a). In the instant review, the GOA reported that the Province of San Luis had undertaken significant efforts to collect payment on these loans. We verified that the Province of San Luis had collected a few, very small payments in 2001 and 2002. However, the amount collected was so small that it would have no impact on the countervailable subsidy rate. As such, we need not address whether it is appropriate to consider these payments as repayments of the subsidy. Therefore, consistent with our methodology in the investigation, we have summed the amounts disbursed through the program for the years 1994 through 1999, plus the accrued interest through 1999, when

[3] Law 25,567 and Decree 214/2002 converted all foreign currency-denominated debts except those directly related to the financing of exports.

the loans were effectively forgiven. We summed those amounts and added the leasing amount for 1999 and then allocated this sum over the 10-year average useful life of assets (AUL) used in the honey industry. We used the 1999 annual average of long-term fixed Peso-denominated interest rates as our discount rate. *See* ''Benchmark Interest Rates and Discount Rates,'' and ''Allocation Period'' sections, above.

For the purposes of establishing the countervailable subsidy rate for 2001, we converted the Argentine Peso-denominated benefit attributable to 2001 into U.S. Dollars using the official exchange rates provided by the GOA. We then divided this amount by the U.S. Dollar value of honey production in the Province of San Luis during 2001. We then determined the countervailable subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from San Luis represents of total honey exports to the United States during 2001. Thus, the countervailable subsidy rate attributable to this program for 2001 is 0.141 percent *ad valorem.*

For the purposes of establishing the countervailable subsidy rate for 2002, and the cash deposit rate, we converted the Argentine Peso-denominated benefit attributable to 2002 into U.S. Dollars using the official annual average exchange rate provided by the GOA. We then divided this amount by the U.S. Dollar value of honey production in the Province of San Luis during 2002. We then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from San Luis represents of total honey exports to the United States during 2002. Thus, the countervailable subsidy rate for 2002 and cash deposit rate applicable to this program are 0.024 percent *ad valorem.*

2. Province of Chaco Line of Credit Earmarked for the Honey Sector

The Chaco government's Line of Credit Earmarked for the Honey Sector funded efforts to increase honey production in the province. The Chaco government offered long-term, fixed rate, Argentine Peso-denominated loans to purchase hives as well as loans to improve access to new bee breeds and for honey extraction rooms. These loans were made as part of a series of annual campaigns which took place in 1995, 1997, and 1999.

In the *Honey Final Determination,* we determined that the leasing component of the Honey Program was countervailable. *See Honey Issues Memo,* at ''Province of Chaco Line of Credit Earmarked for the Honey Sector.'' There is no new information or evidence of changed circumstances which would warrant the reconsideration of this finding.

However, in the instant review, based on the results of verification, we find it appropriate to make one change to the calculation of the benefit arising from this program. We calculated outstanding balances for these loans to include outstanding interest which accrued on these loans. In order to determine whether a benefit existed, we compared the interest rate charged on loans provided under this program to the commercial interest rates for loans that most closely resemble loans under this program. Because these are long-term, fixed rate, Argentine Peso-denominated loans, we selected from information provided by the GOA a long-term benchmark from: 1995 to apply to the 1995 tranche; 1997 to apply to the 1997 tranche; and 1999 to apply to the 1999 tranche. Based on this comparison, there is a difference in the amount the recipient of the loan pays on the loan and the amount the recipient would have paid on a comparable commercial loan that the recipient could have actually obtained on the market. Thus, this line of credit is providing a benefit, under section 771(5)(E) (ii)of the Act.

We calculated the amount of the benefit for 2001 in the following steps: (1) We multiplied the average outstanding Argentine Peso-denominated loan balances for 2001 by the interest rate differential; (2) we converted the resulting the resulting Argentine Peso-denominated benefit into U.S. Dollars using the official annual average exchange rates provided by the GOA; (3) we divided this U.S. Dollar-denominated benefit by the U.S. Dollar value of honey production in the Province of Chaco during 2001: (4) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Chaco represents of total honey exports to the United States during 2001. We find the countervailable subsidy from this line of credit to be 0.084 percent *ad valorem* for 2001.

For the purposes of establishing the countervailable subsidy rate for 2002 and the cash deposit rate of estimated countervailing duties, we calculated the amount of the benefit for 2002 in the following steps: (1) We multiplied the average outstanding Argentine Peso-denominated loan balances for 2002 by the interest rate differential; (2) we converted the resulting Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rates provided by the GOA; (3) because the GOA was unable to demonstrate that no honey produced in Chaco was exported to the United States in 2002, we divided this U.S. Dollar-denominated benefit by the U.S. Dollar value of honey production in Argentina during 2002. Thus, the countervailable subsidy rate for 2002 and cash deposit rate applicable to this program are 0.019 percent *ad valorem.*

3. Buenos Aires Honey Program

In 1996, the Province of Buenos Aires created the Buenos Aires Honey Development Program (BAHP) to increase provincial honey production, and improve production efficiency and quality. Through the program, the Banco de la Provincia de Buenos Aires (Banco Provincia or BAPRO), a bank owned by the government of the Province of Buenos Aires, provides two types of credit lines to honey producers in the province: the Line of Credit for Working Capital; and the Line of Credit for the Acquisition of Capital Goods. Eligibility for both credit lines requires honey producers to enroll in the Province's Registry of Honey Producers. In addition, the Province of Buenos Aires provided Technical Assistance at no charge to honey producers.

In the underlying investigation, we found all three elements of the BAHP to provide countervailable subsidies. *See Honey Issues Memo,* at ''Buenos Aires Honey Program.'' There is no new information or evidence of changed circumstances which would warrant reconsideration of this finding. However, the GOA reported, and we verified, that no Technical Assistance was provided under the BAHP during the POR.

A. The Line of Credit for Working Capital

The Line of Credit for Working Capital enables beekeepers to finance their operating expenses. Beekeepers applying for this loan must have a minimum of fifteen beehives. This line offers US$15.00 per active producing beehive with no limit on the number of beehives. The maximum term for repayment of the loan may not exceed 180 days from the date of the loan.

The Banco Provincia offered two different rates under this line of credit: (i) For products that will be exported, the applicable interest rate is the market rate applied by Banco Provincia under its line of credit for the pre-financing of exports: (ii) for all other cases, the applicable interest rate is the market rate that Banco Provincia charges under

all other credit facilities. There were no loans for the prefinancing of exports under this line of credit with outstanding balances in 2001 or 2002

To calculate the 2001 benefit we multiplied the average U.S. Dollar-denominated loan balance outstanding during 2001 by the difference between the interest rate charged by this program and the benchmark for short-term, U.S. Dollar-denominated loans (*See* ''Benchmark Interest Rates and Discount Rates'' section above).

Because loans made under this program were converted from U.S. Dollars to Argentine Pesos on January 29, 2002 pursuant to Law 25,567 and Decree 214/2002, we consider this conversion to constitute, in effect, a new loan made in 2002. To calculate the benefit for 2002 we did the following: (1) We multipled the U.S. Dollar-denominated outstanding loan balances which existed from January 1, 2002 through January 29, 2002 by the difference between the interest rate for loans charged under the program and the appropriate benchmark interest rate for U.S. Dollar-denominated loans; (2) we then multiplied the-averaged Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for short-term, Argentine Peso-denominated loans made during 2002; and (3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rate data provide by the GOA.

B. The Line of Credit for the Acquisition of Capital Goods

The Line of Credit for the Acquisition of Capital Goods under the BAHP was implemented by the Banco Provincia through Circular ''A'' No. 13,854 in July 1997, pursuant to an agreement between the Banco Provincia and Banco de Inversion y Comercio Exterior S.A. (BICE), and utilizes funding provided through the BICE Norms 006 and 006/1. The BICE is a GOA entity, which functions as a ''second tier'' bank, lending money to other banks (both commercial and other government-owned or controlled banks) for the purpose of implementing government lending programs.

Under this line of credit, beekeepers are eligible to receive long-term financing for the acquisition of capital goods including beehives, new nuclei, inert material, and extraction and processing material, among other goods. Financing for this line of credit carries a maximum repayment term of five years. Interest rates are based on LIBOR, plus a spread added by the BICE, and a spread added by the Banco Provincia. The spreads given by both the BICE and Banco Provincia vary depending upon the repayment schedule of the loan. All of the loans that had outstanding loan balances during the POR were originally provided in U.S. Dollars; but these balances were converted to Argentine Pesos on January 29, 2002 in accordance with Law 25,567 and Decree 214/2002.

To calculate the 2001 benefit we multiplied the average U.S. Dollar-denominated balance outstanding during 2001 by the difference between the interest rate charged by this program and the benchmark for long-term U.S. Dollar-denominated loans (*See* ''Benchmark Interest Rates and Discount Rates'' section above).

As discussed above, loans made under this program were converted from U.S. Dollars to Argentine Pesos pursuant to Law 25,567 and Decree 214/2002. As such, we consider that this conversion constitutes, in effect, the provision of new loans made in 2002. We calculated the benefit for 2002 in the following steps: (1) We multiplied the average U.S. Dollar-denominated outstanding loan balances which existed from January 1, 2002 through January 28, 2002 by the difference between the interest rate for loans charged under the program and the appropriate benchmark interest rate for U.S. Dollar-denominated loans; (2) we multiplied the average Argentine Peso-denominated outstanding loan balance which existed from January 29, 2002 through December 31, 2002 by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for long-term, Argentine Peso-denominated loans made during 2002; and (3) we converted the 2002 Argentine Peso-denominated benefit into U.S. Dollars using the official exchange rate data provide by the GOA.

Total Countervailable Subsidy From the Buenos Aires Honey Program

To calculate the total countervailable subsidy for 2001 from the Buenos Aires Honey program, we did the following: (1) We summed all dollar-denominated benefits arising from Loans for Working Capital and Loans for the Acquisition of Capital Goods; (2) we divided this total 2001 benefit by the value of honey production in the Province of Buenos Aires during the 2001; (3) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Buenos Aires represents of total honey exports to the United States during 2001. See section entitled ''Denominator Issues'' above. Thus, we preliminarily determine the countervailable subsidy rate from the Buenos Aires Honey Program for 2001 is 0.047 percent *ad valorem.*

To calculate the total countervailable subsidy for 2002 from the Buenos Aires Honey program, we did the following: (1) We summed all dollar-denominated benefits arising from Loans for Working Capital and Loans for the Acquisition of Capital Goods; (2) we divided this total 2002 benefit by the value of honey production in the Province of Buenos Aires during the 2002; (3) we then determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Buenos Aires represents of total honey exports to the United States during 2002. *See* section entitled ''Denominator Issues'' above. Thus, we preliminarily determine the countervailable subsidy rate from the Buenos Aires Honey Program for 2002 and the rate of cash deposit of estimated countervailing duties applicable to this program is 0.045 percent *ad valorem.*

II. Program Preliminarily Determined To Be Not Countervailable

Provincial Program

Buenos Aires Micro-, Small- and Medium-Sized Businesses (MIPyMEs) Agreement for 2000 and the Buenos Aires Agricultural MIPyMEs Agreement for 2000

The Province of Buenos Aires provided information on two agreements: the ''Convenio Programa MIPyMEs Bonarenses 2000'' and the ''Convenio Programa MIPyMEs Agropecarias Bonarense 2000,'' which together comprise the MIPyMEs Agreement. This program is administered by the Banco de la Provincia de Buenos Aires (Banco Provincia or BAPRO) and its goal is to preserve and assist in the development of small businesses. MIPyMEs is the acronym for Micros, Pequeñas y Medianas Empresas (micro- small-, and medium sized businesses). Information about these programs was provided in response to the Department's question regarding whether the GOA, or entities owned directly, in whole or in part, by the government, provide, directly or indirectly, any other forms of assistance to producers or exporters of the subject merchandise.

Under the MIPyMEs Agreement, the government of the Province of Buenos Aires, through Banco Provincia,

allocated US$ 50,000 for each of the agreements made under the Special Programs of Support of Economic Activities of the Province of Buenos Aires for the year 2000. The programs are to offset up to 7 annual percentage points for loans issued by Banco Provincia during the year 2000 to micro-, small-, and medium-sized companies in the agricultural, industrial, commercial, and services sectors within the Province of Buenos Aires. In general, under the MIPyMEs Agreement, loans are granted for purposes of working capital and investment. The terms (length) of the loans varied and were based on the nature of the borrower. For the honey sector, loans can be given up to US$ 20,000 and have an interest rate for non-export transactions [4] in foreign currency. The Province can defray the interest on these loans up to four percent annually.

While eligibility for this program is limited to micro-, small- and medium-sized businesses involved in agricultural, industrial, commercial, and services sectors within the Province of Buenos Aires, in accordance with 19 CFR § 351.502(e), a subsidy is not specific solely because the subsidy is limited to small firms or small- and medium-sized firms. As such, we preliminarily determine that this program is not *de jure* specific. We have analyzed whether the actual use of these credit loans give rise to *de facto* specificity under section 71(5A)(D)(iii) of the Act. Based on information examined at verification, these loans were provided to a broad range of borrowers within numerous industries in agriculture, industry, and services. Honey producers received significantly less than one percent of the loans, by value, under the MIPyMEs Agreement. Thus, there is no basis for concluding that benefits under this program are *de facto* specific to an enterprise or industry or group of industries within the meaning of section 771(5A)(D)(iii) of the Act. Moreover, we found no evidence to indicate that these loans were provided to finance exports or import substitution.

As a result, we preliminarily determine that the loans offered under the MIPyMEs Agreement are not countervailable subsidies within the meaning of the Act.

[4] According to the questionnaire response, dated April 14, 2003, this rate typically exceeds the rate associated with loans that pertain to foreign trade, due to the perceived higher level of risk associated with the transactions.

III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that Argentine producers and exporters of honey to the United States did not apply for or receive benefits under the following programs during the POR.

A. Federal Programs

1. BICE Norm 001: Financing of Production of Goods Destined for Export
2. BICE Norm 007: Line of Credit Offered to Finance Industrial Investment Projects to Restructure and Modernize the Argentine Industry
3. BNA Line of Credit to the Agricultural Producers of the Patagonia
4. BNA Pre-Financing of Exports Regime for the Agricultural Sector
5. Production Pole Program for Honey Producers
6. Enterprise Restructuring Program
7. SGRs—Government Backed Loans Guarantees
8. Fundacion Export *AR
9. PROAPI

B. Provincial Programs

1. Province of Entre Rios Honey Program
2. Province of Chabut: Province of Chabut Law No. 4430/98
3. Province of Santiago del Estero Creditos de Confinanzas (Trust Credits)

Preliminary Results of Administrative Review

In accordance with section 777A(e)(2)(B) of the Act, we have calculated CVD rates on an aggregate or industry-wide basis for exports of subject merchandise in this administrative review. We have calculated separate rates for 2001 and for 2002. We preliminarily determine the total net countervailable subsidy rate is 5.77 percent *ad valorem* for 2001 and 0.57 percent *ad valorem* for 2002.

If the final results of this administrative review remain the same as the preliminary results, the Department will instruct CBP to liquidate shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption from January 1, 2001 through December 31, 2001 at 5.77 percent *ad valorem* and shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption from January 1, 2002 through December 31, 2002 at 0.57 percent *ad valorem.* Also, the rate of cash deposits of estimated countervailing duties will be set at 0.57 percent *ad valorem* for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of the final results of this review.

Public Comment

Pursuant to 19 CFR § 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR § 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise extended, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date of submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(1)).

Dated: December 8, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30902 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120903C]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Committee, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Tuesday, January 6, 2004, from 10 a.m. to 5 p.m. and Wednesday, January 7, 2004, from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Sheraton Providence Airport Hotel, 1850 Post Road, Warwick, RI; telephone: (401) 738–4000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to assist the NEFSC in developing effective and consistent trawl survey protocols and practices for the trawl surveys. The Committee will be describing what they envision the scientific sampling gear should do in terms of the sampling focus and performance. They will be making recommendations on the size of the trawl doors.

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 identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management 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 Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least five days prior to the meeting date.

Dated: December 10, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00553 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004 in excess of the following limits:

Category	Twelve-month restraint limit
410	462,435 square meters.
433	12,915 dozen.
435	19,509 dozen.
443	107,901 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include

entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00554 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Carryforward used thus far in 2003 is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period January 1, 2004 through December 31, 2004, in excess of the following levels of restraint:

Category	Restraint limit
Fabric Group	
219, 313–O [1], 314–O [2], 315–O [3], 317–O [4], 326–O [5], 617, 625/626/627/628/629, as a group.	309,290,723 square meters of which not more than 70,679,236 square meters shall be in Category 219; not more than 86,385,732 square meters shall be in Category 313–O; not more than 50,260,790 square meters shall be in Category 314–O; not more than 67,537,941 square meters shall be in Category 315–O; not more than 70,679,236 square meters shall be in Category 317–O; not more than 7,853,246 square meters shall be in Category 326–O, and not more than 47,119,494 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	31,817,441 square meters of which not more than 12,726,974 square meters shall be in Category 625; not more than 12,726,974 square meters shall be in Category 626; not more than 12,726,974 square meters shall be in Category 627; not more than 12,726,974 square meters shall be in Category 628; and not more than 12,726,974 square meters shall be in Category 629.
Limits not in a group	
200	2,982,231 kilograms.
300/301	14,520,268 kilograms.
335	626,940 dozen.
336/636	1,476,793 dozen.
338/339/638/639	8,698,313 dozen of which not more than 7,828,484 dozen shall be in Categories 338–S/339–S/638–S/639–S [6].
340/640	2,298,447 dozen of which not more than 653,708 dozen shall be in Categories 340–Y/640–Y [7].
341/641	2,269,824 dozen of which not more than 794,439 dozen shall be in Categories 341–Y/641–Y [8].
342/642	1,643,978 dozen.
347/348	8,944,353 dozen of which not more than 2,943,132 dozen shall be in Categories 347–T/348–T [9].
351/651	1,410,182 dozen.

Category	Restraint limit
361	2,965,335 numbers.
369–S [10]	3,240,687 kilograms.
410/624	1,217,232 square meters of which not more than 852,063 square meters shall be in Category 410.
448	39,306 dozen.
604	3,538,593 kilograms.
611	93,580,701 square meters.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.
[2] Category 314–O: all HTS numbers except 5209.51.6015.
[3] Category 315–O: all HTS numbers except 5208.52.4055.
[4] Category 317–O: all HTS numbers except 5208.59.2085.
[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.
[6] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.
[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.
[8] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.
[9] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.
[10] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00556 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine establishes limits for certain wool textile products, produced or manufactured in Ukraine and exported during the period beginning on January 1, 2004 and extending through December 31, 2004.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
435	101,468 dozen.
442	16,892 dozen.
444	73,201 numbers.
448	73,201 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 9, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00557 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner of Customs,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	286,340 dozen.
335	246,497 dozen.
410	3,232,862 square meters of which not more than 1,847,352 square meters shall be in Category 410–A [1] and not more than 2,976,284 square meters shall be in Category 410–B [2].
433	19,305 dozen.
434	28,799 dozen.
435	58,162 dozen.
442	41,144 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00558 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

December 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 17, 2000 between the Governments of the United States and the Socialist Republic of Vietnam, establishes limits for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Socialist Republic of Vietnam and exported during the period January 1, 2004 through December 31, 2004.

Carryforward applied to the 2003 limits has been deducted from all categories. Any categories which did not use all carryforward in 2003 will be re-credited back the unused amount later in 2004.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits may be revised if Vietnam becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Vietnam.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, and the bilateral textile agreement of July 17, 2003, between the Governments of the United States and the Socialist Republic of Vietnam, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Vietnam and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004 in excess of the following levels of restraint:

Category	Restraint limit
200	309,000 kilograms.
301	700,400 kilograms.
332	1,030,000 dozen pairs.
333	37,080 dozen.
334/335	695,250 dozen.
338/339	14,233,333 dozen.
340/640	2,060,000 dozen.
341/641	785,579 dozen.
342/642	571,325 dozen.
345	309,000 dozen.
347/348	7,116,667 dozen.
351/651	496,460 dozen.
352/652	1,905,500 dozen.
359–C/659–C [1]	334,750 kilograms.
359-S/659-S [2]	540,750 kilograms.
434	15,876 dozen.
435	39,200 dozen.
440	2,450 dozen.
447	50,960 dozen.
448	31,360 dozen.
620	6,554,920 square meters.
632	515,000 dozen pairs.
638/639	1,309,130 dozen.
645/646	206,000 dozen.
647/648	2,032,517 dozen.

[1] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Socialist Republic of Vietnam.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated May 12, 2003) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Vietnam becomes a member of the World Trade

Organization (WTO) and the United States applies the WTO agreement to Vietnam.

In carrying out the above directions, the Commissioner of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00559 Filed 12–12–03; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning a new information collection activity, the Performance Surveys for Senior Corps Programs. This request for new data collection reflects the Corporation's intent to conduct Performance Surveys for its three Senior Corps programs: the Foster Grandparent Program, the Senior Companion Program, and the Retired and Senior Volunteer Program. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 13, 2004.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Department of Research and Policy Development; Attention Mr. Nathan Dietz, Research Associate/Statistician; Room 8105, 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2785, Attention Mr. Nathan Dietz, Research Associate/Statistician.

(4) Electronically through the Corporation's e-mail address system: *ndietz@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Nathan Dietz, (202) 606–5000, ext. 287, or by e-mail at *ndietz@cns.gov.*

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Corporation is requesting comments on plans to conduct Performance Surveys for the three major Senior Corps programs, Foster Grandparent Program, Senior Companion Program, and Retired and Senior Volunteer Program. This study is being conducted under contract with Westat, Inc. (#CNCSHQC03003, Task Order #WES03T001) to collect information about local project volunteer outputs and outcomes. This information is to be used by CNCS to prepare Annual Performance Reports, to share with grantees as a means to quantify and describe the services of Senior Corps volunteers, to help program managers to improve the quality of services provided, and to aid the Corporation in responding to *ad hoc* requests from Congress and other interested parties.

The Performance Surveys for Senior Corps Programs will be distributed to the universe of grantees for each program, samples of volunteer work stations for each program, samples of volunteers for each program, and samples of end beneficiaries for each program.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Performance Surveys of Senior Corps Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Foster Grandparent, Senior Companion, and Retired and Senior Volunteer grantees; staff of agencies and organizations serving as volunteer work stations for volunteers from those programs; Senior Corps volunteers, and end beneficiaries of volunteer activities.

Total Respondents: 6,000.

Frequency: One time.

Average Time Per Response: 15 minutes.

Estimated Total Burden Hours: 1500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 9, 2003.

David A. Reingold,

Director, Research and Policy Development.

[FR Doc. 03–30893 Filed 12–12–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement for the Transformation of the 56th Brigade, Pennsylvania Army National Guard (PAARNG), Into a Stryker Brigade Combat Team (SBCT)

AGENCY: National Guard Bureau (NGB), Department of the Army (DA), DoD.

ACTION: Notice of intent.

SUMMARY: It is the intent of the National Guard Bureau and the Pennsylvania Army National Guard to prepare an Environmental Impact Statement addressing the proposed action of the transformation of the PAARNG's 56th Brigade into an SBCT. The purpose is to evaluate the environmental impacts associated with the action.

ADDRESSES: Interested parties can direct inquiries or furnish written comments or materials to Captain Patricia Rickard, SBCT Transformation EIS Project Officer, Environmental Section, 1119 Utility Road, Annville, Pennsylvania 17003–5002; phone: (717) 861–2580; or to Lieutenant Colonel Christopher Cleaver, NGTC–FTIG Public Affairs Officer, PADMVA Headquarters, Building 0–47, Annville, Pennsylvania 17003–5002; phone: (717) 861–8468.

FOR FURTHER INFORMATION CONTACT: Major Amy Calder, NEPA Team Leader, National Guard Bureau, Environmental Programs Division, 111 South George Mason Drive, Arlington VA 22204; phone: (703) 607–7971.

SUPPLEMENTARY INFORMATION: On July 12, 2001, the Secretary of the Army identified the 56th Brigade as one of six brigades designated for conversion to an SBCT. The purpose of this action is to enable the 56th Brigade to transform to achieve the force characteristics associated with the Army Transformation Plan. The requirement for change within the U.S. Army associated with the SBCT is based on the need to address the emerging security challenges of the 21st century. Chief among these challenges is the need to be able to respond more rapidly to different types of operations requiring military actions, including the ability to put a combat force anywhere in the world within 96 hours. World-wide deployment would utilize the C–130 transport aircraft, or aircraft with similar transport capabilities, to achieve this rapid deployment objective. The transformed force would rely on improved ground mobility and dramatically increased intelligence information and command and control capabilities. To support the increased mobility, the SBCT initiative incorporates the Stryker Interim Armored Vehicle (IAV) to transport troops over a variety of terrain and bring to the battlefield an assortment of equipment and armaments. Proficiency training for members of the 56th brigade will require the use of training facilities and ranges to maintain readiness levels as an SBCT. These facilities include such elements as electronic and training facilities for computer equipment, weapons firing ranges, and troop and vehicle maneuver areas. This proficiency training will occur under Inactive Duty Training (IDT) that consists of weekend drills and a multi-week Annual Training (AT) period. Readiness Centers (*i.e.,* Armories) are spread across the State of Pennsylvania and support local IDT events. The National Guard Training Center-Fort Indiantown Gap (NGTC–FTIG) in Annville, Pennsylvania, has historically been used to provide training for members of the 56th Brigade and offers an assortment of firing ranges and other types of facilities that can be used for IDT events and certain limited AT applications. Fort Pickett, Virginia, has historically been used for AT events. Other U.S. Army installations which could be used to support IDT or AT events include Fort A P Hill, Virginia; Fort Dix, New Jersey; Fort Drum, New York; and Ravenna Training and Logistic Site, Ohio.

Alternatives that will be analyzed in the EIS include:

(1) The preferred project alternative under which transformation of the 56th Brigade into an SBCT would be implemented and would include six critical elements. These elements are administrative reorganization of the 56th Brigade into an SBCT; upgrades to information technology infrastructure to support digital training needs of the SBCT; initial equipment and soldier training at existing facilities; fielding of the Stryker IAV and associated new equipment; improvements to and consolidation of Statewide facilities (*i.e.,* Readiness Centers, Organizational Maintenance Shops); and construction of new ranges and training facilities to support IDT and AT events at NGTC–FTIG and Fort Pickett.

(2) The no action alternative under which the 56th Brigade would not transform into an SBCT unit and would not be responsive to the Secretary of the Army's directive. The 56th Brigade would retain its current mission, unit structure, and training approach.

Any other viable alternatives that become evident as a result of public input and environmental analysis of the proposals within the plan will be developed and included in the EIS. Other alternatives may consist of alternative locations for specific projects, partial implementation of specific projects, or other modifications of specific projects.

Public scoping meetings will be held at three locations: (1) State Capitol in Harrisburg, Pennsylvania, (2) the vicinity of NGTC–FTIG, and (3) the vicinity of Fort Pickett, Virginia, to facilitate input to the EIS process by citizens and organizations. Dates, times and exact locations for these meetings will be announced through letters, public notices, display advertisements, and legal advertisements and will be released to newspapers of general circulation a minimum of 15 days prior to the meetings. Those wishing to provide information or data relevant to the environmental analysis of the proposed action or potential alternatives are encouraged to do so at the public scoping meetings.

Dated: December 9, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health)

[FR Doc. 03–30821 Filed 12–12–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Navy Case No. 82,405, entitled ''Surface Coating for Particle Based Bioanalytical Techniques'' and U.S. Patent Application Serial No. 10/457,705, entitled ''Fluidic Force Discrimination'', Navy Case No. 84,529.

ADDRESSES: Requests for information about the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S.

Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: December 9, 2003.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–30853 Filed 12–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; CorActive High Tech, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to CorActive High Tech, Inc., a revocable, nonassignable, exclusive license to practice in the field of chalcogenide optical fibers in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,735,927: Method for Producing Core/Cladding Glass Optical Fiber Preforms Using Hot Isostatic Pressing; Navy Case No. 76,989//U.S. Patent No. 5,778,125: Optical Fiber Terminations, Navy Case No. 77,790//U.S. Patent No. 5,779,757: Process for Removing Hydrogen and Carbon Impurities from Glasses by Adding a Tellurium Halide, Navy Case No. 77,216//U.S. Patent No. 5,879,426: Process for Making Optical Fibers from Core and Cladding Glass Rods, Navy Case No. 77,577//U.S. Patent No. 5,900,036: Multi-Cylinder Apparatus for Making Optical Fibers, Process and Product, Navy Case No. 76,981//U.S. Patent No. 5,953,478: Metal-Coated IR-transmitting Chalcogenide Glass Fibers, Navy Case No. 77,806//U.S. Patent No. 6,021,649: Apparatus for Making Optical Fibers from Core and Cladding Glass Rods with Two Coaxial Molten Glass Flows, Navy Case No. 79,632// U.S. Patent No. 6,175,678: Infrared Fiber Imager, Navy Case No. 79,823//U.S. Patent No. 6,526,782: Multi-Heating Zone Apparatus and Process for Making Core/Clad Glass Fibers, Navy Case No. 82,941// U.S. Patent Application Serial No. 10/632,210: Hollow Core Photonic Band Gap (HCPBG) Infrared Fiber Sensors, Navy Case No. 84,395.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 30, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: December 9, 2003.

S. K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–30852 Filed 12–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–220–000, et al.]

NEO California Power LLC, et al.; Electric Rate and Corporate Filings

December 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. NEO California Power LLC

[Docket No. ER04–220–000]

Take notice that on November 21, 2003, NEO California Power LLC (NEO California) tendered for filing Schedule A (Contract Service Limits for the 2004 Contract Year), associated with a Must-Run Service Agreement (RMR Agreement) between NEO California and the California Independent System Operator Corporation.

Comment Date: December 12, 2003.

2. CPV Milford, LLC

[Docket No. ER04–222–001]

Take notice that on December 3, 2003, CPV Milford, LLC tendered for filing an amendment to its application for authorization to sell energy, capacity, and ancillary services and to provide asset management services at market-based rates pursuant to Section 205 of the Federal Power Act.

Comment Date: December 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00551 Filed 12–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–31–000, et al.]

Quest Energy, L.L.C., et al.; Electric Rate and Corporate Filings

December 4, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Quest Energy, L.L.C. v. The Detroit Edison Company

[Docket No. EL04–31–000]

Take notice that on December 2, 2003, Quest Energy, L.L.C. filed a Complaint against The Detroit Edison Company (DTE), seeking compensation for Imbalance Services provided pursuant to the DTE Open Access Transmission Tariff.

Comment Date: December 22, 2003.

2. Exelon Fore River Development, LLC; Exelon Mystic Development, LLC; Exelon Edgar LLC; Exelon New Boston LLC, Exelon Framingham LLC, Exelon West Medway LLC; Exelon Wyman LLC; and Exelon New England Power Marketing, L.P.

[Docket Nos. ER01–41–004; ER02–42–005; ER01–513–005; and ER99–2404–004]

Take notice that on November 28, 2003, the nine subsidiaries of Exelon Generation Company L.L.C. (Exelon) listed in the above caption (collectively, Applicants), tendered for filing an updated market power study pursuant to the Commission's various orders granting those entities market-based rate authority. Applicants state that the submission demonstrates that Exelon and its subsidiaries continue to satisfy the Commission's requirements for authority to sell power at market-based rates. Applicants further state that they also tendered for filing new tariff provisions committing to abide by the Market Behavior Rules recently set forth by the Commission in Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,128 (Nov. 17, 2003).

Comment Date: December 19, 2003

3. New England Power Pool

[Docket No. ER04–239–000]

Take notice that on December 1, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to terminate the membership of El Cap II, LLC (El Cap), Leonard LaPorta, Jr. (LaPorta), and Marc Schaefer (Schaefer). The Participants Committee requests a November 1, 2003 effective date for the termination of El Cap and LaPorta, and a December 1, 2003 effective date for the termination of Schaefer.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: December 19, 2003.

4. Ameren Services Company

[Docket No. ER04–240–000]

Take notice that on November 28, 2003, Ameren Services Company (ASC) tendered for filing a revised Network Integration Transmission Service Agreement between ASC and City of Owensville, Missouri. ASC asserts that the purpose of the filing is to replace the executed Agreement in Docket No. ER02–931–000 with the revised executed Agreement.

Comment Date: December 19, 2003.

5. American Electric Power Service Corporation

[Docket No. ER04–241–000]

Take notice that on November 28, 2003, American Electric Power Service Corporation (AEPSC) as agent for Central and South West Services, Inc. (CSW) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreements under CSW FERC Electric Tariff, Original Volume No. 8.

AEPSC requests an effective date of November 1, 2003 for the cancellation.

AEPSC states it has served copies of the filing upon the parties listed in Exhibit 1 and the affected state regulatory commissions.

Comment Date: December 19, 2003.

6. Pacific Gas and Electric Company

[Docket No. ER04–242–000]

Take notice that on November 28, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a revised Grid Management Charge Pass-Through Tariff (PTT). PG&E states that this filing seeks to recover the costs proposed in the California Independent System Operator Corporation's (California ISO) GMC filing in Docket No. ER04–115–000 on October 31, 2003. PG&E requests an effective date of January 1, 2004.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission, all affected customers and the California ISO.

Comment Date: December 19, 2003.

7. Orange and Rockland Utilities, Inc.

[Docket No. ES04–7–000]

Take notice that on November 24, 2003, Orange and Rockland Utilities, Inc. (O&R) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue short-term debt in amount not to exceed $150 million.

Comment Date: December 15, 2003.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ES04–8–000]

Take notice that on November 24, 2003, Consolidated Edison Company of New York, Inc. submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue short-term debt in amount not to exceed $1 billion.

Comment Date: December 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00552 Filed 12–12–03; 8:45 am]

BILLING CODE 6717–01

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0065; FRL–7335–8]

Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances (EPA ICR No. 0574.12, OMB Control No. 2070–0012). This ICR involves a collection activity that is currently approved and scheduled to expire on July 31, 2004. The information collected

under this ICR helps EPA evaluate the health and environmental effects of new chemical substances before manufacture or importation of such substances begin. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0065, must be received on or before February 13, 2004.

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

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

For technical information contact: Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; fax number: (202) 564–4745; e-mail address:*alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Petroleum and coal products manufacturing (NAICS 324), e.g., Petroleum refineries, asphalt paving, roofing, saturated materials manufacturing, asphalt shingle and coating materials manufacturing, petroleum lubricating oil, and grease manufacturing.
- Chemical manufacturing (NAICS 325), e.g., Basic chemical manufacturing, resin, synthetic rubber, artificial and synthetic fibers and filaments manufacturing, paint, coating, adhesive manufacturing and other chemical product, and preparation manufacturing.

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0065. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

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

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

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

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

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are

submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0065. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0065. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

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

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0065 The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

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

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances.

ICR numbers: EPA ICR No. 0574.12, OMB Control No. 2070–0012.

ICR status: This ICR is currently scheduled to expire on July 31, 2004. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR,

after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) requires manufacturers and importers of new chemical substances to submit to EPA notice of intent to manufacture or import a new chemical substance 90 days before manufacture or import begins. EPA reviews the information contained in the notice to evaluate the health and environmental effects of the new chemical substance. On the basis of the review, EPA may take further regulatory action under TSCA, if warranted. If EPA takes no action within 90 days, the submitter is free to manufacture or import the new chemical substance without restriction.

TSCA section 5 also authorizes EPA to issue Significant New Use Rules (SNURs). EPA uses this authority to take follow-up action on new or existing chemicals that may present an unreasonable risk to human health or the environment if used in a manner that may result in different and/or higher exposures of a chemical to humans or the environment. Once a use is determined to be a significant new use, persons must submit a notice to EPA 90 days before beginning manufacture, processing, or importation of a chemical substance for that use. Such a notice allows EPA to receive and review information on such a use and, if necessary, regulate the use before it occurs.

Finally, TSCA section 5 also permits applications for exemption from section 5 review under certain circumstances. An applicant must provide information sufficient for EPA to make a determination that the circumstances in question qualify for an exemption. In granting an exemption, EPA may impose appropriate restrictions.

Responses to the collection of information are mandatory (see 40 CFR parts 700, 720, 721, 723, and 725). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 102.1 hours per response and to require 3.4 hours of recordkeeping per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 443.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 3.

Estimated total annual burden hours: 163,791 hours.

Estimated total annual burden costs: $34,348,733.

IV. Are There Changes in the Estimates from the Last Approval?

This request reflects a decrease of 62,756 hours (from 226,547 hours to 163,791 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease represents an adjustment in the number of annual submissions to reflect EPA's experiences since the most recent ICR. The decrease in the number of submissions per year is largely associated with the polymer and other exemptions implemented under the 1995 amendments.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 4, 2003.

William H. Sanders III,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–30885 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0066; FRL–7336–6]

Chemical-Specific Rules, Toxic Substances Control Act Section 8(a); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Chemical-Specific Rules, Toxic Substances Control Act (TSCA) Section 8(a) (EPA ICR No. 1198.07, OMB Control No. 2070–0067). This ICR involves a collection activity that is currently approved and scheduled to expire on April 30, 2004. The information collected under this ICR helps EPA evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0066, must be received on or before February 13, 2004.

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

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Keith Cronin, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8102; fax number: (202) 564–4775; e-mail address: *cronin.keith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, or import, or propose to manufacture, process, or import, chemical substances and mixtures. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., Basic chemical manufacturing, resin, synthetic rubber and artificial and synthetic fibers, filaments manufacturing, paint, coating, adhesive manufacturing and other chemical product, and preparation manufacturing.
- Petroleum refineries (NAICS 324110), e.g., Crude petroleum refineries, diesel fuels manufacturing, fuel oils manufacturing, oil refineries, and petroleum distillation.

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0066. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

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

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

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

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

C. How and to Whom Do I Submit the Comments?

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

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0066. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0066. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

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

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0066. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Chemical-Specific Rules, Toxic Substances Control Act (TSCA) Section 8(a).

ICR numbers: EPA ICR No. 1198.07, OMB Control No. 2070–0067.

ICR status: This ICR is currently scheduled to expire on April 30, 2004. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: TSCA section 8(a) authorizes the Administrator of EPA to promulgate rules that require persons who manufacture, import, or process chemical substances and mixtures, or who propose to manufacture, import, or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal Agency has a reasonable need for information, which cannot be satisfied via other sources, is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing,

use or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities, and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (see 40 CFR part 704). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 68.8 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 4.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 275 hours.

Estimated total annual burden costs: $11,702.

IV. Are There Changes in the Estimates from the Last Approval?

There are no changes in the burden estimates from the last approval.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 4, 2003.

William H. Sanders III,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–30886 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0003; FRL–7599–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; EPA ICR No. 1249.07, OMB Control No. 2070–0074

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0003, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *http://www.epa.gov/edocket,* or by mail to: EPA, Office of Pesticide Programs, Public Information and Records Integrity Branch, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division, 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6475; fax number: 703–305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 19, 2003, (68 FR 8013), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0003, which is available for public viewing at the Pesticides Docket, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will

be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection.

Abstract: This information collection activity will enable EPA to obtain the information needed to track the use of registered 1080 collars and the record keeping requirements imposed by an administrative judge in October 1982 and confirmed by the Agency in 1983. This ICR affects the States of Montana, New Mexico, South Dakota, and Wyoming that monitor the program plus one additional registrant. Applicators who are certified to apply Livestock Protection Collars must keep records of: (a) Number of collars purchased; (b) number of collars placed on livestock; (c) number of collars punctured or ruptured; (d) apparent cause of puncture or rupture; (e) number of collars lost or unrecovered; (f) number of collars in use and in storage; and (g) location and species data on each animal poisoned as an apparent result of the toxic collar. This ICR pertains to monitoring activities associated with collar use and to the preparation and submission of an annual monitoring report to EPA that are over and above requirements that are either conditions of registration or obligations associated with the handling and regulation of any restricted use pesticide product.

Applicators maintain records, and the registrants/lead agencies do monitoring studies and submit the reports. These records are monitored by either the State lead agencies or registrants. EPA receives annual monitoring reports from registrants or State lead agencies.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 40 hours per certified applicator, 77 hours per State, and 9 hours per registrant. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pesticide applicators using 1080 collars for livestock protection; three state agencies; one pesticide registrant.

Estimated Number of Respondents: 40

Frequency of Response: Annual

Estimated Total Annual Hour Burden: 1,753

Estimated Total Annual Cost: $30,460.

Changes in the Estimates: The total annual respondent burden is decreased by 1,600 hours. This change reflects a burden adjustment and is explained in the ICR.

Dated: December 4, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30888 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–8]

Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its sixth year of the Tribal Open Dump Cleanup Project (Cleanup Project). Since FY99, the Workgroup has funded approximately $9 million in projects. In FY03, the Interagency Workgroup made approximately $2.1 million available to fully or partially fund 26 selected projects. A similar amount of funding is projected for FY04. The Cleanup Project is part of a federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Cleanup Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management.

The Workgroup was established in April 1998 to coordinate federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency; the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the Bureau of Land Management; the departments of Agriculture, Defense, and Housing and Urban Development.

DATES: For consideration, proposals must be received by close of business on January 30, 2004. Proposals postmarked on or before but not received by the closing date will not be considered. Please do not rely solely on overnight mail to meet the deadlines.

ADDRESSES: If sending the proposal by the U.S. Postal Service, please send to: U.S. Environmental Protection Agency, Tribal Solid Waste Interagency Workgroup, Attn: Christopher Dege, Office of Solid Waste (MC–5306W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If sending the proposal using a commercial delivery service (Federal Express, UPS, DHL, etc.), please use the following address: U.S. Environmental Protection Agency, Tribal Solid Waste Interagency Workgroup, Attn: Christopher Dege, Office of Solid Waste, 2800 Crystal Drive, 8th Floor, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Copies of the Request for Proposals package may be downloaded from the Internet at *http://www.epa.gov/tribalmsw* by clicking on ''Funding.'' Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Christopher Dege, 703–308–2392

IHS—Steve Aoyama, 301–443–1046

BIA—Debbie McBride, 202–208–3606

SUPPLEMENTARY INFORMATION: *Criteria:* Eligible recipients of assistance under The Open Dump Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this project may be found in the Request for Proposals package.

Dated: November 14, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–30889 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–3]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of eighteenth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this eighteenth update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 68 FR 107, January 2, 2003, which was current as of February 4, 2003. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 3 additions and 0 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,257.

DATES: This list is current as of August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket may be obtained at *http://epa.gov/compliance/cleanup/federal/index.html*.

SUPPLEMENTARY INFORMATION:

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1.0 Introduction
2.0 Revisions of the Previous Docket
3.0 Process for Compiling the Updated Docket
4.0 Facilities Not Included
5.0 Facility Status Reporting
6.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222), October 2, 2001 (66 FR 50185), July 1, 2002 (67 FR 44200), and January 2, 2003 (68 FR 107). This notice constitutes the eighteenth update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 (February 12, 1988) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerardo Millán-Ramos (HBS), US EPA Region 1, #1 Congress St., Suite 1100, Boston, MA 02114–2023, (617) 918–1377

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260

Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276

Cesar Lee (3HS50), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3205

Gena Townsend (4WD–FFB), US EPA Region 4, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–8538

Laura Ripley (SE–5J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–6040

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178
D. Karla Asberry (FFSC), US EPA Region 7, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7595
Stan Zawistowski (EPR–F), US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6255
Philip Armstrong (SFD–9–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3098
Ken Marcy (ECL–115), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–2782
Monica Lindeman (ECL, SACU2), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–5113

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 3 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the 3 facilities being added to the docket, none are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation ''103(a)'' in the ''Reporting Mechanism'' column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs and have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities ''owned or operated'' by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that ''owns or operates'' the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having ''jurisdiction, custody, or control'' over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 0 facilities are being deleted from the docket. When facilities are deleted from the docket, it is for reasons such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 CFR 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an ''O''), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a ''C'') for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRAInfo), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four

provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Augusta K. Wills, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20004.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Facility Status Reporting

EPA has expanded the docket database to include information on the NFRAP status of listed facilities. Indicating NFRAP status allows easy identification of facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time of the status change. Accordingly, the docket database includes the following facility status codes:

U=Undetermined

N=No further remedial action planned (NFRAP)

NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has NFRAP status. The status information contained in the docket database is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional docket coordinators for review. The results of those reviews were incorporated into the status field in the docket database. Subsequently, an updated list of facilities having NFRAP status (those for which an ''N'' appears in the status field) was generated; the list of updates since the previous publication of the docket is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of August 14, 2003. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the list of facilities that have NFRAP status is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed and a new list of facilities classified as NFRAP will be published at each docket update.

6.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this fifteenth docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each facility: For example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the complete list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained at

http://www.epa.gov/compliance/cleanup/federal/index.html or by calling the HQ Docket Coordinator at (202) 564–2468. As of today, the total number of Federal facilities that appear on the docket is 2,257.

Dated: December 8, 2003.

David J. Kling,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Federal Agency (New Responsible Federal Agency Must Submit proof of previously performed PA, which is subject to approval by EPA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Must Submit proof of previously performed PA, which is subject to approval by EPA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling Augusta K. Wills, the HQ Docket Coordinator at (202) 564–2468.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET #18–ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
FWS-Grays Lake National Wildlife Refuge.	74 Grays Lake Rd 30 Mi N of Soda Springs.	Wayan	ID	83285	3010	Interior	19A.
FS-Ochoco NF: Amity Mine	FS Rd 42 & FS Rd 152 T14S R20E S15, W.M.	Prineville	OR	97754	103c	Agriculture	19A.
FS-Ochoco NF: Blue Ridge Mine.	FS Rd 42 & FS Rd 200 T14S R20E S15, W.M.	Prineville	OR	97754	103c	Agriculture	19A.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	CG—Point Spencer Dump Site.	Port Clarence—60 Mi NW of Cy.	Nome	AK	99762	Homeland Security	103c 3010	21
o	CG—Point Spencer Dump Site.	Port Clarence—60 Mi NW of Cy.	Nome	AK	99762	Transportation	103c 3010.	
c	CG—Loran Station on Sitkinak.	Sitkinak Island.	Old Harbor	AK	99643	Homeland Security	103c	21
o	CG—Loran Station on Sitkinak.	Sitkinak Island.	Old Harbor	AK	99643	Transportation	103c.	
c	CG—St. Paul Island Loran Station.	Saint Paul Airport, 1.5 Mi from Runway #2.	Saint Paul Island	AK	99660	Homeland Security	3010 103c	21
o	CG—St. Paul Island Loran Station.	Saint Paul Airport, 1.5 Mi from Runway #2.	Saint Paul Island	AK	99660	Transportation	3010 103c.	
c	CG—Edna Bay Entrance Light.	Edna Bay, 32 Mi NW of City.	Craig	AK	99921	Homeland Security	3010 103c	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	CG—Edna Bay Entrance Light.	Edna Bay, 32 Mi NW of City.	Craig	AK	99921	Transportation	3010 103c.	
c	CG—Ketchikan Base.	Tongass Hwy 1 Mi S of Ketchikan.	Ketchikan	AK	99901	Homeland Security	3010 103c 3005.	21
o	CG—Ketchikan Base.	Tongass Hwy 1 Mi S of Ketchikan.	Ketchikan	AK	99901	Transportation	3010 103c 3005.	
c	CG—Kodiak Support Center.	Womans Bay Kodiak Isl.	Kodiak	AK	99619	Homeland Security	3010 103c 3016 3005.	21
o	CG—Kodiak Support Center.	Womans Bay Kodiak Isl.	Kodiak	AK	99619	Transportation	3010 103c 3016 3005.	
c	CG—Cape Sarichef.	Unimak Island, W Coast.	Unimak	AK	99685	Homeland Security	103c	21
o	CG—Cape Sarichef.	Unimak Island, W Coast.	Unimak	AK	99685	Transportation	103c.	
c	Mobile Coast Guard Base.	South Broad St.	Mobile	AL	36615	Homeland Security	3010 103a 103c.	21
o	Mobile Coast Guard Base.	South Broad St.	Mobile	AL	36615	Transportation	3010 103a 103c.	
c	W.G. Huxtable Pumping Plant.	On The St. Francis River—10 Miles E on Hwy. 121/ Hwy 79.	Marianna	AR	72360	Corps of Engineers, Civil	3010 103c	20A, 23
o	Huxtable Pumping.	Highway 79 8M N.	Marianna	AR	72360	Corps of Engineers, Civil	3010.	
c	Hassayampa/ Lynx Creek Abandoned Mines.	5 Miles SE Prescott-Prescott Natl Forest.	Prescott	AZ	86301	Agriculture	103c 3016 103a.	20A
o	Prescott NF: Upper Hassayampa Creek Mines.		Prescott	AZ	86303	Agriculture	103c 3016 103a.	
c	National Guard Camp Navajo.	1002 Hale Dr I–40 Ex 185.	Bellemont	AZ	86015–9999	Army	3005 3010 3016 103c.	20A
o	Navajo Army Depot.	I–40	Flagstaff	AZ	86001	Army	3005 3010 3016 103c.	
c	Yuma Border Patrol Sector.	350 First St	Yuma	AZ	85364	Homeland Security	3010	21
o	Yuma Border Patrol Sector.	350 First St	Yuma	AZ	85364	Justice	3010.	
c	Edwards Air Force Base.	AFFTC Edwards AFB.	Edwards AFB	CA	93524	Air Force	3005 3010 3016 103c.	20A
o	Edwards Air Force Base.	P.O. Box 458	Edwards	CA	93523	Air Force	3005 3010 3016 103c.	
c	Mendocino NF: Eel River Work Center Waste Sump.	T.23 N., R. 11 W., NE¼ of Section 28.	Willits	CA	95490	Agriculture	103a 103c	20A, 23

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Mendocino NF: Eel River Work Center Waste Sump.	T23N R11W S28 NE¼.	Covelo	CA		Agriculture	103a.	
c	Alameda Coast Guard Support Center.	Coast Guard Government Island.	Alameda	CA	94501	Homeland Security	3010 103c	21
o	Alameda Coast Guard Support Center.	Coast Guard Government Island.	Alameda	CA	94501	Transportation	3010 103c.	
c	San Francisco CAMSPAC.	525 Mesa Road.	Bolinas	CA	94956	Homeland Security	3010 103c	21
c	San Francisco CAMSPAC.	525 Mesa Road.	Bolinas	CA	94956	Transportation	3010 103c.	
c	U.S. Border Patrol Station.	225 Kenney	El Cajon	CA	92020	Homeland Security	103c	21
c	U.S. Border Patrol Station.	225 Kenney	El Cajon	CA	92020	Justice	103c.	
c	Middletown Coast Guard Loran C Station.	Loran C Station.	Middletown	CA	95461	Homeland Security	103c	21
o	Middletown Coast Guard Loran C Station.	Loran C Station.	Middletown	CA	95461	Transportation	103c.	
c	San Francisco Coast Guard Base.	Yerba Buena Island.	San Francisco	CA	94130	Homeland Security	3010 103c	21
o	San Francisco Coast Guard Base.	Yerba Buena Island.	San Francisco	CA	94130	Transportation	3010 103c.	
c	Fort MacArthur.	Pacific Avenue.	San Pedro	CA	90731	Homeland Security	103c	21
o	Fort MacArthur.	Pacific Avenue.	San Pedro	CA	90731	Transportation	103c.	
c	San Pedro Coast Guard Support Center.	1801 Seaside Ave.	San Pedro	CA	90731	Homeland Security	3010 103c	21
o	San Pedro Coast Guard Support Center.	1801 Seaside Ave.	San Pedro	CA	90731	Transportation	3010 103c.	
c	San Ysidro Border Patrol.	3752 Beyer Blvd.	San Ysidro	CA	92073	Homeland Security	3010	21
o	San Ysidro Border Patrol.	3752 Beyer Blvd.	San Ysidro	CA	92073	Justice	3010.	
c	Former NAVSTA Long Beach.	Navy Mole Pier.	Long Beach	CA	90822	Navy	3010 103c 103a.	20A
o	Long Beach Naval Station.	Seaside Ave	Long Beach	CA	90822	Navy	3010 103c 103a.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Former NTC San Diego.	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c 3016.	20A
o	San Diego Naval Training Center.	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c 3016.	
c	USAF Academy.	8120 Edgerton Dr.	Colorado Springs	CO	80840–2400	Air Force	3010 103c	20A
o	Colorado Springs Academy.	AFA/DE	Colorado Springs	CO	80840	Air Force	3010 103c.	
c	BLM—Town of Mesa Landfill.	T10S, R96W, Sec22.	Molina	CO	81646	Interior	103c	20A
o	BLM—Town of Mesa Landfill.	T10S, R96W, Sec22.	Molina	CO		Interior	103c.	
c	Long Island Sound Coast Guard Group.	120 Woodward Ave.	New Haven	CT	06512	Homeland Security	3010 103c	21
o	Long Island Sound Coast Guard Group.	120 Woodward Ave.	New Haven	CT	06512	Transportation	3010 103c.	
c	U.S. Coast Guard Academy.	Mohegan Ave	New London	CT	06320	Homeland Security	3005 3010	21
o	U.S. Coast Guard Academy.	Mohegan Ave	New London	CT	06320	Transportation	3005 3010.	
c	CG—Cape Canaveral Light.	9235 Grouper Rd.	Cape Canaveral	FL	33131	Homeland Security	3010	21
o	CG—Cape Canaveral Light.	9235 Grouper Rd.	Cape Canaveral	FL	33131	Transportation	3010.	
c	CG—Crooked River Light.	Rt 98	Carrabelle	FL	33131	Homeland Security	3010	21
o	CG—Crooked River Light.	Rt 98	Carrabelle	FL	33131	Transportation	3010.	
c	CG—Sand Key Light.	CG Group Key W Trumbo Pt Annex.	Key West	FL	33131	Homeland Security	3010	21
o	CG—Sand Key Light.	CG Group Key W Trumbo Pt Annex.	Key West	FL	33131	Transportation	3010.	
c	Key West Coast Guard Station.		Key West	FL	33040	Homeland Security	3010 103c	21
o	Key West Coast Guard Station.		Key West	FL	33040	Transportation	3010 103c.	
c	Mayport Coast Guard Base.	PO Box 385	Mayport	FL	32267	Homeland Security	3010 103c 103a.	21
o	Mayport Coast Guard Base.	PO Box 385	Mayport	FL	32267	Transportation	3010 103c 103a.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	CG—Carysfort Reef Light.	100 MacArthur Causeway.	Miami Beach	FL	33131	Homeland Security	3010	21
o	CG—Carysfort Reef Light.	100 MacArthur Causeway.	Miami Beach	FL	33131	Transportation	3010.	
c	Miami Beach Coast Guard Base.	100 MacArthur Cswy.	Miami Beach	FL	33139	Homeland Security	3005 3010 103c.	21
o	Miami Beach Coast Guard Base.	100 MacArthur Cswy.	Miami Beach	FL	33139	Transportation	3005 3010 103c.	
c	Miami Coast Guard Air Station.	Opa Locka Airport.	Opa Locka	FL	33054	Homeland Security	103c 3010	21
o	Miami Coast Guard Air Station.	Opa Locka Airport.	Opa Locka	FL	33054	Transportation	103c 3010.	
c	CG—Hillsboro Light.	Hillsboro Inlet	Pompano Beach	FL	33131	Homeland Security	3010	21
o	CG—Hillsboro Light.	Hillsboro Inlet	Pompano Beach	FL	33131	Transportation	3010.	
c	St. Petersburg Coast Guard Station.	600 8th Ave SE.	St Petersburg	FL	33701	Homeland Security	3010 103c	21
o	St. Petersburg Coast Guard Station.	600 8th Ave SE.	St Petersburg	FL	33701	Transportation	3010 103c.	
c	Federal Law Enforcement Training Center.	GA State Rd 303.	Glynco	GA	31524	Homeland Security	3005 3010 3016.	21
o	Federal Law Enforcement Training Center.	GA State Rd 303.	Glynco	GA	31524	Treasury	3005 3010 3016.	
c	CG—Kure Atoll.	300 Ala Moana Blvd, Ste 8122.	Honolulu	HI	96850	Homeland Security	103c	21
o	CG—Kure Atoll.	300 Ala Moana Blvd, Ste 8122.	Honolulu	HI	96850	Transportation	103c.	
c	CG—Honolulu Coast Guard Base.	Sand Island	Honolulu	HI	96819	Homeland Security	3010 103c	21
o	CG-Honolulu Coast Guard Base.	Sand Island	Honolulu	HI	96819	Transportation	3010 103c.	
c	Kanehoe Coast Guard Omega Station.	Haiku Valley	Kaneohe	HI	96744	Homeland Security	103c	21
o	Kanehoe Coast Guard Omega Station.	Haiku Valley	Kaneohe	HI	96744	Transportation	103c.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Cedar Rapids (EX) National Guard Target.	4 Miles N of Iowa City, 19 Miles S/SW of Cedar Rapids.	Cedar Rapids	IA	52401	Corps of Engineers, Civil	103c	20A
o	Cedar Rapids (EX) National Guard Target.	4 Miles N of Iowa City, 19 Miles S/SW of Cedar Rapids.	Cedar Rapids	IA	52401	Corps of Engineers, Civil	103c.	
c	Saylorville Reservoir and Recreation Area.	5600 NW 78th Ave.	Johnston	IA	50131	Corps of Engineers, Civil	103c	20A
o	Saylorville Reservoir and Recreation Area.		Johnston	IA		Corps of Engineers, Civil	103c.	
c	Palzo Mine Site-Shawnee.	Springhill Church Road.	Stonefort	IL	62987	Agriculture	103c	20A
o	National Forest Palzo Mine.	Shawnee National Forest.	Harrisburg	IL	62946	Agriculture	103c.	
c	Michigan City East Pier Head Light.	Washington Park Site B Pier.	Michigan City	IN	46360	Homeland Security	3010	21
o	Michigan City East Pier Head Light.	Washington Park Site B Pier.	Michigan City	IN	46360	Transportation	3010.	
c	New Orleans Coast Guard Base.	4640 Urquhart Street.	New Orleans	LA	70117	Homeland Security	3010 103c	21
o	New Orleans Coast Guard Base.	4640 Urquhart Street.	New Orleans	LA	70117	Transportation	3010 103c.	
c	U.S. Coast Guard Support.	427 Commercial St.	Boston	MA	02109	Homeland Security	3010	21
o	U.S. Coast Guard Support.	427 Commercial St.	Boston	MA	02109	Transportation	3010.	
c	Woods Hole Coast Guard Base.	Little Harbor Road.	Falmouth	MA	02543	Homeland Security	3010 103c	21
o	Woods Hole Coast Guard Base.	Little Harbor Road.	Falmouth	MA	02543	Transportation	3010 103c.	
c	U.S. Coast Guard Buoy Depot South Weymouth.	Trotter Road	South Weymouth	MA	02190	Homeland Security	3005 3010 103c.	21
o	U.S. Coast Guard Buoy Depot South Weymouth.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c.	
c	Fort George G. Meade.	MD Rt 175	Odenton	MD	21113	Army	3005 3010 3016 103c.	20A
o	Fort George G. Meade.	MD Rt 175	Odenton	MD	20755	Army	3005 3010 3016 103c.	
c	Curtis Bay Coast Guard Yard.	2401 Hawkins Point Rd.	Baltimore	MD	21226	Homeland Security	3010 103c	20A, 21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	U.S. Coast Guard Yard.	Hawkins Point Rd.	Baltimore	MD	21226	Transportation	3010 103c.	
c	Back Creek Rear Range Coast Guard Structure.	25 Ft Square Position.	Chesapeake City	MD	21915	Homeland Security	103c	21
o	Back Creek Rear Range Coast Guard Structure.	25 Ft Square Position.	Chesapeake City	MD	21915	Transportation	103c.	
c	U.S. Coast Guard Base South Portland.	259 High St	South Portland	ME	04106	Homeland Security	3010 103c	21
o	U.S. Coast Guard Base South Portland.	259 High St	South Portland	ME	04106	Transportation	3010 103c	
c	Charlevoix Coast Guard Station.	220 Coast-guard Road.	Charlevoix	MI	49720	Homeland Security	3010 103c	21
o	Charlevoix Coast Guard Station.	220 Coast-guard Road.	Charlevoix	MI	49720	Transportation	3010 103c	
c	Saulte Ste Marie Coast Guard Group.	Water St	Sault St Marie	MI	49783	Homeland Security	3010	21
o	Saulte Ste Marie Coast Guard Group.	Water St	Sault St Marie	MI	49783	Transportation	3010	
c	St. Joseph North Pier Head Light.	18535 Lite List.	St. Joseph	MI	49417	Homeland Security	3010	21
o	St. Joseph North Pier Head Light.	18535 Lite List.	St. Joseph	MI	49417	Transportation	3010	
c	Traverse City Coast Guard Air Station (Ave ''E'' Ground-water.	Airport Road	Traverse City	MI	45685	Homeland Security	3010 103c	21
o	Traverse City Coast Guard Air Station (Ave ''E'' Ground-water.	Airport Road	Traverse City	MI	45685	Transportation	3010 103c	
c	Duluth Coast Guard Station.	1201 Min-nesota Ave.	Duluth	MN	55802	Homeland Security	3010 3016 103c.	21
o	Duluth Coast Guard Station.	1201 Min-nesota Ave.	Duluth	MN	55802	Transportation	3010 3016 103c.	
c	Fort Macon Coast Guard Station.	PO Box 237	Atlantic Beach	NC	28512	Homeland Security	3010 103c	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Fort Macon Coast Guard Station.	PO Box 237	Atlantic Beach	NC	28512	Transportation	3010 103c	
c	Elizabeth City Coast Guard Support Center.	Hwy 34 S/4 Mi. S Elizabeth City.	Elizabeth City	NC	27909	Homeland Security	3005 3010 3016 103c.	21
o	Elizabeth City Coast Guard Support Center.	Hwy 34 S/4 Mi. S Elizabeth City.	Elizabeth	NC	27909	Transportation	3005 3010 3016 103c.	
c	Stanley R Mickelson Safeguard Complex.	One Half Mile North of Nekoma.	Nekoma	ND	58355	Air Force	103c	20A
o	Stanley R. Mickelson Safeguard Complex.		Nekoma	ND		Air Force	103c	20A
c	Nebraska National Forest Site #2.	5.5 Mi S of Hwy 2.	Halsey	NE	69142	Agriculture	3016 103c	16
o	Nebraska National Forest.	State Rt 2 West Spur 868 PO Box 38.	Halsey	NE	69142	Agriculture	3016 103c	
c	Nebraska National Forest Site #1.	State Rt 2 W	Halsey	NE	69142	Agriculture	3016 103c	16
o	Nebraska National Forest.	State Rt 2 West Spur 868 PO Box 38.	Halsey	NE	69142	Agriculture	3016 103c	
c	Sandy Hook Coast Guard Station.	Hartshorne Drive.	Highlands	NJ	07732	Homeland Security	3010 103c	21
o	Sandy Hook Coast Guard Station.	Hartshorne Drive.	Highlands	NJ	07732	Transportation	3010 103c	
c	Plum Island Animal Disease Center.	Route 25	Orient Point	NY	11957	Homeland Security	3016 103c 3010.	21
o	Plum Island Animal Disease Center.	Route 25	Orient Point	NY	11957	Agriculture	3016 103c 3010.	21
c	Moriches Coast Guard Group.	100 Moriches Island Rd.	East Moriches	NY	11940	Homeland Security	3010 103c	21
o	Moriches Coast Guard Group.	100 Moriches Island Rd.	East Moriches	NY	11940	Transportation	3010 103c	
c	Support Center Governor's Island.	C/O U.S. Coast Guard Group.	Governor's Island	NY	10004	Homeland Security	3010 103c	21
o	Support Center Governor's Island.	C/O U.S. Coast Guard Group.	Governor's Island	NY	10004	Transportation	3010 103c	
c	Shinnecock Coast Guard Station.	Shinnecock Station.	Hampton Bays	NY	11946	Homeland Security	3010 103c	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Shinnecock Coast Guard Station.	Shinnecock Station.	Hampton Bays	NY	11946	Transportation	3010 103c	
c	Aids to Navigation Team.	7063 Lighthouse Drive.	Saugerties	NY	12477	Homeland Security	3010 103c	21
o	Aids to Navigation Team.	7063 Lighthouse Drive.	Saugerties	NY	12477	Transportation	3010 103c.	
c	CG—Astoria Coast Guard Base.	Hwy 30 at Tongue Point.	Astoria	OR	97103	Homeland Security	3010 103c	20A, 21
o	Astoria Coast Guard Base.	Hwy 30 at Tongue Point.	Astoria	OR	97103	Transportation	3010 103c.	
c	CG—Coos Bay Ant.	4333 Boat Basin Rd.	Charleston	OR	97420	Homeland Security	3010 103c	21
o	CG—Coos Bay Ant.	4333 Boat Basin Rd.	Charleston	OR	97420	Transportation	3010 103c.	
c	CG—Portland Marine Safety Coast Guard.	6767 N Basin	Portland	OR	97217	Homeland Security	3010 103c	20A, 21
o	Portland Marine Safety Coast Guard Station.	6767 N Basin	Portland	OR	97217	Transportation	3010 103c.	
c	Fort Dix Tacony Warehouse.	5100 Princeton Ave.	Philadelphia	PA	19135	Army	103c	20A
o	Fort Dix Tacony Warehouse.	1500 Princeton Ave.	Philadelphia	PA	19124	Army	103c.	
c	Borinquen Coast Guard Air Station.	Ramey Air Force Base.	Aquadilla	PR	00604	Homeland Security	3010 103c	21
o	Borinquen Coast Guard Air Station.	Ramey Air Force Base.	Aquadilla	PR	00604	Transportation	3010 103c.	
c	USAF Poinsett Electronic Combat Range.	5 Miles South of Wedgefield.	Sumter	SC	29168	Air Force	3010 3016 103c.	23
o	Shaw AFB Poinsett Range.	SC Hwy 261 4 Miles of.	Wedgefield	SC	29167	Air Force	3016 103c.	
c	Charleston Coast Guard Group.	196 Tradd St	Charleston	SC	29401	Homeland Security	3010	21
o	Charleston Coast Guard Group.	196 Tradd St	Charleston	SC	29401	Transportation	3010.	
c	101st Airborne Division (Air Assault).	West of U.S. 41A; at TN–KY Border.	Border	TN	3700	Army	3005 3010	20A
o	101st Airborne Division (Air Assault).	West of U.S. 41 at Border.		TN	3700	Army	3005 3010.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	U.S. Coast Guard Shore Side Detachment Par.	700 Coast Guard Rd.	Buchanan	TN	38222	Homeland Security	3010	21
o	U.S. Coast Guard Shore Side Detachment Par.	700 Coast Guard Rd.	Buchanan	TN	38222	Transportation	3010.	
c	U.S. Coast Guard (Ouachita) Shoreside.	3551 Old Harrison Pike.	Chattanooga	TN	37416–2825	Homeland Security	3010	21
o	U.S. Coast Guard (Ouachita) Shoreside.	3551 Old Harrison Pike.	Chattanooga	TN	37416–2825	Transportation	3010.	
c	Cotton Insects Research Lab.	414 Ringold Rd.	Brownsville	TX	78520	Agriculture	103c	20A
o	Cotton Insects Research Lab.		Brownsville	TX	78520	Agriculture	103c.	
c	Lake Lavon-North Gully-Site 1.	2½ Mi SE of Hwy 380.	Lewisville	TX	75077	Corps of Engineers, Civil	3016 103c	20A
o	Lake Lavon-North Gully-Site 1.	Highway 380	Wylie	TX	75077	Corps of Engineers, Civil	3016 103c.	
c	Corpus Christi Coast Guard Depot.	1201 Navigation Blvd.	Corpus Christi	TX	78407	Homeland Security	3010 103c	21
o	Corpus Christi Coast Guard Depot.	1201 Navigation Blvd.	Corpus Christi	TX	78407	Transportation	3010 103c.	
c	Galveston Coast Guard Base.	Ferry Road	Galveston	TX	77550	Homeland Security	3010 103c	21
o	Galveston Coast Guard Base.	Ferry Road	Galveston	TX	77550	Transportation	3010 103c.	
c	Customs—Millington Addition.	4 Bl East of FM 170.	Presidio	TX	79845	Homeland Security	103c	21
o	Customs—Millington Addition.	4 Bl East of FM 170.	Presidio	TX	79845	Transportation	103c.	
c	Virginia Ordnance Works.	Callis Mines Road.	Glen Wilton	VA	24438	Agriculture	103c	20A
o	Virginia Ordnance Works.	Mines Street	Glen Wilton	VA	24438	Agriculture	103c.	
c	Portsmouth Coast Guard Support Center.	4000 Coast Guard Blvd.	Portsmouth	VA	23703	Homeland Security	3010 103c	21
o	Portsmouth Coast Guard Support Center.	4000 Coast Guard Blvd.	Portsmouth	VA	23703	Transportation	3010 103c.	
c	Yorktown Reserve Training Center.	Route 238 SE Corner of York Co.	Yorktown	VA	23690	Homeland Security	3010	21

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Yorktown Reserve Training Center.	Route 238 SE Corner of York Co.	Yorktown	VA	23690	Transportation	3010.	
c	NAVSTA Norfolk.	1530 Gilbert St Ste 2000.	Norfolk	VA	23511	Navy	3005 3010 3016 103c.	20A
o	Sewells Point Naval Complex.	US 64 at VA 564.	Norfolk	VA	23511	Navy	3005 3010 3016 103c.	
c	Flamingo Bay Army Test Areas—Former Fort.	Water Island	St. Thomas	VI	00802	Interior	103c	20A
o	Flamingo Bay Army Test Areas Former Ft. Segarra.	Water Island	St. Thomas	VI		Interior		103c
c	Seattle Coast Guard Support Center.	1519 Alaskan Way S.	Seattle	WA	98134	Homeland Security	3010 3016 103c.	21
o	Seattle Coast Guard Support Center.	1519 Alaskan Way S.	Seattle	WA	98134	Transportation	3010 3016 103c.	
c	Seattle Coast Guard Support Center Annex.	2700 W Commodore Way.	Seattle	WA	98119	Homeland Security	3010 103c	21
o	Seattle Coast Guard Support Center Annex.	2700 W Commodore Way.	Seattle	WA	98119	Transportation	3010 103c.	
c	Milwaukee Coast Guard Group Base.	2420 Lincoln Memorial Dr.	Milwaukee	WI	53207	Homeland Security	3010 103c	21
o	Milwaukee Coast Guard Group Base.	2420 Lincoln Memorial Dr.	Milwaukee	WI	53207	Transportation	3010 103c.	
c	BLM—Baroil Landfill.	T26NR 90WSec26.	Baroil	WY	82322	Interior	103c	20A
o	BLM—Baroil Landfill.	T26NR 90WSec26.	Baroil	WY		Interior	103c.	
c	BLM—Indian Creek Drums.	I–90 & Indian Creek Road.	Near Buffalo	WY	82834	Interior	103c	20A
o	BLM—Indian Creek Drums.		Near Buffalo	WY	82834	Interior	103c.	
c	Wyoming Air National Guard.	Cheyenne Municipal Airport.	Cheyenne	WY	82003	Air Force	103c 3010	20A
o	Cheyenne Air National Guard.	Cheyenne Municipal Airport.	Cheyenne	WY	82003	Air Force	103c 3010.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18–NFRAP STATUS CHANGES

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
W.G. Huxtable Pumping Plant.	On the St. Francis River—10 Miles E on Hwy. 121/Hwy 79.	Marinna	AR	72360	Corps of Engineers, Civil	103c 3010.
Former NTC San Diego	Rosencranz & Nimitz Blvds.	San Diego	CA	92133	Navy	3010 103c 3016.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #18–NFRAP STATUS CHANGES—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
Nebraska National Forest Site #2.	5.5 Mi S of Hwy 2	Halsey	NE	69142	Agriculture	3016 103c.
Sante Fe NF: Pecos Campground.	1220 St. Francis Drive	Santa Fe	NM	87504	Agriculture	103c 3016.
Farmingdale Organizational Maintenance Shop #43.	25 Baiting Place Road	Farmingdale	NV	11735	Army	3010 103c.
BLM-Nevada Barth Corporation.	T31NR51ESEC7, 8	Palisade	NV	89822	Interior	103c.
Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c 3010 3016.
Lake Lavon-St Paul Site 2.	S End Rolling Meadows St.	Wylie	TX	75098	Corps of Engineers, Civil	103c 3010.
West Virginia Air National Guard.	Off Coonskin Park Drive	Charleston	WV	25301	Defense	103c 3010.

[FR Doc. 03–30890 Filed 12–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, December 17, 2003

December 10, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 17, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Office of Engineering and Technology.	*Title:* Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies (ET Docket No. 03–108); and Authorization and Use of Software Defined Radios (ET Docket No. 00–47). *Summary:* The Commission will consider a Notice of Proposed Rulemaking and Order concerning the use of cognitive radio technologies to facilitate opportunities for more flexible, efficient and reliable spectrum use.
2	Wireline Competition	*Title:* Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6). *Summary:* The Commission will consider a Third Report and Order and Second Further Notice of Proposed Rulemaking concerning the administration of the schools and libraries universal service mechanism.
3	Wireless Tele-Communications	*Title:* Amendment of the Commission's Rules Regarding Dedicated Short-Range Communication Services in the 5.850–5.925 GHz Band (5.9 GHz Band) (WT Docket No. 01–90); and Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850–5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services (ET Docket No. 98–95, RM–9096). *Summary:* The Commission will consider a Report and Order concerning licensing and service rules for the Dedicated Short Range Communications (DSRC) Service in the Intelligent Transportation Systems (ITS) Radio Service in the 5.850–5.925 GHz band (5.9 GHz band).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape.

Qualex International may be reached by e-mail at *Qualexint@aol.com*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31014 Filed 12–11–03; 2:02 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 13, 2004.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the revision, without extension, of the following reports:

Report title: Financial Statements for Bank Holding Companies.

Agency form numbers: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Reporters: Bank holding companies (BHCs).

Annual reporting hours: 369,113.

Estimated average hours per response: FR Y–9C: 34.80 hours, FR Y–9LP: 4.75 hours, FR Y–9SP: 4.09 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes.

Number of respondents: FR Y–9C: 2,113, FR Y–9LP: 2,455, FR Y–9SP: 3,312, FR Y–9CS: 600; FR Y–9ES: 92.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier BHCs that have total assets of $150 million or more and by lower–tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR–Y9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to

supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES is filed annually by BHCs that are Employee Stock Ownership Plans (ESOPs).

Current Actions: A detailed description of the proposed changes follows.

Proposed Revisions Effective March 31, 2004.

Voluntary Advance Collection of Summary FR Y–9C Data from the Largest BHCs.

The Federal Reserve proposes to incorporate into the FR Y–9C information collection the advance collection of key FR Y–9C summary items from selected institutions of up to fifty of the largest BHCs. These data would be collected in advance of the regular FR Y–9C filing deadline on a voluntary, as–needed basis. The Federal Reserve relies primarily on the quarterly earnings press releases published by these institutions to perform analysis of the largest BHCs – individually and in aggregate – weeks before FR Y–9C filings become available. However, pronounced and sustained differences have appeared between aspects of these published results and the FR Y–9C data at many of these institutions. The nature of these differences appears to be specific to each institution, related to the manner in which the institution chooses to present its results. The presence of such differences impairs the Federal Reserve's ability to analyze aggregates and make meaningful comparisons across institutions.

The Federal Reserve has addressed these differences by obtaining preliminary or estimated FR Y–9C information from affected institutions on a voluntary basis through informal dialog after the press releases have been issued. These cases were highly individualized, in which selected institutions were generally asked to provide preliminary information on a variety of FR Y–9C items. However, over the past year a growing range of items with differences has emerged at a significantly larger set of these institutions, and indeed for some items (*e.g.*, earning assets) there have been significant differences for a major share of these largest institutions.

Obtaining these selected, institution–specific preliminary data allows the Federal Reserve to evaluate meaningfully the financial condition and performance of the largest banking institutions, to discern and monitor emerging trends and issues (such as credit quality) in the banking industry, and to analyze these data in a timely manner. The Federal Reserve is willing to accept preliminary or estimated data from the institution in the interest of minimizing burden. In general, the data requested are supplemental to those published in press releases and are routinely contained in a firm's management information systems.

The items requested are primarily summary items such as total noninterest expense or total loans, and a few individual line items such as total trading revenue. The number of items collected varies from respondent to respondent according to the nature of the item, its relevance to the institution, and the basis of presentation used in the BHC's press release. However, any changes to this information collection would not exceed the estimated average burden of 30 minutes per respondent.

The advance information is collected by the Federal Reserve in the manner most convenient to the institution, mainly through electronic mail, telephone, or facsimile transmission. Reporting instructions would not be required because the requested financial items are defined in the FR Y–9C instructions. The advance information collected would be used only within the Federal Reserve System and would not be made available to the public.

Cover Pages

The Federal Reserve proposes to modify the contact information on the cover page of the FR Y–9C, FR Y–9LP, and FR Y–9SP reports to include the email address of the person to whom questions about this report should be directed. Collection of the email address would enhance communications between the Federal Reserve Bank staff and the respondent.

Schedule HC – Balance Sheet

The Federal Reserve proposes to modify the definition of Schedule HC, Balance Sheet, item 20, ''Other liabilities,'' and Schedule HC–G, Other Liabilities, item 4, ''Other,'' to include information on trust preferred securities. This information would no longer be included in Schedule HC, item 22, ''Minority interest in consolidated subsidiaries and similar items.'' The proposed reporting change would be consistent with the manner in which trust preferred securities are presented for other public reporting purposes. In addition a footnote would be added to the form for item 20 stating that this item ''Includes guaranteed preferred beneficial interests in the bank holding company's junior subordinated debt securities (trust preferred securities).'' The footnote would clarify that trust preferred securities information included in other liabilities is comparable to information reported under this caption in other public financial reports, such as the Securities and Exchange Commission (SEC) Form 10–K.

This proposed reporting change does not represent any change to the risk–based capital treatment for trust preferred securities. Consistent with guidance previously provided in Federal Reserve Supervisory Letter SR 03–13 of July 2, 2003, BHCs should continue to include eligible trust preferred securities in their tier 1 capital for regulatory capital purposes. The amounts qualifying for inclusion in tier 1 capital should be reported in Schedule HC–R, item 6, in accordance with the reporting instructions. The Federal Reserve will review the regulatory implications of any accounting treatment changes affecting trust preferred securities and, if necessary or warranted, will provide further appropriate guidance.

Schedule HC——Memoranda

In order to promote public awareness of risk disclosures, and to enhance the ability of the public to readily access this information, the Federal Reserve proposes to add to Schedule HC–M, a new Memorandum item 22, ''URL for the reporting bank holding company's web page that displays risk disclosures, including those about credit and market risk.'' This item would be updated on a quarterly basis, if applicable. The Federal Reserve has long supported greater market discipline and enhanced risk disclosures by banking organizations to achieve that objective. The Federal Reserve Board, in cooperation with the U.S. Securities and Exchange Commission (SEC) and the Office of the Comptroller of the Currency, sponsored the Working Group on Public Disclosure (the Working Group) in April 2000, which was asked to provide recommendations for improved public disclosures. The Working Group issued six recommendations in January 2001 for enhanced disclosure of market and credit risk and the Federal Reserve issued an SR letter that strongly encouraged large banking organizations to adopt these recommendations. Some large banking organizations have since adopted them. Because the Working Group recommendations focus on large banking organizations, the Federal Reserve proposes to collect the URL from large banking organizations with total assets of $30 billion or more that provide risk disclosures on their web site. The Federal Reserve would provide to the public the web address, which would link directly to the risk disclosure information on the large banking organization's web site or to a table that cross–references to the location of the disclosures. For example,

this information would likely be found in the risk management disclosure in management's discussion and analysis (MD&A) of large BHCs Form 10–K and Form 10–Q filed with the SEC and usually available on the BHC's website.

Schedule HC——Regulatory Capital

The Federal Reserve proposes to make the following changes to Schedule HC–R, Regulatory Capital.

1. Remove the caption for memoranda item 3.a, ''Perpetual preferred stock eligible for inclusion in Tier 1 capital:'' and modify the caption for memoranda item 3 to read ''Preferred stock (including related surplus) eligible for inclusion in Tier 1 capital:.''

2. Renumber memoranda item 3.a(1) as item 3.a and modify the caption to include a clarifying parenthetical note. The caption would read ''Noncumulative perpetual preferred stock (included and reported in ''Total equity capital,'' on Schedule HC).''

3. Renumber memoranda item 3.a(2) as item 3.b and modify the caption to include a clarifying parenthetical note. The caption would read ''Cumulative perpetual preferred stock (included and reported in ''Total equity capital,'' on Schedule HC).''

4. Modify current memoranda item 3.b, ''Cumulative preferred stock (*e.g.*, trust preferred securities) included and reported in ''Minority interest in consolidated subsidiaries and similar items,''on Schedule HC'' and renumber as 3.d. The revised caption would read ''Other cumulative preferred stock eligible for inclusion in Tier 1 capital (*e.g.*, trust preferred securities) (included in Schedule HC, items 20 or 22).'' This item would include trust preferred stock eligible for Tier 1 capital that is issued out of a special purpose subsidiary for which the bank holding company is the sole common shareholder, and that is reflected in Schedule HC, item 20, ''Other liabilities.'' This item would also include any other cumulative preferred stock included in Schedule HC, item 22, ''Minority interest in consolidated subsidiaries and similar items.''

5. Add a new memoranda item 3.c, ''Other noncumulative preferred stock eligible for inclusion in Tier 1 capital (*e.g.*, REIT preferred securities) (included in Schedule HC, item 22).''

The Federal Reserve proposes the first three changes to clarify existing items and proposes the fourth change for consistency with the proposed changes to Schedule HC, Balance Sheet, on trust preferred securities. The Federal Reserve proposes the fifth change, the addition of new memoranda item 3.c, to collect information on real estate investment trust (REIT) preferred securities. REIT preferred securities are a type of innovative capital instrument typically issued from a special purpose subsidiary at the bank level. Qualifying REIT preferred securities may be included in bank Tier 1 capital with a limit of up to 25 percent of Tier 1. Currently no data are collected for REIT instruments on financial reports at either the bank or BHC level. Therefore the Federal Reserve does not have comprehensive information on the amount of these instruments in banks' or BHCs' capital structures. The Federal Reserve has learned through available anecdotal information that a number of large banking organizations have made issuances of over $500 million. This item would also include any other noncumulative preferred stock included in Schedule HC, item 22, ''Minority interest in consolidated subsidiaries and similar items.''

Instructions

Instructional revisions and clarifications will be made to FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES, as necessary, in an attempt to achieve greater consistency in reporting by respondents.

Proposed Revisions Effective September 30, 2004 and December 31, 2004

Editing of Data by Respondents

The Federal Reserve proposes to require data validation checks to be performed by respondents as a condition for the accepted filing of the FR Y–9 reports (except for the FR Y–9CS). Implementation of this requirement is targeted as of the September 30, 2004, reporting date for FR Y–9C and FR Y–9LP respondents, and as of the December 31, 2004, reporting date for FR Y–9SP and FR Y–9ES respondents. The proposed changes are also consistent with the proposed data validation process for the Call Report, also targeted for September 2004.

Currently, after the Federal Reserve receives a bank holding company (BHC) report, it is subjected to edit checks to assess the accuracy and reasonableness of the data submitted. ''Validity'' edits verify the accuracy of reported data, for example, whether the individual items in a report schedule add up to the reported total or whether an item reported in one schedule agrees with the amount reported for an equivalent item in another schedule. Validity edits include mathematical and logical tests. ''Quality'' edits test the reasonableness of data and include tests using historical data and other relational tests, for example, whether the amount reported for a year''to''date item is greater than or equal to the amount reported for the same item in the previous quarter or whether the fair value reported for a category of securities falls within a specified range of the amortized cost reported for these securities. Also certain quality or ''interseries'' edits compare data reported on parent''only statements (FR Y–9LP) and data reported on the consolidated bank holding company statements (FR Y–9C).[1]

If this validation process identifies any edit exceptions in a BHC's report, a Federal Reserve analyst may contact the BHC and explain the edit exceptions detected in the BHC''s report. The BHC then reviews the reported data associated with these edit exceptions and provides the Federal Reserve analyst with any necessary corrections or describes the underlying facts and circumstances that explain why the data are correct as reported.

Under this proposal, the validation process will take place in conjunction with a BHC's submission of its FR Y–9 reports. The Federal Reserve's internet''based data collection system will subject a respondent's electronic data submission, whether by data entry or by file transfer, to published validity and quality edit checks and transmit the results of such checks to the respondent.[2] Companies that offer computer software to aid in the preparation of FR –9 reports or BHCs that have developed their own reporting software may also choose to incorporate validity and quality edit checks into their software. Thus edit exceptions will be identified while a BHC is preparing its report or during the submission process. The BHC will then be expected to correct its report data to eliminate any validity edit exceptions. The BHC will also be provided a method for supplying explanatory comments concerning quality edit exceptions. The Federal Reserve would not accept any submission as fulfilling reporting requirements or meeting the filing deadline that fails any validity edits or lacks explanatory comments concerning any quality edit exceptions.[3]

Because a BHC will be made aware of any edit exceptions while its staff is completing its FR Y–9 report, the BHC

[1] A list of validity and quality edits (including interseries edits) is located at the end of the instructions to the FR Y–9 reports (except for the FR Y–9CS), and validity edits are currently distributed to respondents in the form of a Reports Monitoring Checklist.

[2] Note that due to interseries comparisons between the FR Y–9LP and the FR Y–9C, the FR Y–9LP cannot be processed until the FR Y–9C is accepted.

[3] The data collection system will provide for acceptance of data that in rare situations may fail a validity edit due to unusual circumstances but have been identified as accurate.

will respond to these exceptions immediately rather than after''the''fact as it is under the Federal Reserve's current method. Although BHCs will still have to provide explanations to support data that trigger quality edit exceptions, this change should reduce subsequent questions from the Federal Reserve about these edits. The Federal Reserve will continue to treat BHCs explanatory comments that address any quality exceptions as confidential. Overall the proposed requirements are expected to improve the timeliness and quality of BHC data, enhance market discipline through faster access by the public, and utilize technological advances in an efficient manner.

Board of Governors of the Federal Reserve System, December 9, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E3–00561 Filed 12–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—11/03/2003			
20040009	Barry Diller	Hotwire, Inc	Barry Diller. Hotwire, Inc.
Transactions Granted Early Termination—11/04/2003			
20040050	Triad Hospitals, Inc	Tenet Healthcare Corporation	Central Arkansas Hospital, Inc. Central Care, Inc. Dedicated Health PHO, Inc. Garland Managed Care Organization, Inc. Jonesboro Health Services, L.L.C. National Park Medical Center, Inc. NPMC Healthcenter—Physician Services, Inc. StarCare of Jonesboro, Inc. St. Mary's Medical Group, Inc. St. Mary's Regional Medical Center, Inc. Tenet Healthcare Corporation. Tenet HealthSystem medical, Inc. Triad Hospitals, Inc.
20040054	American Industrial Partners Capital Fund III, L.P.	Alcoa, Inc	Advanced Technology and Equipment, Inc. Alcoa, Inc. American Industrial Partners Capital Fund III, L.P. Stolle Machiner, Inc.
20040055	Littlejohn Fund III, LP	General Electric Company	General Electric Canada, Inc. General Electric Company. General Electric Plastics France (SNC). General Electric South Africa (Proprietary) Ltd. GEP Italia SRL. GE Plastics Hong Kong Ltd. GE Plastics Ltd. GE Polymerland Korea Ltd. GEP South America LTDA. GE Superabrasives Europe GmbH. GE Superabrasives, Inc. GE Surperabrasives US, Inc. Littlejohn Fund II, LP.
20040060	U.S. Commercial Corp., S.A. de C.V.	Good Guys, Inc	Good Guys, Inc. U.S. Commercial Corp., S.A. de C.V.
20040064	Peter M. Brant	Enron Corp. (Debtor-in-Possession).	Enron Corp. (Debtor-in-Possession). Papiers Stadacona Ltee. Peter M. Brant. St. Aurelie Timberlands, Co., Ltd.
20040066	Gryphon Partners II, L.P	The Great Atlantic & Pacific Tea Company, Inc.	Gryphon Partners II, L.P. The Great Atlantic & Pacific Tea Company, Inc.
20040069	CCG Investments (BVI), L.P	Concertro Software, Inc.	CCG Investments (BVI), L.P.

Trans #	Acquiring	Acquired	Entities
			Concertro Software, Inc.
Transactions Granted Early Termination—11/07/2003			
20040023	Schlumberger Limited	Atos Origin SA	Atos Origin SA. Schlumberger Limited.
20040041	Allergan, Inc	Oculex Pharmaceuticals, Inc	Allergan, Inc. Oculex Pharmaceuticals, Inc.
20040059	The BISYS Group, Inc	Richard P. Love, Jr	Richard P. Love, Jr. The BISYS Group, Inc. USA Insuracne Group, Inc.
20040067	ValueClick, Inc	Commission Junction, Inc	Commission Junction, Inc. Value Click, Inc.
20040079	The TJX Companies, Inc	Bob's Stores, Inc	Bob's H.C., Inc Bob's Inc. Bob's Non-Connecticut Operating Co. Bob's Stores Center, Inc. Bob's Stores, Inc. The TJX Companies, Inc.
20040082	Apollo Investment Fund V, L.P	ConAgra Foods, Inc	2326396 Canada, Inc. Apollo Investment Fund V. ConAgra Foods, Inc. United Agri Products Canada Inc. United Agri Products, Inc.
20040084	Apollo Investment Fund V, L.P	UAP Holding Corp	Apollo Investment Fund V, L.P. UAP Holding Corp.
20040085	Macromedia, Inc	eHelp Corporation	eHelp Corporation. Macromedia, Inc.
20040090	Lions Gate Entertainment Corp	Audax Enterainment, L.P	Audax Entertainment, L.P. Film Holdings Co. Lions Gate Enterainment Corp.
Transactions Granted Early Termination—11/10/2003			
20040068	Sabre Holdings Corporation	My Travel Group plc	My Travel Group plc. Sabre Holdings Corporation. Travel Services International, Inc. TTC Holdings, Inc. World Choice Travel, Inc.
20040071	The Goldman Sachs Group, Inc	Cogentrix Energy, Inc	Congentrix Energy, Inc. The Goldman Sachs Group, Inc.
20040091	Avaya Inc	NorthWestern Corporation	Avaya Inc. Expanets, Inc. NorthWestern Corporation.
Transactions Granted Early Termination—11/13/2003			
20040058	Merit Partners, L.P	Royal Dutch Petroleum Company	Merit Partners, L.P. Midstream Capital Corp. Royal Dutch Petroleum Company. Shell Michigan Pipeline Company. Shell Onshore Ventures Inc. SWEPI LP.
20040061	National Leisure Group, Inc	MyTravel Group plc	Blue Sea Partners, Inc. MyTravel Group plc. National Leisure Group, Inc.
20040074	Digital Insight Corporation	Magnet Communications, Inc	Digital Insight Corporation. Magnet Communications, Inc.
20040075	Manulife Financial Corporation	John Hancock Financial Services, Inc.	John Hancock Financial Services, Inc. Manulife Financial Corporation.
20040089	Clipper Group Trust	Lasco Shipping Co	Clipper Group Trust. Lasco Shipping Co.
20040095	Jeld-Wen Holdings, Inc	Windowmaster Products	Jeld-Wen Holdings, Inc. Windowmaster Products.
Transactions Granted Early Termination—11/17/2003			
20040015	Vestar Capital Partners IV, L.P	Terrance Johnson	Mayer-Johnson, Inc. Terrance Johnson. Vestar Capital Partners IV, L.P.
20040053	dj Orthopedics, Inc	OrthoLogic Corp	dj Orthopedics, Inc. OrthoLogic Corp.
20040062	aaiPharma Inc	Elan Corporation plc	aaiPharma Inc.

Trans #	Acquiring	Acquired	Entities
20040100	O. Bruton Smith	Michele F. Salta	Elan Corporation plc. Elan Pharmaceuticals, Inc. CL Motors, LLC. CTM, LLC. Michele F. Salta O. Bruton Smith.
20040102	MetLife, Inc	Allianz Aktiengesellschaft	Allianz Aktiengesellschaft. Allianz Life Insurance company of North America. MetLife, Inc.
20040106	Veeco Instruments Inc	Lauren D. Lackey and Barbara Lackey.	Advanced Imaging, Inc. Lauren D. Lackey and Barbara Lackey. Veeco Instruments Inc.
Transactions Granted Early Termination—11/18/2003			
20040110	Scottish Re Group Limited	General Electric Company	ERC Life Reinsurance Corporation. General Electric Company. Scottish Re Group Limited.
Transactions Granted Early Termination—11/20/2003			
20040087	Apollo Investment Fund V, L.P	Royal Numico, N.V	Apollo Investment Fund V, L.P. General Nutrition Companies, Inc. GNC Franchising Canada, Ltd. GNC Franchising Nutrition Commpanies, Inc. Royal Numico, N.V.
20040108	Estate of Burk Zanft, c/o Deutsche Bank.	Heritage Fund I, L.P	Estate of Burk Zanft, c/o Deutsche Bank. Heritage Fund I, L.P.
20040109	Wellspring Capital Partners III, L.P	Walter Industries, Inc	New England Pottery Co., Inc. JW Aluminum Company. Walter Industries, Inc. Wellspring Capital Partners III, L.P.
20040115	Quovadx, Inc	Rogue Wave Software, Inc	Quovadx, Inc. Rogue Wave Software, Inc.
20040118	Dycom Industries, Inc	Willian T. Stover	Dycom Industries, Inc. First South Utility Construction, Inc. William T. Stover.
Transactions Granted Early Termination—11/24/2003			
200440072	Marquette Financial Companies	KBK Capital Corporation	KBK Capital Corporation. Marquette Financial Companies.
20040093	Lehman Brothers Holdings Inc	Hunter Fan Holdings, Inc	Hunter Fan Holdings, Inc. Lehman Brothers Holdings Inc.
20040135	Mitsubishi Chemical Corporation	Mitsubishi Chemical Corporation	Mitsubishi Chemical Corporation. Mitsubishi Pharma Corporation.
Transactions Granted Early Termination—11/25/2003			
20031016	Symantec Corporation	PowerQuest Corporation	PowerQuest Corporation. Symantec Corporation.
20040107	drugstore.com, Inc	lan and Louise Mummery	drugstore.com, Inc. lan and Louise Mummery. International Vision Direct Corp.
20040121	TA IX L.P	Logistics Health, Inc	Logistics Health, Inc. TA IX L.P.
20040123	Ephesos Vermogensverwaltung GmbH.	Sirona Dental Systems S.a.r.l	Ephesos Vermogensverwaltung GmbH. SIRONA Beteilligungs—und Verwaltungsgesellschaft. Sirona Dental Systems S.a.r.l.
20040125	J.W. Childs Equity Partners III, L.P	John T. Walton	John T. Walton. J.W. Childs Equity Partners III, LP. Xyron, Inc.
20040127	Liz Claiborne, Inc	Cerberus SBI Investor L.P	Cerberus SBI Investor L.P. Enyce Holding LLC Liz Claiborne, Inc.
20040129	Maple Leaf Foods Inc	Smithfield Foods, Inc	Maple Leaf Foods Inc. Smithfield Canada Limited. Smithfield Foods, Inc.
20040134	Heritage Propane Partners, L.P	LaGrange Energy, L.P	ETC Oasis GP, LLC. Five Dawaco, Inc.

Trans #	Acquiring	Acquired	Entities
			Heritage Propane Partners, L.P. LA GP, LLC. La Grange Acquisition, L.P. La Grange Energy, L.P. LGM, LLC. LG PL, LLC.
20040138	Siegwerk GmbH & Co. KG	Color Converting Industries Co	Color Converting Industries Co. Color Converting, LLC. Siegwerk GmbH & Co. KG.
20040145	Orbitz, Inc	Orbitz, LLC	Orbitz, Inc. Orbitz, LLC.
20040147	Sun Microsystems, Inc	Waveset Technologies, Inc	Sun Microsystems, Inc. Waveset Technologies, Inc.
20040150	Lawrence F. Flick, IV	Fox & Roach/Trident, G.P	Fox & Roach/Trident, G.P. Lawrence F. Flick, IV.
20040154	Littlejohn Fund II, L.P	LTS Holdings, Inc	Littlejohn Fund II, L.P. LTS Holdings, Inc.
Transactions Granted Early Termination—11/28/2003			
2004076	L–3 Communications Holdings, Inc	The Veritas Capital Fund L.P	L–3 Communications Holdings, Inc. The Veritas Capital Fund L.P. Vertex Aerospace LLC.
2004081	Computershare Limited	Geogeson Shareholder Coimmunications, Inc.	Computershare Limited. Geogeson Shareholder Communications Inc.
20040101	KAT Holdings, L.P	General Electric Company	Atrium Corporation. General Electric Company. KAT Holdings, L.P.
20040119	Reliant Pharmaceuticals, LLC	Abbott Laboratories	Abbott Laboratories. Reliant Pharmaceuticals, LLC.
20040130	The Home Depot, Inc	RMA Home Services, Inc	RMA Home Services, Inc. The Home Depot, Inc.
20040131	Bain Capital Fund VII, L.P	Bombardier Inc	Bain Capital Fund VII, L.P. Bombardier Inc. Bombardier Motor Corporation of America.
20040132	Ralcorp Holdings, Inc	Wind Point Partners III, L.P	Ralcorp Holdings, Inc. Value Added Bakery Holding Company. Wind Point Partners III, L.P.
20040133	Unilin Holding N.V	Fritz Homann	Fritz Homann. Homanit USA, Inc. Unilin Holding N.V.
20040136	Rural Cellular Corporation	AT&T Wireless Services, Inc	ABC Wireless, LLC AirCom PCS, Inc. AMT Cellular, LLC AT&T Wireless PCS, LLC. AT&T Wireless Services, Inc. Comet Wireless, Inc. QuinCom, Inc. Rural Cellular Corporation. Tritel A/B Holding Corp. Tritel C/F Holding Corp.
20040137	AT&T Wireless Services, Inc	Rural Cellular Corporation	AT&T Wireless Services, Inc. RCC Holdings, Inc. RCC Minnesota, Inc. Rural Cellular Corporation.
20040142	BB&T Corporation	McGriff, Seibels & Williams, Inc	BB&T Corporation. McGriff, Seibels & Williams, Inc.
20040151	Aetna Inc	Frederick H. Chicos	Aetna Inc. Chickering Benefit Planning Insurance Agency, Inc. Chickering Claims Administrators, Inc. Frederick H. Chicos.
20040155	Copperweld Acquisition Corporation.	The LTV Corporation (Debtor-in-Possession).	Copperweld Acquisition Corporation. Copperweld Canada, Inc. Copperweld Corporation. LTV Copperweld Bimetallics UK (Holdings) Ltd. The LTV Corporation (Debtor-in-Possession).
20040161	Aetna Inc	Kenneth Chicos	Aetna Inc. Chickering Benefit Planning Insurance Agency, Inc. Kenneth Chicos.

For Further Information Contact: Sandra M. Peay, Contact Representative, or Renee Hallman, Legal Technician. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–30861 Filed 12–12–03; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy

Cancellation of an Optional Form by the Department of State

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The Department of State cancelled the following Optional Form: OF 137, Designation of Beneficiary (12/77).

This form is now a State Department form. You can request copies from: Department of State, A/RPS/DIR, SA–22, 18th and G Streets, NW.; Suite 2400, Washington, DC 20520–2201, 202–312–9605.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

DATES: Effective December 15,2003.

Dated: December 5, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–30891 Filed 12–12–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1370–N]

Medicare Program; The Practicing Physicians Advisory Council's Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2004.

DATES: Nominations will be considered if received at the appropriate address, no later than 5 p.m. (EST) December 26, 2003.

ADDRESSES: Mail or deliver nominations to the following address: Centers for Medicare & Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: Cheryl L. Slay, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–11–27, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Kenneth Simon, M.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–10–07, Baltimore, MD 21244–1850, (410) 786–3377. Please refer to the CMS Advisory Committees Information Line: (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet at *http://www.cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities. News media representatives must contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Ronald Castallanos, M.D.; Rebecca Gaughan, M.D.; Carlos R. Hamilton, M.D.; Joseph Heyman, M.D.; Dennis K. Iglar, M.D.; Christopher Leggett, M.D.; Joe Johnson, D.O.; Barbara McAneny, M.D.; Angelyn L. Moultrie-Lizana, D.O.; Laura B. Powers, M.D.; Michael T. Rapp, M.D.; Amilu Rothhammer, M.D.; Robert L. Urata, M.D.; and Douglas L. Wood, M.D.

This notice serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short résumé or description of the nominee's experience. To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section 1868(b) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, as identified by the Secretary. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services/Centers for Medicare & Medicaid Services provides management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of the Council's membership.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, sections 10(a) and 14)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 8, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–30791 Filed 12–12–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

SES Performance Review Board

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the CMS Senior Executive Service (SES) Performance Review Board.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Mueller, Executive Resources Management Team, Office of Operations Management, Centers for Medicare and Medicaid Services, C2–12–16, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5554.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The purpose of the board is to provide fair and impartial review of the initial appraisal prepared by the senior executive's immediate supervisor; to make recommendations to the appointing authority regarding the performance of the senior executive; and to make recommendations for monetary performance awards. Composition of the specific PRB will be determined on an ad hoc basis from among the individuals listed below:

Gale Arden, Director, Private Health Insurance Group
Gary Bailey, Deputy Director for Health Plans, Center for Beneficiary Choices
Dara Bendavid, Deputy Director, Office of Financial Management
Judith Berek, Senior Advisor on National Policy Implementation
Charlene Brown, Deputy Director, Center for Medicaid and State Operations
Gregory Carson, Director, Medicare Contractor Management
Rose Crum-Johnson, Atlanta Regional Administrator
James R. Farris, Dallas Regional Administrator
Jeffrey Flick, San Francisco Regional Administrator
Robert Foreman, Director, Office of Legislation
Richard Foster, Chief Actuary/Director Office of the Actuary
Wallace Fung, Deputy Director (Technology)
Jacqueline Garner, Chicago Regional Administrator
Thomas L. Grissom, Director, Center for Medicare Management
Thomas Gustafson, Deputy Director, Center for Medicare Management
Stuart Guterman, Director, Office of Research, Development and Information
Thomas Hamilton, Director, Office of Survey and Certification
Timothy B. Hill, Director, Office of Financial Management
Gary Kavanagh, Director, Business Systems Operations Group
Carmen Keller, Director, Office of Medicare Adjudication
James Kerr, New York Regional Administrator
Thomas Kickham, Director, Partnership and Promotion Group
Mary Laureno, Director, Beneficiary Information Services Group
Timothy Love, Director, Office of Information Services
Sonia A. Madison, Philadelphia Regional Administrator
Gail McGrath, Director, Center for Beneficiary Choices
Michael McMullan, Deputy Director, Center for Beneficiary Choices
Regina McPhillips, Director, Beneficiary Education and Analysis Group
Solomon Mussey, Director, Office of Medicare and Medicaid Cost Estimates Group
Leslie V. Norwalk, Acting Deputy Administrator, Chair
Elizabeth Richter, Director, Hospital and Ambulatory Policy Group
Jean Sheil, Director, Family and Children's Health Program Group
Dennis Smith, Director, Center for Medicaid and State Operations
Robert A. Streimer, Deputy Director, Office of Clinical Standards and Quality
Stewart Streimer, Director, Provider Billing Group
Dallas Sweezy, Director, Public Affairs Office
Deborah Taylor, Deputy Director, Office of Financial Management
Joe Tilghman, Kansas City Regional Administrator
Alexander Trujillo, Denver Regional Administrator
Sean Tunis, Director, Office of Clinical Standards and Quality
Jacqueline White, Director, Office of Strategic Operations and Regulatory Affairs
Laurence Wilson, Director, Chronic Care Policy Group
Charlotte Yeh, Boston, Regional Administrator

Dated: December 2, 2003.

Leslie V. Norwalk,

Acting Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 03–30792 Filed 12–12–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0554]

Compliance Policy Guide Sec. 110.310—''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a Compliance Policy Guide (CPG) Sec. 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' The CPG provides written guidance to FDA's and Customs and Border Protection's (CBP's) staff on enforcement of section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulations, which require, beginning on December 12, 2003, prior notice for all food imported or offered for import into the United States.

DATES: This guidance is final upon the date of publication. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section

for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Joe McCallion, Office of Regulatory Affairs, Food and Drug Administration, (301) 443–6553 or Ted Poplawski, Office of Regulatory Affairs, Food and Drug Administration, (301) 443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of CPG Sec. 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' This guidance is issued jointly with CBP and explains to FDA and CBP staff the FDA and CBP policies on enforcement of section 307 of the Bioterrorism Act and its implementing regulations, which require, beginning on December 12, 2003, prior notice to FDA of all food imported or offered for import into the United States. (68 FR 58974 (Oct. 10, 2003) (to be codified at 21 CFR 1.276–1.285).)

FDA is issuing this document as level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The CPG Sec. 110.310 is being implemented immediately without prior public comment, under § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. Under section 307 of the Bioterrorism Act, the prior notice requirements are effective December 12, 2003, making it urgent that the agencies explain how they intend to enforce those requirements.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance document. Submit two copies of written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: December 10, 2003.

John M. Taylor, III,

Associate Commissioner for Regulatory Affairs, Food and Drug Administration.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection.

[FR Doc. 03–30920 Filed 12–11–03; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) personnel (Corps Personnel) for the period July 1, 2003, through June 30, 2004, is posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov/resources/fedreg-hpol/*. This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Scholarship Program; the NHSC Loan Repayment Program; and Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Shortage Designation Branch in the National Center for Workforce Analysis, Bureau of Health Professions, Health Resources and Services Administration; (2) enter into an agreement with the State agency that administers Medicaid, accept payment under Medicare and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (3) be determined by the Secretary to have (a) a need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; and (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there. Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary, mental or oral health services to a HPSA of greatest shortage; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps members is not assigned to the entity.

Entities that receive assignment of Corps personnel must assure that (1) the vacancy will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in full-time clinical practice for a minimum of 40 hours per week with at least 32 hours in the ambulatory care setting. Obstetricians/gynecologists and certified nurse midwives (CNMs) are required to engage in a minimum of 21 hours per week of outpatient clinical practice. The remaining hours, making up the 40-hour per week total, include delivery and other clinical hospital-based duties. Time spent on-call does not count toward the 40 hours per week. In addition, sites receiving assignment of Corps personnel are expected to (1) report to the NHSC all absences in excess of the authorized number of days (up to 35 days or 280 hours); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. This system allows the site to assess the age, sex, race/ethnicity and provider encounter records for its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a health professional shortage area with the greatest such shortage. For the program year July 1, 2003—June 30, 2004, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: (1) Primary care HPSAs with a score of 14 and above are authorized for the assignment of Corps members who are family nurse practitioners or primary care physicians participating in the Scholarship Program; (2) mental health HPSAs with a score of 18 and above are authorized for the assignment of Corps members who are physician psychiatrists participating in the Scholarship Program; (3) dental HPSAs with a score of 18 and above are authorized for the assignment of Corps members who are dentists participating in the Scholarship Program; (4) all primary care HPSAs are authorized for the assignment of Corps members who are physician assistants (PAs) or CNMs participating in the Scholarship Program; and (5) HPSAs (appropriate to each discipline) with scores of 14 and above will receive authorization for the assignment of Corps members who are participating in the Loan Repayment Program. HPSAs with scores below 14 will be eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to those HPSAs receiving the priority for placement of Corps members through the Loan Repayment Program. Placements made through the Loan Repayment Program in HPSAs with scores 13 or below will be made by decreasing HPSA score, only to the extent funding remains available. All sites on the list are eligible sites for individuals wishing to serve in an underserved area but who are not contractually obligated under the Scholarship or Loan Repayment Program. A listing of HPSAs and their scores is posted at *http://belize.hrsa.gov/newhpsa/newhpsa.cfm.*

Sites qualifying for an automatic HPSA designation are currently unscored. A methodology to score these automatic HPSAs is currently being developed. Sites on the list with an unscored HPSA designation are authorized for the assignment of Corps personnel who are PAs or CNMs participating in the Scholarship Program. Unscored HPSAs are eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to scored HPSAs. When automatic HPSAs receive scores, these sites will then be authorized to receive assignment of Corps members if they meet the criteria outlined above and their newly assigned scores are above the stated cutoffs.

The number of new NHSC placements through the Scholarship and Loan Repayment programs allowed at any one site are limited to the following:

(1) Primary Health Care

(a) *Loan Repayment Program*—no more than 2 physicians (MD or DO); and no more than a combined total of 2 nurse practitioners (NPs), PAs, or CNMs.

(b) *Scholarship Program*—no more than 2 physicians (MD or DO); and no more than a combined total of 5 NPs, PAs or CNMS.

(2) Dental

(a) *Loan Repayment Program*—no more than 2 dentists and 2 dental hygienists.

(b) *Scholarship Program*—no more than 1 dentist.

(3) Mental Health

(a) *Loan Repayment Program*—no more than 2 psychiatrists (MD or DO); and no more than a combined total of 2 clinical or counseling psychologists; licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

(b) *Scholarship Program*—no more than 2 psychiatrists.

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including HPSA score, will be removed from the priority listing. Entities interested in being added to the high priority list must submit an NHSC Recruitment and Retention Assistance Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857, fax 301–594–2721. These applications must be submitted on or before the deadline date of March 26, 2004. Applications submitted after this deadline date will be considered for placement on the priority placement list in the following program year. Any changes to this deadline will be posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov.*

Additional Information

Entities interested in receiving application materials may do so by calling the NHSC call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.bhpr.hrsa.gov/applications/rraa.cfm.*

Entities wishing to provide additional data and information in support of their inclusion on the high priority placement list, must do so in writing no later than January 14, 2004. This information should be submitted to the National Health Service Corps, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities eligible to receive priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Recruitment & Retention Assistance Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: December 9, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–30820 Filed 12–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16675]

Random Drug-Testing Rate for Covered Crewmembers; Calendar Year 2004

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug-testing rate.

SUMMARY: The Coast Guard has set the calendar year 2004 minimum random chemical drug-testing rate at 50 percent of covered crewmembers. An evaluation of the 2002 Management Information System (MIS) data collection forms submitted by marine employers showed that random drug testing on covered crewmembers for the calendar year 2002 resulted in positive test results 1.63 percent of the time. Therefore, we will maintain the minimum random drug-testing rate at 50 percent of covered

crewmembers for the calendar year 2004.

DATES: The minimum random drug-testing rate is effective January 1, 2004 through December 31, 2004. You must submit your 2003 MIS reports by March 15, 2004.

ADDRESSES: The annual MIS report may be submitted in writing to Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 2404, Washington, DC 20593–0001 or by electronic submission to the following Internet address: *http://www.uscg.mil/hq/g-m/moa/dapip.htm.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone (202) 267–0684. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Dockets Operations, Department of Transportation, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. Marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 through December 31 and must submit this data by March 15 of the following year to the Coast Guard in an annual MIS report. You may either submit your own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The Coast Guard uses the chemical drug testing data to develop its policies for deterring and detecting illegal drug use in the maritime industry.

Because 2002 MIS data shows that the positive results from random testing are greater than one percent industry-wide (1.63 percent), the Coast Guard's minimum random drug testing rate will remain at 50 percent of covered employees for the period of January 1, 2004, through December 31, 2004, in accordance with 46 CFR 16.230(e).

Each year we will publish a notice reporting the results of the previous calendar year's MIS data and the minimum annual percentage rate for random chemical drug testing for the next calendar year.

Dated: December 4, 2003.

Howard L. Hime,

Acting Director of Standards.

[FR Doc. 03–30904 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1498–DR]

California; 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 for the State of California (FEMA–1498–DR), dated October 27, 2003, and related determinations.

EFFECTIVE DATE: December 2, 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 December 2, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30863 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 2 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 Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 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 the incident period for this disaster is closed effective November 23, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30867 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; 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 Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 4, 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 Commonwealth of Puerto Rico is hereby amended to include the Public Assistance program for the following areas among those areas determined to

have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

The municipalities of Cayey, Ceiba, Coamo, Juncos, Sabana Grande, San German, San Lorenzo, and Utuado for Public Assistance.

The municipalities of Guanica, Guayama, Lajas, Luquillo, Maunabo, Naguabo, Patillas, Salinas, Yabucoa, and Yauco 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: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30868 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; 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 West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 1, 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 West Virginia 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 November 21, 2003:

Harrison County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30864 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; 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 West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 1, 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 West Virginia 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 November 21, 2003:

Calhoun, Fayette, Gilmer, Greenbrier, Marion, McDowell, Mercer, Monroe, Nicholas, Putnam, Raleigh, Summers, Webster, Wetzel, and Wyoming Counties for Public Assistance (already designated for Individual Assistance).

Barbour, Braxton, Doddridge, Lewis, Marshall, Pendleton, Pocahontas, Ritchie, Taylor, and Upshur Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance, 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30865 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; 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 West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: November 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 November 30, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–30866 Filed 12–12–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: application—Alternative Inspection Services; Forms I–823 and I–823F.

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 2, 2003 at 68 FR 56848. The notice allowed for a 60-day public comment period. No public comments were received by the ICE on the extension of this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 14, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection of techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application—Alternative Inspection Services and FAST Commercial Driver Application.

(2) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–823 and 823F. U.S. Immigration and Customs Enforcement, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected on these forms will be used by the DHS to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 Form I–823 responses at 70 minutes (1.166 hours) per response; and 25,000 Form 823F responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 304,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of the Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: December 9, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Immigration and Customs Enforcement.

[FR Doc. 03–30869 Filed 12–12–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Arrival Record, Form I–94AOT.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 25, 2003 at 68 FR 55408, allowing for a 60-day public comment period. No comments were received by the ICE on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 14, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Department of Homeland Security Desk Officer, 725–17th Street NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Arrival Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–94AOT, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is captured electronically as part of a pilot program established by the legacy Immigration and Naturalization Service in cooperation with two participating carriers to streamline document handling and data processing. The information collected will be used by the DHS to document an alien's arrival and departure to and from the United States and may be evidence of registration under certain provisions of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 3 minutes (.05 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4034, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets SW, Suite 44636–26, Washington, DC 20202.

Dated: December 9, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Immigration and Customs Enforcement.

[FR Doc. 03–30870 Filed 12–12–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–49]

Notice of Proposed Information Collection: Comment Request; Application Submission Requirements—Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: February 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne E_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application Submission Requirements—Section 202 Supportive Housing for the Elderly.

OMB Control Number, if applicable: 2502–0267.

Description of the need for the information and proposed use: The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop housing for the elderly within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

Agency form numbers, if applicable: HUD–92015–CA, HUD–424, SF LLL, HUD–50071, HUD–424–B, HUD–2880, HUD–2991,HUD–92041, HUD–92042, HUD–2990, HUD–2530.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 16,456; the number of respondents is 400 generating approximately 400 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 6 minutes to 22 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 10, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–30842 Filed 12–12–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–50]

Notice of Proposed Information Collection; Comment Request; Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 13, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: For information concerning Mortgage Insurance Termination contact Silas C. Vaughn, Jr., Chief, Data Quality Section; Single Family Insurance Operations Division (SFIOD), telephone (202) 708–1994 x3545 (this is not a toll free number) or for information concerning Form HUD–27050–B, Application for Premium Refund or Distributive Share, contact Lillie M. Watson, Chief, Disbursements Branch, SFIOD, telephone (202) 708–1233 x3305 (this is not a toll-free number) Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of 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. This notice also lists the following information:

Title of Proposal: Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment.

OMB Control Number, if applicable: 2502–0414.

Description of the need for the information and proposed use: The information collection for the Mortgage Insurance Termination is used by Federal Housing Administration (FHA) approved mortgages to comply with HUD requirements fro reporting the termination of FHA mortgage insurance on single family dwellings (24 CFR 203.318). The form HUD–27050–A is now obsolete. However, the information collection is still in effect and is collected electronically through Electronic Data Interchange and via FHA Connection. The Application for Premium Refund or Distributive Share Payment is used by former FHA mortgagors to apply for homeowner refunds of the unearned portion of the mortgage insurance premium or a distributive share payment (24 CFR 203.423, 24 CFR 203.283, and 24 CFR 203.284).

Agency form numbers, if applicable: HUD–27050–A (Submitted electronically) and HUD–27050–B (System generated).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Respondents	Total annual responses	Hours per response	Total annual hours
Mortgage Insurance Termination	6,000	1,570,001	.08	125,600
HUD–27050–B	1,500,000	1,500,000	.25	375,000
Totals	1,506,000	3,070,001	.....	500,600

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 10, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–30843 Filed 12–12–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4800–FA–10]

Notice of Funding Awards; Mainstream Housing Opportunities for Persons With Disabilities (Mainstream Program) for Fiscal Year 2003

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Mainstream Program for Fiscal Year (FY) 2003. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the allocation of funding available for each state.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY2003 Mainstream awards, contact the Office of Public and Indian Housing's Grant

Management Center, Director, Iredia Hutchinson, Department of Housing and Urban Development, Washington, DC 20410–5000, telephone (202) 358–0221. For the hearing- or speech-impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the ''800'' TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the $53.6 million in five-year budget authority and approximately 1,800 vouchers for use in the housing of elderly and non-elderly disabled families is found in the Departments of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, FY 2003 (Pub. L. 108). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

This program is intended to provide vouchers under the Housing Choice Voucher Program to enable people with disabilities (elderly and non-elderly) to access affordable private money. The FY 2003 awards announced in this notice were selected for funding in a competition announced in a **Federal Register** NOFA published on April 25, 2003 (68 FR 21905). Applications were scored based on the selection criteria in that notice and funding selections made based on the rating and ranking of applications within each state.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 771 awards made under the Mainstream Program competitions.

Dated: December 3, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

LIST OF AWARDEES FOR FUNDING AWARDS FOR THE HOUSING CHOICE VOUCHERS MAINSTREAM PROGRAM

[Fiscal Year 2003]

Applicant name	Address	Vouchers	Amount (dollars)
Jefferson County Housing Authority	3700 Industrial Parkway, Birmingham, Alabama 35217	50	$1,372,170
Arizona Behavioral Health Corporation	1406 North Second Street, Phoenix, Arizona 85004	50	1,562,070
Anaheim Housing Authority	201 S. Anaheim Boulevard, Second Floor, Anaheim, California 92805.	50	2,200,680
Housing Authority of the City of Fresno	1331 Fulton Mall, P.O. Box 11985, Fresno, California 93776–1985.	42	1,063,717
Housing Authority of the County of San Diego	c/o Michael Dececchi, 3989 Ruffin Road, San Diego, California 92123.	50	2,072,490
Colorado Department of Human Services	4131 S. Julian Way, Denver, Colorado 80236	50	1,483,290
Colorado Division of Housing	1313 Sherman Street, Room 518, Denver, Colorado 80203	50	1,776,930
Boley Centers for Behavioral Health Care, Inc.	455 31st Street N., St. Petersburg, Florida 33713	31	917,519
Broward County Housing Authority	3810 Inverrary Blvd., Suite 405, Lauderhill, Florida 33319	50	2,237,310
Carrfour Supportive Housing	155 South Miami Avenue, #1150, Miami, Florida 33131	50	2,188,150
Housing Authority of the City of Atlanta	230 John Wesley Dobbs Avenue, NE, Atlanta, Georgia 30303–2429.	50	2,130,000
Chicago Housing Authority	626 W. Jackson Boulevard, Chicago, Illinois 60661	50	2,035,080
Housing Authority of the Village of Oak Park	21 South Boulevard, Oak Park, Illinois 60302	50	1,954,770
American Training, Inc.	102 Glenn Street, Lawrence, Massachusetts 01843	50	2,674,000
Brockton Area Multi-Services, Inc.	500 Belmont Street, Suite 230, Brockton,Massachusetts 02301.	14	625,400
Greater Lynn Mental Health and Retardation	37 Friend Street, P.O. Box 408, Lynn, Massachusetts,01903	50	2,049,750 408
Community Enterprises Corporation, Inc.	11 Spring Street, Freehold, New Jersey 07728	50	1,988,430
Jersey City Episcopal Community Development Corporation.	118 Summit Avenue, Jersey City, New Jersey 07304–3008	50	2,003,560
Family and Children Association	100 East Old Country Road, Mineola, New York 11501	50	2,636,170
Cuyahoga Metropolitan Housing Authority	1441 West 25th Street, Cleveland, Ohio 44113	50	1,715,490
Emerald Development & Economic Network (EDEN), Inc..	7812 Madison Ave., Cleveland, Ohio 44102	50	1,740,490
1260 Housing Development Corporation	2042–48 Arch Street, 2nd Floor, Philadelphia, Pennsylvania 19103.	50	1,963,240
Allegheny County Housing Authority	625 Stanwix Street, Pittsburgh, Pennsylvania 15222	49	1,220,100
Philadelphia Housing Authority	12 South 23rd Street, Philadelphia, Pennsylvania 19103	50	1,938,240
Tennessee Housing Development Agency	404 James Robertson Parkway, Suite 1114, Nashville, Tennessee 37243–0900.	50	1,222,110
Housing Authority of the City of Houston	P.O. Box 2971, Houston, Texas 77252–2971	50	1,773,210
The Housing Authority of the City of Dallas, Texas.	3939 N. Hampton Road, Dallas, Texas 75212	50	2,216,160
King County Housing Authority	600 Andover Park West, Seattle, Washington 98188	50	2,223,090

[FR Doc. 03–30903 Filed 12–12–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–04–1320–EL; COC 66514]

Notice of Coal Lease Offering by Sealed Bid; COC 66514

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Garfield County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11 a.m., Tuesday, January 6, 2004. Sealed bids must be submitted no later than 10 a.m., Tuesday, January 6, 2004.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer that meets or exceeds the BLM's pre-sale appraisal of fair market value. The minimum bid for this tract is $100 per acre, or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The offer that is officially accepted by the BLM will be the fair market value of record for this tract.

Coal Offered: The coal resource offered is limited to coal recoverable by underground mining methods on the Spink Canyon Tract in the following lands:

T. 7 S., R. 102 W., 6th P.M.
sec. 3, lots 22, 24, & Tract. 45, lots 21, & 23;
sec. 4, lots 9, 11, 13 & Tract. 45, lots 10, 12, & 14, S½NE¼, SE¼NW¼, SW¼, and NW¼SE¼;
sec. 5, SE¼SE¼;
sec. 8, E½E½;
sec. 9, lots 2, 4, 5, 7, 10, 12, 13, 16, 17, 19, 22, & Tr. 45, lots 1, 3, 9, & 11, Tr. 37, lots 6, 8, 14, 15, 18, 20, & 21, N½NW¼, SW¼NW¼, NW¼SW¼, and E½SE¼;
sec. 10, lot 1, & Tract. 45, lot 2, SW¼NW¼, and W½SW¼.

Containing approximately 1,520.24 acres.

The total recoverable coal reserve is estimated to be 8,365,000 tons. The coal is ranked as high volatile C bituminous coal with an as-received quality of:

Btu—10,767 Btu/lb.
Moisture—8.16%
Sulfur Content—0.48%
Ash Content—13.81%

Rental and Royalty: The lease, if issued, will require payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payable to the United States in an amount equal to 8 percent of the value of coal, as determined in accordance with 30 CFR 206, for all coal mined by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. You may request a copy of the Detailed Statement of Coal Lease Sale, and the proposed coal lease, either in person or by mail from the BLM Colorado State Office at the address given above. The case file for the Federal coal lease tract is available for public inspection in the Public Room, BLM Colorado State Office, during normal business hours at the address given above.

Dated: November 5, 2003.

Karen Purvis,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. 03–30879 Filed 12–12–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–03–1310–EI]

Notice of Intent To Prepare Planning Analyze/Environmental Assessments

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare a Planning Analysis/Environmental Assessment.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Jackson Field Office, Eastern States intends to prepare Planning Analysis/Environmental Assessment (PA/EA) to consider leasing one tract of Federal mineral estate for oil and gas exploration and development. The PA/EA 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.

DATES: This notice initiatives the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below. Due to the limited scope of this PA/EA process, public meetings are not scheduled. BLM will, however, consider requests for one or more public meetings.

ADDRESSES: Send comments to: Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: John Reiss, Lead for PA/EA, Jackson Field Office, (601–977–5400).

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider nominations to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in the preparation of the PA/EA. The preliminary issues associated with issuance of the lease for Federal Oil and Gas, as identified below, are subject to change as a result of public input. The issues are: (1) Potential impacts of oil and gas leasing and the resulting exploration and development on the surface resources as a result of leasing the federal minerals and (2) consideration of proposed restrictions (lease stipulations), involving future development of this lease (lease rights, surface use, and protection of surface resources). One PA/EA will be prepared for this tract. Tract location, along with acreage, is listed below.

Mississippi, Monroe County, Huntsville Meridian

T14S, R19W: Sec 15, 320 acres; Tract 113, Lots 2, 3, 4 and 5.

Consideration is being given to the request to lease Federal Minerals under this Tract. The Corp Of Engineers is the surface management agency and is requiring a ''No Surface Occupancy Stipulation'', as a condition of consent

to lease. Operations could be allowed to directionally drill a well under the tract, but will not result in surface disturbance on the tract. However, surface disturbance could occur on lands adjacent to this proposed lease.

Bruce Dawson,

Field Manager, Jackson Field Office.

[FR Doc. 03–30878 Filed 12–12–03; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of conference call.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (P.L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES: The AMWG will conduct the following conference call:

Wednesday, December 17, 2003. The conference call will begin at 1 p.m. and conclude at 3 p.m. MOUNTAIN TIME.

Agenda: The purpose of the conference call will be to discuss how to improve interactions between the Glen Canyon Dam Adaptive Management Program and the Grand Canyon Monitoring and Research Center's science advisors.

To register for the conference call, please contact Linda Whetton at (801) 524–3880 at least two (2) days prior to the call. You will be given the phone number and password at that time.

To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

Due to difficulties caused by holidays and leave schedules in setting up this conference call, this notice may be published in a shorter time than normally required by the Federal Advisory Committee Act. However, an e-mail message will be sent by Reclamation to those persons who have expressed interest in the Glen Canyon Dam Adaptive Management Program to allow them full participation on the conference call.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: November 26, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 03–30848 Filed 12–12–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Sanction for Breach of Commission Administrative Protective Order

AGENCY: International Trade Commission.

ACTION: Sanction for breach of Commission administrative protective order.

SUMMARY: Notice is hereby given of the sanction imposed by the Commission for a breach of the administrative protective order (''APO'') issued in *Hot Rolled Steel Products from Argentina, China, Indonesia, Kazakstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine (Hot Rolled Steel Products),* Inv. Nos. 701–TA–404–408 and 731–TA–898–908 (Final). The Commission determined that attorney Bruce Aitken breached the APO in the *Hot Rolled Steel Products* investigations by failing to provide adequate supervision over another attorney who had little experience in the bracketing of business proprietary information (''BPI'') and who prepared a public version of a brief containing BPI and served the brief on other parties to the investigations, some of whom were not signatories to the APO. This public reprimand is being issued because the aforementioned breach is the fourth breach for Mr. Aitken occurring within a three-year, one-month period. On November 14, 2001, the Commission had previously publicly reprimanded Mr. Aitken for the second and third of the four breaches. 66 FR 57110 (November 14, 2001).

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov).*

SUPPLEMENTARY INFORMATION: In connection with the *Hot Rolled Steel Products* investigations, Bruce Aitken filed an application for access to APO information with the Commission. In that application, he swore (i) not to disclose without written permission any of the information obtained under the APO except to certain enumerated categories of approved persons, (ii) to serve all materials containing BPI disclosed under the APO as directed by the Secretary, and (iii) to otherwise comply with the terms of the APO and the Commission's regulations regarding access to BPI. He also acknowledged in the APO that violation of the APO could subject him, and his firm, to disbarment from practice before the Commission, referral to the U.S. Attorney or appropriate professional association, or ''[s]uch other administrative sanctions as the Commission determines to be appropriate * * *.'' 19 CFR 207.7(d). The Commission granted his application.

The firm with which Mr. Aitken is affiliated, Aitken Irvin Berlin & Vrooman, LLP, is very experienced in Commission practice as is Mr. Aitken, the senior name partner. Mr. Aitken appears frequently before the Commission and has sought access to APO information on a regular basis. He has been found to have previously breached an APO in recent prior investigations. None of these prior breaches was egregious enough to warrant a public reprimand when considered separately, but by the third breach the Commission determined that a public reprimand was warranted for the series of breaches. The Commission found that the series of breaches resulting in the previous public reprimand demonstrated a disturbing and unacceptable pattern of overall failure to safeguard information released

under APO. In spite of the public reprimand at that time, Mr. Aitken substantially participated in the *Hot Rolled Steel Products* investigations with a lawyer who was inexperienced in Commission title VII investigations, but who, despite his inexperience with Commission investigations, was named lead attorney and APO Compliance Officer for the firm. Although Mr. Aitken participated in the drafting of the confidential version of the brief, he did not participate in the preparation of the public version of the brief where historically his firm has committed most of its APO breaches. The Commission found that as the senior name partner in the firm with many years of experience in title VII investigations, Mr. Aitken failed in his obligations under the APO by not participating in the preparation of the public brief and/or supervising the other attorney more closely to prevent the next in a lengthy series of APO breaches that has been caused by various members of Mr. Aitken's firm.

Business proprietary information received from private parties plays an important role in Commission investigations. The Commission's ability to obtain such information depends on the confidence of the submitting parties that their proprietary information will be protected.

Bruce Aitken is reprimanded for breaching the APO in the *Hot Rolled Steel Products* investigations as stated above and for committing multiple APO breaches over a relatively short period of time.

The Commission determined to suspend Mr. Aitken's access to APO information for a period of six months from the date of publication of this notice in the **Federal Register**. In addition, the Commission directs the law firm of Aitken Irvin Berlin & Vrooman, LLP to have at least two attorneys review all documents to be filed with the Commission for APO compliance, to so certify to the Commission on an annual basis, and to continue that practice for five years commencing with the date of the publication of this notice in the **Federal Register**.

The authority for this action is conferred by section 207.7(d) of the Commission's rules of practice and procedure (19 CFR 207.7(d)).

By order of the Commission.

Issued: December 9, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30833 Filed 12–12–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–481]

In the Matter of Certain Display Controllers With Upscaling Functionality and Products Containing Same; Notice of Commission Decision to Review in Part A Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (ALJ) on October 20, 2003, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 18, 2002, based on a complaint filed by Genesis Microchip (Delaware) Inc. (''Genesis'') of Alviso, California, against Media Reality Technologies, Inc. of Sunnyvale, California; Trumpion Microelectronics, Inc. of Taipei, Taiwan; and SmartASIC, Inc. (''SmartASIC'') of San Jose, California. 67 FR 64411 (October 18, 2002). The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain display controllers with upscaling functionality and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,738,867 (' '867 patent'').

On January 14, 2003, the ALJ issued an ID (Order No. 6) terminating respondent SmartASIC from the investigation on the basis of a settlement agreement. On February 12, 2003, the Commission issued a notice of its decision not to review that ID (Order No. 6).

The evidentiary hearing in this investigation was held from July 14, 2003, through July 25, 2003. On October 20, 2003, the ALJ issued his final ID in which he found that there was no violation of section 337. All the parties to the investigation, including the Commission investigative attorneys filed timely petitions for review of various portions of the final ID, and all of them filed timely responses to the petitions.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review:

(1) The ALJ's construction of the claim term ''pixel data'';

(2) The ALJ's construction of the ''wherein'' clause;

(3) The ALJ's construction of the claim limitation ''receiving means'';

(4) All of the ALJ's non-infringement findings;

(5) The ALJ's finding that complainant Genesis does not practice any claims of the '867 patent;

(6) The ALJ's finding that the Spartan reference does not anticipate (*i.e.*, invalidate) the asserted claims of the '867 patent; and

(7) The ALJ's finding that the ACUITY Application Note does not anticipate the asserted claims of the '867 patent.

The Commission has determined not to review the remainder of the final ID.

On review, the Commission requests briefing, based on the evidentiary record, on the issues under review, and is particularly interested in receiving answers to the following questions:

1. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether ''the time to provide said plurality of destination pixel data'' in the ''wherein'' clause includes the time to provide inactive pixels in a destination image frame?

2. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether ''a period to receive said source pixel data'' in the ''wherein'' clause

includes a period to receive inactive pixels in a source image frame?

3. What intrinsic and, to the extent it is applicable, extrinsic evidence supports your position on the issue of whether the analog-to-digital converter depicted in Figure 13 is a structure that corresponds to the ''receiving means'' in claim 12?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the October 20, 2003, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorneys are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on December 19, 2003. Reply submissions must be filed no later than the close of business on December 26, 2003. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–210.45 of the Commission's rules of practice and procedure (19 CFR 210.42–210.45).

By order of the Commission.

Issued: December 9, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30832 Filed 12–12–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #249E]

Controlled Substances: Established Initial Aggregate Production Quotas for 2004

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2004.

SUMMARY: This notice establishes initial 2004 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by section 0.100 of title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to section 0.104 of title 28 of the Code of Federal Regulations.

The 2004 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2004 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On November 4, 2003, a notice of the proposed initial 2004 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (68 FR 62474). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 25, 2003.

Five companies commented on a total of 27 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate

production quotas for alfentanil, amphetamine, codeine (for conversion), codeine-N-oxide, dextropropoxyphene, dihydrocodeine, dihydromorphine, fentanyl, hydrocodone (for sale), hydromorphone, levorphanol, meperidine, methadone (for sale), methadone intermediate, methamphetamine (for conversion), methylphenidate, morphine (for sale), morphine-N-oxide, noroxymorphone (for sale), noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), oxymorphone, phenylacetone, sufentanil, tetrahydrocannabinols and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2003 manufacturing quotas, current 2003 sales and inventories, 2004 export requirements and research and product development requirements. Based on this information, the DEA has adjusted the initial aggregate production quotas for 2,5-dimethoxy-4-n-propylthiophenethylamine (2C-T-7), 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), alfentanil, alpha-methyltryptamine (AMT), codeine (for conversion), codeine-N-oxide, dihydrocodeine, levomethorphan, methadone intermediate, morphine (for sale), morphine-N-oxide, noroxymorphone (for conversion), oxycodone (for sale), oxycodone (for conversion), oxymorphone, phencyclidine, phenylacetone, racemethorphan, sufentanil and thebaine to meet the legitimate needs of the United States.

Regarding amphetamine, dextropropoxyphene, dihydromorphine, fentanyl, hydrocodone (for sale), hydromorphone, levorphanol, meperidine, methadone (for sale), methamphetamine (for conversion), methylphenidate, noroxymorphone (for sale), and tetrahydrocannabinols, the DEA has determined that the proposed initial 2004 aggregate production quotas are sufficient to meet the current 2004 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to part 1303 of title 21 of the Code of Federal Regulations, the Acting Deputy Administrator of the DEA will, in early 2004, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2003 year-end inventory and actual 2003 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by section 0.100 of title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to section 0.104 of title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the 2004 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 2004 quotas
Schedule I	
2,5-Dimethoxyamphetamine	3,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
2,5-Dimethoxy-4-n-propylthiophenethylamine (2C-T–7)	10
3-Methylfentanyl	2
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	11
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	5
3,4-Methylenedioxymethamphetamine (MDMA)	16
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	2
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)	10
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	4
Alphacetylmethadol	2
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	3
Alpha-methyltryptamine (AMT)	10
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	2
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	2

Basic class	Established initial 2004 quotas
Codeine-N-oxide	502
Diethyltryptamine	2
Difenoxin	9,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	10,000,000
Heroin	5
Hydromorphinol	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	61
Marihuana	840,000
Mescaline	2
Methaqualone	5
Methcathinone	4
Methyldihydromorphine	2
Morphine-N-oxide	502
N,N-Dimethylamphetamine	2
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	2
Normorphine	12
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Propiram	210,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	176,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1-Phenylcyclohexylamine	2
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	2,000
Alphaprodine	2
Amobarbital	3
Amphetamine	10,987,000
Cocaine	186,000
Codeine (for sale)	41,341,000
Codeine (for conversion)	43,559,000
Dextropropoxyphene	167,365,000
Dihydrocodeine	776,000
Diphenoxylate	716,000
Ecgonine	38,000
Ethylmorphine	2
Fentanyl	970,000
Glutethimide	2
Hydrocodone (for sale)	30,622,000
Hydrocodone (for conversion)	1,500,000
Hydromorphone	1,651,000
Isomethadone	2
Levo-alphacetylmethadol (LAAM)	2
Levomethorphan	2
Levorphanol	15,000
Meperidine	9,753,000
Metazocine	1
Methadone (for sale)	14,057,000
Methadone Intermediate	18,296,000
Methamphetamine	2,275,000
825,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,420,000 grams for methamphetamine for conversion to a Schedule III product; and 30,000 grams for methamphetamine (for sale)	
Methylphenidate	23,726,000
Morphine (for sale)	21,800,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	99,000
Noroxymorphone (for conversion)	3,800,000

Basic class	Established initial 2004 quotas
Opium	1,000,000
Oxycodone (for sale)	41,606,000
Oxycodone (for conversion)	920,000
Oxymorphone	534,000
Pentobarbital	18,251,000
Phencyclidine	2,060
Phenmetrazine	2
Phenylacetone	11,000,000
Racemethorphan	2
Secobarbital	1,000
Sufentanil	4,000
Thebaine	59,437,000

The Acting Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in sections 1308.11 and 1308.12 of title 21 of the Code of Federal Regulations be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action 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 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.

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action 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.

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: December 8, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–30834 Filed 12–12–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Agency Information Collection Activities: Proposed Collection; Comment request; Applicant Background Questionnaire

AGENCY: Office of the Assistant Secretary for Administration and Management (OASAM), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Department of Labor is soliciting comments concerning the proposed extension of the Applicant Background Questionnaire'. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 13, 2004.

ADDRESSEE: Anderson Glasgow, U.S. Department of Labor, Human Resource Services Center, 200 Constitution Ave. NW., Room N–5464, Washington, DC 20210; Phone: (202) 693–7738; Written comments limited to 10 pages or fewer may also be transmitted by facsimile to: (202)693–7631; Internet: *glasgow.william@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its obligation to provide equal employment opportunities, is charged with ensuring that qualified individuals in groups that are under-represented in various occupations, are included in applicant

pools for the Department's positions. *See* 5 U.S.C. 7201(c); 29 U.S.C. 791; 29 U.S.C. 2000e–16; 5 CFR 720.204; 29 CFR 1614.101(a). To achieve this goal, DOL employment offices have conducted targeted outreach to a variety of sources, including educational institutions, professional organizations, newspapers and magazines. DOL has also participated in career fairs and conferences that reach high concentrations of Hispanics, African Americans, Native Americans, Asians, and persons with disabilities.

Without the data provided by this collection, DOL does not have the ability to evaluate the effectiveness of any of these targeted recruiting strategies because collection of racial and national origin information only occurs at the point of hiring. DOL needs to collect data on the pools of applicants which result from the various targeted recruitment strategies listed above. After the certification and selection process has been completed, it is necessary to cross-reference the data collected with the outcome of the qualifications review in order to evaluate the quality of applicants from various recruitment sources. With the information from this collection, DOL can adjust and redirect its targeted recruitment to achieve the best result. DOL will also be able to respond to requests for information received from the Office of Personnel Management (OPM) in the course of OPM's evaluation and oversight activities.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, for example, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the Applicant Background Questionnaire. Extension is necessary to continue to evaluate the effectiveness of agency recruitment programs in attracting applicants from under-represented sectors of the population.

Type of Review: Extension of a currently approved collection.

Agency: U.S. Department of Labor.

Title: Applicant Background Questionnaire.

OMB Number: 1225–0072.

Affected Public: Applicants for positions recruited in the Department of Labor.

Total Respondents: 3000.

Frequency: One time per respondent.

Total Responses: 3000.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 250 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 5, 2003.

Daliza Salas,

Director of Human Resources.

[FR Doc. 03–30855 Filed 12–12–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Extension of the Information Collection Request Submitted for Public Comment and Recommendations; Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995(PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before February 13, 2004.

ADDRESSES: Send comments to Kari M. Baumann, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kari M. Baumann, telephone: 202–693–3286 (this is not a toll-free number); fax: 202–693–3975; e-mail: *baumann.kari@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Workforce Agencies (SWAs) except in the U.S. Virgin Islands have been required by regulation at 20 CFR Part 602 to operate BAM programs to assess the accuracy of their UI benefit payments in three programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-servicemembers (UCX).

The Benefit Accuracy Measurement seeks to reduce waste, fraud, and abuse in the UI system. By investigating small representative weekly samples of both paid and denied UI claims, it enables each state to estimate reliably the number and dollar value of proper and improper payments and denials of UI benefits; the rates of occurrence of these proper and improper payments and denials; and the error types, error causes, and the parties that are responsible for the errors within its system.

The BAM program consists of two comprehensive reviews of a statewide probability sample of UI payments and denials to determine the precise nature of improper payments. States use the same population edit and sample selection software programs to select the weekly samples. This software uses a systematic random sampling algorithm. The survey population excludes supplemental payments, waiting weeks, and extended benefits.

Paid Claims Accuracy. Each week a random sample is selected of both intrastate and interstate original payments (including combined wage claims) made for a week of UI benefits under the State UI, UCX or UCFE programs. A sample of 360 cases per year is pulled in the ten states with the

smallest UI program workloads and 480 cases per year in the other states. State BAM staff audit each selected claim, examining all aspects of a claimant's eligibility to receive UI benefits during the sampled week. In an investigation, staff verify wages used to establish monetary entitlements, the claimant's reason for being unemployed, efforts to find work during the week, and any other factors which would have affected the claimant's entitlement to a UI benefit payment during the sampled week or the amount of the benefit paid. The findings are then numerically coded and entered into an automated database that is maintained on a computer located in each state.

Denied Claims Accuracy. On a weekly basis, states select systematic random samples from three separate sampling frames constructed from the universes of UI claims for which eligibility was denied for monetary, separation and nonseparation reasons. All states sample a minimum of 150 cases of each denial type in each calendar year. State BAM staff review agency records and contact claimants, employer(s), and all other relevant parties to verify information in agency records or obtain additional information pertinent to the determination that denies UI benefit eligibility. Unlike the investigation of paid claims, in which all prior determinations affecting claimant eligibility for the compensated week selected for the sample are evaluated, the investigation of denied claims is limited to the issue upon which the denial determination is based. The findings are then numerically coded and entered into an automated database that is maintained on a computer located in each state. Like the investigation of paid claims, states have the flexibility to conduct the investigation of denied claims by in-person interview, telephone, mail, e-mail or fax, as they deem appropriate.

The Department relies heavily on BAM data for information on states' UI operations (*e.g.*, the percent of claims taken by telephone and other remote methods) and performance. These data are reported annually in a data summary report and as part of the UI PERFORMS Annual Report. Further, BAM data are used as part of a overpayment detection measure under the Government Performance and Results Act (GPRA).

II. Desired Focus of Comments

The Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the UI BAM program data (OMB control number 1205–0245) now authorized through March 31, 2004. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the information collection handbook (ETA Handbook 395) can be obtained by contacting the employee listed above in the contact section of this notice.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Benefit Accuracy Measurement Program.

OMB Number: 1205–0245.

Recordkeeping: States are required to follow their state laws regarding public record retention in retaining BAM paid and denied claims records.

Affected Public: Individuals; businesses; other for-profit/not-for-profit institutions; farms; Federal, State, local or tribal governments.

Frequency: Annually.

Total Respondents and Responses: 188,984 per year (52 SWAs/3,634 per state; includes claimants, employers, third parties, and SWA BAM program staff).

Estimated Time Per Case: Paid claims: claimant—0.5 hours; employers—0.85 hours; work search contacts—0.55 hours; third parties—0.05 hours; and SWA BAM staff—8.27 hours. Denied claims: claimant—0.5 hours; employers and third parties—0.5 hours; and SWA BAM staff—6.66 hours (average).

Estimated Total Burden Hours: 423,243 annually (8,139 hours per state).

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $12,544,372.73 annually (approximately $241,237.94 per state).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 9, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–30856 Filed 12–12–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for Temporary Agricultural Employment of Nonimmigrant Workers in the United States (H–2A Workers); On-line Application Processing System; Formal Briefings

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: As the result of the General Accounting Office (GAO) recommendation to the Secretary of Labor on ways to improve the H–2A program, the Department of Labor (DOL) has designed an H–2A case management system to improve data tracking and reporting capabilities. The system will also provide a user-friendly platform for the Regional Office staff and the regulated community to enter application data. The Division of Foreign Labor Certification, Employment and Training Administration (ETA), Department of Labor, announces two formal briefings to demonstrate to agricultural employers and other interested parties the new On-Line Application Processing System. The briefings will allow ETA to demonstrate to the regulated community, *i.e.*, employers, attorneys, agents and associations, the benefits of the on-line application completion module.

DATES: The briefing dates are:

Thursday, January 15, 2004, 9:30 a.m. to 4 p.m., Boxborough, MA

Thursday, January 22, 2004, 9:30 a.m. to 4 p.m., Nashville, TN.

Notices of intention to appear at the briefings must be postmarked no later than December 29, 2003.

ADDRESSES: The briefing locations are:

Holiday Inn Boxborough, 242 Adams Place, Boxborough, MA 01719

Double Tree Hotel, 315 Fourth Avenue, N., Nashville, TN 37219

Send notices of intention to appear to: Charlene Giles, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Notices also may be faxed to Charlene Giles at 202–693–2769 (this is not a toll-free number), or submitted by e-mail at *dflc.onp@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Charlene Giles; telephone 202–693–2950. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The formal public briefings will be chaired by a senior official of the Employment and Training Administration. Persons appearing at the briefings will be allowed a hands on experience with the system and to pose questions to Department staff.

Signed at Washington, DC, this 8th day of December, 2003.

Emily Stover DeRocco,

Assistant Secretary, for Employment and Training.

[FR Doc. 03–30857 Filed 12–12–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, December 18, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from three (3) Federal Credit Union to Convert to Community Charters.
2. Request from a Federal Credit Union to Expand its Community Charter.
3. Advance Notice of Proposed Rulemaking: Interagency Proposal to Consider Alternative Forms of Privacy Notices.
4. Final Rule: Part 745 of NCUA's Rules and Regulations, Share Insurance.
5. Final Rule: Section 701.22 of NCUA's Rules and Regulations, Loan Participation.
6. National Credit Union Share Insurance Fund (NCUSIF) Operating Level for 2004.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 18, 2003

PLACE: Board Room 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Field of Membership Appeal. Closed pursuant to exemption (4).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: (703) 518–6304

Becky Baker,

Secretary of the Board.

[FR Doc. 03–31037 Filed 12–11–03; 3:29 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc. (Entergy) for operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS), located in Claiborne County, Mississippi.

By letter dated December 5, 2003, Entergy submitted a revised application for amendment to GGNS Technical Specification (TS) 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' to add a provision to the applicability function that will eliminate the requirement that the Residual Heat Removal (RHR) System Isolation, Reactor Vessel Water Level-Low, Level 3, be operable under certain conditions during refueling outages. Specifically, the proposed change requested in the original application dated May 12, 2003, would remove the requirement for this isolation function, specified in Table 3.3.6.1–1, when the upper containment reactor cavity is at the High Water Level (HWL) condition specified in TS 3.5.2, ''Emergency Core Cooling Systems (ECCS) Shutdown.'' The revised application adds a new surveillance requirement (SR) (SR 3.3.6.1.9) to verify the water level in the upper containment pool is ≥ 22 feet 8 inches above the reactor pressure vessel flange every four hours, and adds a footnote to Table 3.3.6.1–1, Item 5.b, for MODE 5 that states that the function is not required when the upper containment reactor cavity and transfer canal gates are removed and SR 3.3.6.1.9 is met. The proposed SR and footnote are only applicable in MODE 5. The May 12, 2003, application was previously noticed in the **Federal Register** on June 10, 2003 (68 FR 34665).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the applicability requirement for the Residual Heat Removal (RHR) System Isolation function of the Primary Containment and Drywell Isolation Instrumentation during MODE 5 and adds a surveillance requirement that is invoked when specific conditions exist. The proposed surveillance requirement only enhances the ability of operating personnel to detect inventory loss associated with a draindown event. The change removes the requirement that the instrumentation be operable during certain conditions (high water level) during refueling outages. The isolation function is intended to mitigate reactor vessel draindown events by isolating the residual heat removal flow path at low reactor water level. Although draindown events during refueling operations are not specifically evaluated in the Updated Final Safety Analysis Report (UFSAR), these events were evaluated in support of licensing actions for the Alternate Decay Heat Removal System. An additional evaluation supporting this change established that the RHR system automatic isolation was not needed to mitigate a draindown event given the possible drain paths and the time available for operators to terminate the draindown event. The probability that a draindown event will be initiated is unrelated to operability requirement for this

instrumentation, the associated isolation valves or the proposed surveillance. The evaluation determined that mitigating actions can be taken to identify and terminate all postulated draindown events prior to fuel uncovery. As a result, the probability of draindown events causing fuel uncovery and the potential for radiological releases has not significantly increased. The operation or failure of the shutdown cooling suction isolation does not contribute to the occurrence of an accident. No active or passive failure mechanisms that could lead to an accident are affected by the proposed change.

The consequences of a vessel drainage event are not significantly increased by the proposed change. Entergy has evaluated various draindown and pumpdown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained and a radiological release does not occur.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Entergy has evaluated various draindown events through the shutdown cooling flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate any events such that adequate core cooling is maintained. The proposed surveillance requirement only enhances the ability of operating personnel to detect inventory loss associated with a draindown event. With the containment refueling cavity flooded, sufficient inventory is available to allow operator action to terminate the inventory loss prior to reaching a low water level in the reactor. Installed equipment is not operated in a new or different manner; no new or different system interactions are created, and no new processes are introduced. No new failures have been created by the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the containment and drywell isolation function is also unchanged. The change simply modifies the applicability of the TS by removing the requirement that the RHR system isolation on low reactor vessel level be operable with the upper containment cavity flooded in MODE 5. During MODE 5, the RHR system isolation mitigates postulated draindown events through the RHR system. The proposed surveillance requirement only enhances the ability of operating personnel to detect inventory loss associated with a draindown event and does not impact a margin of safety. Entergy has evaluated various draindown events through this flow path and determined that adequate time is available for operations personnel to identify and take action to mitigate such events such that adequate core cooling is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

This notification is based on the revised license amendment request dated December 5, 2003, and supercedes the original notification based on the request dated May 12, 2003, published in the **Federal Register** on June 10, 2003 (68 FR 34665).

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 14, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to [insert attorney name and address], attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 12, 2003, as supplemented by letter dated December 5, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of December, 2003.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30961 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335]

Florida Power and Light Company; St. Lucie Plant, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix R, Section III.G.2.d for Facility Operating License No. DPR–67, issued to Florida Power and Light Company (the licensee), for operation of the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

Pursuant to 10 CFR Part 50, Appendix R, Section III.G.2.d, cables and equipment and associated nonsafety circuits of redundant trains located inside noninerted containments are required to be separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. The proposed action would allow a minimum horizontal separation of 7 feet between redundant cable trays with no intervening combustibles in the containment annular region between column lines 2 and 6.

The proposed action is in accordance with the licensee's application dated October 4, 2000, as supplemented by letters dated June 28, 2001, November 29, 2001, May 15, 2002 and October 22, 2002.

The Need for the Proposed Action

On February 21, 1985, the NRC staff approved an exemption from 10 CFR part 50, Appendix R, Section III.G.2.d, to allow cables of redundant trains inside the St. Lucie Unit 1 containment building to be located less than 20 feet

apart horizontally. On March 5, 1987, the NRC staff approved a revision to this exemption to allow minimal intermittent combustibles between the redundant trains. The staff approved the exemptions based, in part, on the redundant trains being separated by more than 7 feet horizontally and 25 feet vertically. The licensee subsequently determined that the assumption of 25 feet vertical separation was incorrect. The proposed action would revise the exemption to eliminate the vertical separation assumption. The licensee provided a fire hazard assessment utilizing a detailed fire model to demonstrate that, with the existing vertical separation and a minimum of 7 feet horizontal separation, a fire in one train will not damage the redundant train. The revised request limits the exemption to the cable trays in the containment annular region between radial column lines 2 and 6 and permits no intervening combustibles.

In summary, the exemption would be revised to allow separation of cables of redundant trains by a horizontal distance of at least 7 feet with no intervening combustibles inside containment in the annular region between radial column lines 2 and 6.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation and concludes, as set forth below, that there are no significant environmental impacts associated with the proposed exemption. The details of the staff's safety evaluation will be provided with the exemption when it is issued by the NRC.

The proposed action will not significantly increase the probability or consequences of accidents, there are no significant changes in the types or significant increase in the quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to the St. Lucie Plant Unit 1, dated June 1973 and Supplement 11 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding St. Lucie, Units 1 and 2,'' dated May 2003.

Agencies and Persons Consulted

On November 3, 2003, the staff consulted with the Florida State official, Mr. William Passetti of the Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 23, 2002, as supplemented on August 28, 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, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of December 2003.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30860 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–00842]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the University of Minnesota and Release of its Facility in Minneapolis, MN

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by e-mail at *pjl2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing an amendment to University of Minnesota Byproduct Material License No. 22–00187–46, to remove authorization to use radioactive materials from its license for Stone Lab I and II Buildings located at 410 Church Street SE. in Minneapolis, Minnesota, and release the facilities for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following publication of this Notice.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Stone Lab I and II Buildings located on Minneapolis campus for unrestricted use. The University of Minnesota was authorized by the NRC to use radioactive materials for medical diagnosis, therapy, and research utilizing labeled compounds, such as H–3, C–14, P–32, etc. On September 11, 2003, the University of Minnesota requested that NRC release the facilities

for unrestricted use. The University of Minnesota has conducted surveys of the facilities and provided information to the NRC to demonstrate that the site meets the license criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

The staff has prepared an EA in support of the proposed licensing action. The staff examined the University of Minnesota's request and the information that the licensee has provided in support of its request, including the surveys performed by University of Minnesota to demonstrate compliance with 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use,'' to ensure that the NRC's decision is protective of the public health and safety and the environment. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the unrestricted use of the University of Minnesota's facilities are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496). Additionally, no non-radiological impacts were identified.

III. Finding of No Significant Impact

On the basis of the EA, summarized above, the staff has concluded that there are no significant environmental impacts from the proposed action. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' University of Minnesota's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. These documents include University of Minnesota's letter dated September 11, 2003, with enclosures (Accession No. ML033230183); and the EA summarized above (Accession No. ML033280741).

Dated at Lisle, Illinois, this 2nd day of December 2003.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 03–30858 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Criteria for Determining Feasibility of Manual Actions To Achieve Post-Fire Safe Shutdown

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering a revision to the fire protection regulations in 10 CFR Part 50, Appendix R, Paragraph III.G.2 to allow the use of manual actions by nuclear power plant operators to achieve hot shutdown conditions in the event of fires in certain areas provided the actions are evaluated against specific criteria and determined to be acceptable. For complying with the requirements of Appendix R, Paragraph III.G.2, licensees who rely on operator manual actions which have not been reviewed and approved by the NRC are generally considered to be in non-compliance. However, the NRC believes that manual actions relied upon by licensees are safe and effective if they meet appropriate acceptance criteria. Accordingly, until the fire protection regulations are revised, the NRC is planning to issue an interim enforcement policy to exercise enforcement discretion for non-compliant licensees if their manual actions meet the NRC's interim acceptance criteria. The NRC is seeking public comments on the adequacy and clarity of draft interim acceptance criteria. On November 26, 2003 (68 FR 66501), the NRC published its draft interim acceptance criteria in the **Federal Register**. The 30 day comment period established for these criteria was to have expired on December 26, 2003. In letters dated November 26 and December 2, 2003, the Nuclear Information and Resource Service and the Union of Concerned Scientists requested a 30 day extension to the comment period. The letters noted that the comment period included two major holidays and stated that the additional time was needed to research the issues and provide meaningful comments. Similar requests were made by many other members of the public. In view of the importance of meaningful stakeholder input on these criteria, the NRC has decided to extend the comment period by 30 days.

DATES: The comment period has been extended and now expires on January 26, 2004.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Comments may be submitted by e-mail to *nrcrep@nrc.gov*. Comments may be delivered to the NRC's headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, telephone (301) 415–1116, e-mail *rfd@nrc.gov* or Ray Gallucci, telephone (301) 415–1255, e-mail *rhg@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of December, 2003.

For the Nuclear Regulatory Commission.

Catherine Haney,

Program Director, Policy and Rulemaking Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30859 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 2003. The interest assumptions for

performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 2003 is 5.12 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 2003 and December 2003.

For premium payment years beginning in:	The required interest rate is:
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90
June 2003	4.53
July 2003	4.37
August 2003	4.93
September 2003	5.31
October 2003	5.14
November 2003	5.16
December 2003	5.12

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of December, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–30948 Filed 12–12–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48882; File No. S7–24–89]

Joint Industry Plan; Order Extending for One Year the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

December 4, 2003.

I. Introduction and Description

On August 8, 2003, the Cincinnati Stock Exchange, Inc. (''CSE'') on behalf of itself and the National Association of Securities Dealers, Inc. (''NASD''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''PHLX'') (hereinafter referred to collectively as ''Participants''),[1] as members of the operating committee (''Operating Committee'' or ''Committee'') of the Plan submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') a request to extend the operation of the Plan and also to extend certain exemptive relief as described below.[2] On August 12, 2003, the Commission issued a notice for comment and simultaneously granted summary effectiveness to the request to extend the operation of the Plan and certain exemptive relief.[3] No comments were received in response to the publication of this notice.

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq Stock Market, Inc. (''Nasdaq'') securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities. Currently, the Plan is scheduled to expire on December 16, 2003.

This order approves, pursuant to Rule 11Aa3–2(c)(2) under the Securities Exchange Act of 1934 (''Act''),[4] the request to extend operation of the Plan and the request to extend certain exemptive relief (''Date Extension'') for a one-year period[5] expiring one year from the date of publication in the **Federal Register**.

II. Exemptive Relief

While both Nasdaq and the NASD operate under the umbrella of a single

[1] The CSE was elected chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'') by the Participants.

[2] *See* letter from Jeffrey T. Brown, Chairman, Plan Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003.

[3] *See* Securities Exchange Act Release No. 48318, 68 FR 49534 (August 18, 2003).

[4] 17 CFR 240.11Aa3–2(c)(2).

[5] As discussed in the order granting partial temporary approval of Amendment No. 13 to the Plan, *see* Securities Exchange Act Release No. 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002) (''Partial Approval''), proposed amendments to the Plan had been segregated into four categories: (1) Category 1, ''Effective Upon Nasdaq's Exchange Registration;'' (2) Category 2, ''Effective Upon Launch of the Internal SIP;'' (3) Category 3, ''Effective Upon End of Parallel Period—Elimination of the Legacy SIP;'' and (4) Category 4, ''Timing Not An Issue.'' Through the Partial Approval, the Commission approved the Category 2, 3, and 4 amendments on a pliot basis, but did not approve the Category 1 amendments. Therefore, the Plan the Commission extends today is the Plan, as modified, by all changes previously approved. In the Partial Approval, the Commission explicitly noted its intention to address the Category 1 amendments through separate action when the Commission acts on the Nasdaq exchange registration application. This order does not approve the Category 1 amendments and the Commission reiterates its intent to act upon the Category 1 amendments through separate action in conjunction with the Nasdaq exchange registration application.

Plan Participant, the submission of two distinct best bids and offers (''BBOs'') could be deemed inconsistent with Section VI.C.1 of the Plan.[6] Pursuant to the 13th Amendment of the Plan and Rule 11Aa3–2(a),[7] Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Plan's Securities Information Processor (''SIP'') in a manner different than specified in Section VI.C.1. of the Plan and, thus, in conflict with Commission Rule 11Aa3–2(d).[8]

As discussed at length in the notice of the 13th Amendment,[9] the Commission had determined to relieve the potential conflict among the SuperMontage approval order,[10] Rule 11Aa3–2,[11] and the Plan, by granting the NASD an exemption under Rule 11Aa3–2(f)[12] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d)[13] until such time as Nasdaq is registered as a national securities exchange. The Plan Participants have requested an extension of such exemptive relief.

III. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)[14] and Section 11A(a)(1)[15] of the Act and Rules 11Aa3–1 and 11Aa3–2 thereunder.[16] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, ''having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets,'' and cites as an objective of that system the ''fair competition * * * between exchange markets and markets other than exchange markets.''[17] When the Commission first approved of the Plan on a pilot basis, it found that the Plan ''should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading.''[18] The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan for a year furthers the goals described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

The Commission also finds that it is appropriate to extend the exemption under Rule 11Aa3–2(f)[19] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d).[20] The Commission believes that the Plan is a critical component of the national market system and that the requested exemptive relief is necessary to assure the effective operation of the Plan. The Commission believes that the requested exemptive relief extension is consistent with the Act, the Rules thereunder, and, specifically, with the objectives set forth in Sections 12(f) and 11A of the Act[21] and Rules 11Aa3–1 and 11Aa3–2 thereunder.[22]

IV. Conclusion

It is therefore ordered, pursuant to sections 12(f) and 11A of the Act[23] and paragraph (c)(4) of Rule 11Aa3–2[24] thereunder, that the operation of the Plan be, and hereby is, extended and that certain exemptive relief also be extended until December 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30839 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–P

[6] Section VI.C.1. of the Plan, as approved by the Operating Committee in the 13th Amendment, states that ''[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD. * * *''

[7] 17 CFR 240.11Aa3–2(a).

[8] 17 CFR 240.11Aa3–2(d). Commission Rule 11Aa3–2(d) requires a self-regulatory organization participant of national market system plan to comply with the terms of that plan.

[9] *See* Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 (July 5, 2002).

[10] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[11] 17 CFR 240.11Aa3–2.

[12] 17 CFR 240.11Aa3–2(f).

[13] 17 CFR 240.11Aa3–2(d).

[14] 15 U.S.C. 78l(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

[15] 15 U.S.C. 78k–1(a)(1).

[16] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2.

[17] 15 U.S.C. 78k–1(a).

[18] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

[19] 17 CFR 240.11Aa3–2(f).

[20] 17 CFR 240.11Aa3–2(d).

[21] 15 U.S.C. 78l(f) and 15 U.S.C. 78k–1.

[22] 17 CFR 240.11Aa3–1 and 11Aa3–2.

[23] 15 U.S.C. 78*l*(f) and 15 U.S.C. 78k–1.

[24] 17 CFR 240.11Aa3–2(c)(4).

[25] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48890; File No. SR–NASD–2003–174]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq National Market Execution System With Respect to Executions Across Multiple MPIDs of the Same Member

December 8, 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 November 26, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the rule immediately 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(i) to modify the fee charged when Quotes/Orders submitted by the same member under different market participant identifiers (''MPIDs'') match and execute against each other in the Nasdaq National Market Execution System (''NNMS'' or,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b-4(f)(2).

''SuperMontage'').[5] Nasdaq implemented the revised fee schedule on December 1, 2003. The text of the proposed rule change appears below. New text is italicized.

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry:	
Non-Directed Orders (excluding Preferenced Orders)	No charge.
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge.
Other Preferenced Orders	$0.02 per order entry.
Directed Orders	$0.10 per order entry.
Order Execution:	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share).
Credit to member providing liquidity	$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share).
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share).
Directed Order	$0.003 per share executed.
Non-Directed or Preferenced Order entered by a member that accesses its own Quote/Order *submitted under the same or a different market participant identifier of the member.*	No charge.
Order Cancellation:	
Non-Directed and Preferenced Orders	No charge.
Directed Orders	$0.10 per order cancelled.

(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend NASD Rule 7010(i) to modify the fee charged when multiple Quotes/Orders submitted by the same member under different MPIDs match and execute against each other in SuperMontage. Currently, Nasdaq does not charge a fee when a member executes a trade against itself in SuperMontage and the Quotes/Orders are submitted under the same MPID (''single MPID execution''). However, when the same scenario occurs but the Quotes/Orders are submitted by a member under different MPIDs (''multiple MPID execution''), Nasdaq charges the standard SuperMontage execution fee that applies when trading interest of different members matches and executes.

Nasdaq proposes to amend NASD Rule 7010(i) so single MPID executions and multiple MPID executions are treated the same—there will be no charge. Therefore, Nasdaq proposes, beginning on December 1, 2003, that there will be no charge when a Non-Directed Order or Preferenced Order submitted under one MPID of a member accesses the member's own Quote/Order submitted under a different MPID.[6] Nasdaq states that its policy for not charging a fee when Quotes/Orders submitted by a member match and execute in SuperMontage is based on an expectation that, in its absence, members would internalize a greater percentage of orders through their own proprietary systems, rather than exposing them to the full market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable fees among members. Nasdaq believes the proposal harmonizes its fee structure for trades that are ''internalized'' by members through SuperMontage, irrespective of whether the trade is the result of a single MPID execution or multiple MPID execution.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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.

[5] ''Quotes/Orders'' is defined under NASD Rule 4701(bb).

[6] 6 Non-Directed Order and Preferenced Order are defined under NASD Rule 4701(p) and (aa), respectively.

[7] 15 U.S.C. 78*o*-3.

[8] 15 U.S.C. 78*o*-3(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b-4(f)(2) thereunder [10] because it establishes or changes a due, fee or other charge. At any time within 60 days after filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–NASD–2003–174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 NASD. All submissions should refer to file number SR–NASD–2003–174 should be submitted by January 5, 2004.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30836 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48880; File No. SR–NASD–2003–145]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Give Authority to a 3-Member Subcommittee of NASD's Market Regulation Committee to Review Alternative Display Facility System Outage and Denial of Excused Withdrawal Determinations

December 4, 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 September 25, 2003, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. On November 24, 2003, and December 2, 2003, NASD filed Amendment Nos. 1[3] and 2[4] to the proposed rule change, respectively. 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

NASD is proposing to amend NASD Rules 4300A and 4619A(g) to give jurisdiction to a 3-member subcommittee of NASD's Market Regulation Committee (''MRC'') to review system outage determinations under Rule 4300A(f) and excused withdrawal denials under Rule 4619A, respectively.

The proposed rule change would apply during the time that the NASD Alternative Display Facility operates on a pilot basis. The Commission previously approved the ADF as a nine-month pilot to quote and trade only Nasdaq-listed securities.[5] The Commission subsequently approved an extension of the pilot until January 26, 2004.[6] The text of the proposed rule is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4300A. Quote and Order Access Requirements.

(a) through (e) No change.

(f) Procedures for Reviewing System Outages

(1) through (4) No change.

(5) A Market Participant may appeal a determination made under paragraph (e)(3) to *a three-member subcommittee comprised of current or former industry members of* NASD's *Market Regulation* [Alternative Display Facility Market Operations Review] Committee in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the *subcommittee* [Committee] shall operate as a stay of the determination made pursuant paragraph (e)(3). Once a written appeal has been received, the Market Participant may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the *subcommittee* [Committee]. The *subcommittee* [Committee] shall render a determination by the close of business following the day a notice of appeal is received. The *subcommittee's* [Committee's] determination shall be final and binding.

* * * * *

4619A. Withdrawal of Quotations and Passive Market Making

(a) through (f) No Change.

(g) *A three-member subcommittee comprised of current or former industry members of* NASD's [Alternative Display Facility Operations Review] *Market Regulation* Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD filed a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[4] Letter from Philip A. Shaikun, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003 (''Amendment No. 2''). Amendment No. 2 deletes the following sentence from Exhibit 1 to the Form 19b–4: ''NASD has designated the proposed rule change as concerned solely with administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(3) thereunder, which renders the proposal effective upon receipt of this filing by the Commission.''

[5] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[6] Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

pursuant to this Rule, or the conditions imposed on their reentry.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Background. On July 24, 2002, the Commission approved SR-NASD 2002–97, which authorizes NASD to operate the ADF on a pilot basis in Nasdaq securities for nine months, pending the anticipated approval of SR–NASD–2001–90, which proposes to operate the ADF on a permanent basis.[7] On April 10, 2003, the Commission approved SR–NASD–2003–53, authorizing extension of the ADF pilot period until January 26, 2004.[8] As described in detail in SR–NASD–2001–90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order[9] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.[10]

For the duration of the pilot period, ADF will provide ADF market participants (market makers and ECNs) the ability to post quotations in Nasdaq securities and will provide all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the Exclusive Securities Information Processor (''SIP'') for Nasdaq-listed issues[11] for consolidation and dissemination of data to vendors and ADF market participants. The facility also will provide for trade comparison through the Trade Reporting and Comparison Service (''TRACS''). The facility further will provide for real-time data delivery to NASD for regulatory purposes, including enforcement of firm quote and related rules. It is anticipated that the ADF will operate on a pilot basis until the effective date of SR–NASD–2001–90, the approval of which would provide for the operation of the ADF on a permanent basis and an expansion of ADF-eligible securities to include all exchange-listed securities.

Order Access Rule. The ADF does not provide an order routing capability. Instead, NASD pilot Rule 4300A requires market participants to provide direct electronic access to other market participants and to provide to all other NASD members direct electronic access or allow for indirect electronic access to the individual market participant's quote. This rule provides the means for ADF market participants and other broker/dealers to access ADF quotes and, among other things, to meet the firm quote and locked and crossed quotation requirements.

System Outage Determinations. Pursuant to NASD Rule 4300A(e)(2), NASD may suspend a market participant from quoting for 20 business days if the market participant experiences three unexcused, confirmed system outages during any period of five business days. The Rule defines system outages as (1) an inability to quote or (2) an inability to respond to orders. The Rule gives officers of NASD authority to review an outage and determine whether the outage should be excused. An officer may deem a system outage excused based on the specific facts and circumstances surrounding the outage. Most significant consideration is given to whether the system outage resulted from circumstances beyond the market participant's control and whether the market participant voluntarily brought the matter to the attention of NASD before it otherwise learned of the outage. Other factors that may be considered include, but are not limited to, the extent and duration of the system problem.

Rule 4300A provides for a review and appeal process of a determination of whether an outage is excused or unexcused. Currently, Rule 4300A(f)(5) gives authority for such reviews to NASD's Alternative Display Facility Market Operations Review Committee. The proposed rule change would amend that provision to give review authority to a three-member subcommittee comprised of current or former industry members of NASD's MRC to take advantage of that committee's expertise. It would be NASD's intention to draw first from current MRC members and resort to former members only when conflicts or availability problems exist with current members.

Denial of Excused Withdrawals. NASD Rule 4619A generally provides that NASD Alternative Display Facility Operations may, under certain circumstances, grant excused withdrawal status to an ADF Market Maker that withdraws its quotations from a security. Rule 4619A(g) provides for review of a denial of an excused withdrawal and gives authority for such reviews to NASD's Alternative Display Facility Market Operations Review Committee. The proposed rule change would amend that provision to give review authority to a three-member subcommittee comprised of current or former industry members of the MRC, as would be the case for system outage proceedings described above.

2. Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the MRC is the appropriate committee to review ADF system outage and excused withdrawal determinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule

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

[7] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[8] Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

[9] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[10] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

[11] Nasdaq initially will be the designated SIP for all transactions and quotations in Nasdaq securities. During the pilot period, the SIP will distribute individual quotations for both ADF and Nasdaq market makers and ECNs.

[12] 15 U.S.C. 78*o*–3(b)(6).

(ii) as to which NASD 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 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–145. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

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 NASD.

All submissions should refer to File No. NASD–2003–145 and should be submitted by January 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30841 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48889; File No. SR–NASD–2003–178]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Certain Listing Fees for Foreign Issuers and To Make a Technical Change to the Rule Pertaining to Recordkeeping Fees for Issuers Listed on The Nasdaq SmallCap Market

December 5, 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 December 3, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to modify certain listing fees for foreign issuers and to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

4500. ISSUER LISTING FEES

4510. The Nasdaq National Market

(a) Entry Fee.

(1) A*n* [domestic] issuer[, or foreign issuer raising capital in conjunction with its Nasdaq listing,] that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares—$100,000
30+ to 50 million shares—$125,000
Over 50 million shares—$150,000

[(2) A foreign issuer not raising capital in conjunction with its Nasdaq listing, including American Depositary Receipts (ADRs), that submits an application for inclusion of any class of its securities (not otherwise identified in this Rule 4500 series) in The Nasdaq National Market, shall pay to The Nasdaq Stock Market, Inc. a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry in The Nasdaq National Market, except for $5,000, which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 3 million shares—$50,000
3+ to 5 million shares—$75,000
5+ to 30 million shares—$100,000
30+ to 50 million shares—$125,000
Over 50 million shares—$150,000]

Current (3)–(6) Renumbered as (2)–(5).

(b)–(c) No change.

(d) Annual Fee—American Depositary Receipts (ADRs).

(1) The issuer of each class of securities that is an ADR listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on ADRs outstanding according to the following schedule not to exceed $30,000 per issuer:

Up to 10 million ADRs—*$21,225* [$10,000]
10+ to 25 million ADRs—*$26,500* [$15,000]
25+ to 50 million ADRs—*$29,820* [$20,000]
[50+ to 75 million ADRs—$22,500
75+ to 100 million ADRs—$25,000]
Over *50* [100] million ADRs—$30,000

(2)–(4) No change.

4520. The Nasdaq SmallCap Market

(a)–(c) No change.

[(e)]*(d)* Recordkeeping Fee.

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc.

* * * * *

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq states that the purpose of the proposed rule change is to revise certain fees for foreign issuers listed on The Nasdaq National Market in order to eliminate or reduce the disparity in the amount of fees paid by issuers.[3] Specifically, Nasdaq proposes to revise the entry fees for foreign issuers not raising capital in conjunction with their listing on Nasdaq and the annual fees applicable to American Depositary Receipts (ADRs), beginning on January 1, 2004. Nasdaq also proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market.

Nasdaq proposes to revise the entry fees for foreign National Market issuers not raising capital in conjunction with their listing. Nasdaq rules currently provide two separate entry fee schedules for foreign issuers. The fee schedule set forth in Rule 4510(a)(1) applies to foreign issuers that raise capital in conjunction with their listing on Nasdaq (as well as to all domestic issuers), and the fee schedule in Rule 4510(a)(2) applies to those issuers that do not raise capital in conjunction with listing on Nasdaq. These two fee schedules are the same except for foreign issuers that do not raise capital in conjunction with their listing and that list less than 5 million shares. These issuers pay a lower fee than they would if they were raising capital in conjunction with their listing, in recognition of the fact that these listings are non-capital raising and generally represent secondary market listings. Nasdaq proposes to eliminate the reduced fees for these issuers and to adopt a single entry fee schedule for all domestic and foreign issuers.

Nasdaq also proposes to revise the annual fee schedule for ADRs listed on the National Market. The current fee schedule for ADRs, which is set forth in Rule 4510(d), provides for lower fees than those applicable to U.S. issuers and foreign issuers that list ordinary shares. In order to more closely align the fees paid by issuers that list ADRs with those paid by other issuers, Nasdaq proposes to raise the fees for ADRs while maintaining the current annual cap of $30,000 per issuer. Under this proposal, issuers that list up to 50 million ADRs will pay the same annual fee as U.S. issuers and foreign issuers that list ordinary shares. Those issuers that list more than 50 million ADRs will pay the maximum annual fee of $30,000.

Lastly, Nasdaq proposes to make a technical change to the rule pertaining to recordkeeping fees for issuers listed on The Nasdaq SmallCap Market. Specifically, Nasdaq proposes to renumber Rule 4520(e) as Rule 4520(d) in order to avoid any potential confusion regarding the fees for SmallCap issuers.[4]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(5) of the Act,[6] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, the revised fee schedules will eliminate or reduce the disparity in the entry and annual fees paid by Nasdaq issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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 non-member issuers affected by the proposed rule change should be afforded the notice and comment periods under Section 19(b)(2) of the Act,[7] the Commission does not find good cause to accelerate approval of this proposal, as Nasdaq requested to ''minimize potential uncertainty or administrative difficulties.'' Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determinate 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 in 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. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 NASD. All submissions should refer to file number SR–NASD–2003–178 and should be submitted by January 5, 2004.

[3] The Commission notes that the net effect of Nasdaq's proposal is to raise entry fees for foreign issuers not raising capital and raise annual fees for issuers of ADRs.

[4] The recordkeeping fee for SmallCap issuers was established pursuant to SR–NASD–2003–127. This fee, however, was erroneously numbered as Rule 4520(e) in the rule filing and should have been numbered as Rule 4520(d) in order to maintain continuity in Rule 4520.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 15 U.S.C. 78s(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–30984 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48891; File No. SR–CSE–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend Its Liquidity Provider Fee and Rebate Pilot Program

December 8, 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 December 3, 2003, National Stock Exchange (''Exchange'')[3] 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 this proposal pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b-4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has a Liquidity Provider Fee and Rebate Program (''Program''), which was originally proposed in SR–CSE–2002–16,[7] that is currently in effect and is set to expire on December 31, 2003.[8] Through this proposed rule change the Exchange seeks to extend the Program through June 30, 2004. The Exchange proposes no other substantive changes to the Program at this time. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 22, 2002, the Exchange filed SR–CSE–2002–16,[9] which proposed to establish a pilot transaction credit for liquidity providers that is paid by liquidity takers on each intra-Exchange execution[10] in Nasdaq securities. Under the Program, the Exchange amended its Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.*, the party executing against a previously displayed quote/order, $0.004 per share. The Exchange then passes on to the liquidity provider, *i.e.*, the party providing the displayed quote/order, $0.003 per share with the exchange retaining $0.001 per share. With this proposed rule change, the Exchange is extending the Program through June 30, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(4) of the Act,[13] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

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 solicited or received in connection with the proposed rule change.

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[14] and Rule 19b–4(f)(6)[15] thereunder. 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 that such waiver is consistent with the protection of investors and the public interest, for it will allow the Program to continue without interruption. For these reasons, the Commission designates the

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange was formerly known as The Cincinnati Stock Exchange. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003)(SR–CSE–2003–12).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange gave the Commission written notice of its intention to file the proposed rule change on November 21, 2003. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

[7] Securities Exchange Act Release No. 46848 (November 19, 2002, 67 FR 70793 (November 26, 2002)(''Original Pilot'').

[8] The Program, which was originally set to expire on March 31, 2003, was subsequently extended until September 30, 2003, and extended again until December 31, 2003. Securities Exchange Act Release Nos. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003)(SR–CSE–2003–03)(extending the Program until September 30, 2003) and 48584 (October 2, 2003), 68 FR 58368 (October 9, 2003)(SR–CSE–2003–13)(extending the Program until December 31, 2003).

[9] *See* Original Pilot, *supra* note 7.

[10] An ''intra-Exchange execution'' (referred to in the Original Pilot as an ''intra-CSE execution'') is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction. *Id.* at 70793.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CSE–2003–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–14 and should be submitted by January 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30835 Filed 12–11–03; 8:45 am]

BILLING CODE 8010–10–P

[16] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48881; File No. SR–NYSE–2003–39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing and Trading of iShares Lehman U.S. Aggregate Bond Fund and iShares Lehman TIPS Bond Fund

December 4, 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 November 25, 2003 the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 3, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade pursuant to unlisted trading privileges (''UTP'') iShares Lehman U.S. Aggregate Bond Fund (the ''Aggregate Bond Fund'') and to list and trade the iShares Lehman TIPS Bond Fund[4] (the ''TIPS Fund'') and together with the Aggregate Bond Fund, (the ''ETFs'' or the ''Funds''), each a series of iShares Trust (the ''Trust''), an exchange traded fund which is a type of Investment Company Unit.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated December 3, 2003 (''Amendment No. 1''). Amendment No. 1 provides for certain technical changes and clarification to the original proposal, particularly settlement and clearance procedures for TIPS Fund.

[4] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

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 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 NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 703.16 of the NYSE Listed Company Manual provides standards for listing and trading Investment Company Units (''ICUs''), which are securities issued by an open-end management company.[5] The Commission previously approved amendments to section 703.16 of the NYSE Listed Company Manual to accommodate the listing and trading of ICUs based on an index of fixed income securities, but such standards are not generic listing standards. Hence, the NYSE has filed NYSE–2003–39 to accommodate the trading pursuant to UTP of the Aggregate Bond Fund and the listing and trading of the TIPS Fund under section 703.16 of the Listed Company Manual. The Funds have been approved for listing on the Amex.[6]

As set forth in detail below, the Funds will hold certain fixed income securities (the ''Component Securities'') selected to correspond generally to the performance of the relevant Underlying Index (the ''Underlying Index'') and, in the case of the Aggregate Bond Fund will also invest in mortgage pass-through securities through TBA

[5] In 1996, the Commission approved Section 703.16 of the Listed Company Manual (the ''Company Manual''), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Company Manual and NYSE Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000). In 2002, the Commission approved amendments to Section 703.16 of the Company Manual to accommodate the listing of ICUs based on an index of fixed income securities. *See* Securities Exchange Act Release No 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002).

[6] *See* Securities Exchange Act Release No. 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003).

transactions, in each instance as described in *Exhibit A* to NYSE–2003–39. The ETFs intend to qualify as a ''regulated investment company'' (the ''RIC'') under the Internal Revenue Code (the ''Code'').

Barclays Global Fund Advisors (the ''Advisor'' or the ''BGFA'') is the investment advisor to the ETFs. The Advisor is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. (the ''BGI''), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Co. (the ''Distributor''), a Pennsylvania corporation and broker-dealer registered under the Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

Administrator/Custodian/Fund Accountant/Transfer Agent/Dividend Disbursing Agent. The Trust has appointed Investors Bank & Trust Co. (the ''IBT'') to act as administrator (the ''Administrator''), custodian, fund accountant, transfer agent, and dividend disbursing agent for the ETFs. The performance of their duties and obligations will be conducted within the provisions of the Advisers Act and the rules thereunder. There is no affiliation between IBT and the Trust, the Advisor or the Distributor.

a. *Operation of the ETFs.* The investment objective of each ETF will be to provide investment results that correspond generally to the performance of its Underlying Index. In seeking to achieve its investment objective, the ETFs will utilize ''passive'' indexing investment strategies. Each ETF may fully replicate is Underlying Index, but currently intends to use a ''representative sampling'' strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities (the ''Component Securities'') of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to an ETF that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same appropriate proportions as in the Underlying Index).[7] The representative sampling techniques that will be used by the Advisor to manage the Aggregate Bond Fund and the TIPS do not differ from the representative sampling techniques it uses to manage the Funds that were the subject of the Commission's June 25, 2002 order under the 1940 Act relating to other series of the iShares Trust indexes of fixed income securities.[8]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of an ETFs portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogenous pieces. These subdivisions are sometimes referred to as ''cells.'' A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) Duration, (2) Sector, (3) Credit Rating, (4) Coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.

According to the Original Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information, (*e.g.,* coupon rates instead of dividend payments).

According to the Original Application, the ETFs' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are ''expensive names'' (*i.e.,* bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each ETF in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a RIC under the Code. For example, if at the end of a calendar quarter an ETF would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange represents that the Advisor[9] expects that each Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each ETF's investment objectives, policies and investment strategies will be fully disclosed in its prospectus (''Prospectus'') and statement of additional information (''SAI''). The TIPS Fund will invest at least 90% of its assets in Component Securities of its Underlying Index. The TIPS Fund may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the TIPS Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, the TIPS Fund may invest in securities not included in the Underlying Index in order to reflect prospective changes in the Underlying Index (such as future corporate actions and index

[7] The Trust, Advisor and Distributor (the ''Applicants'') have filed with the Commission an Application for an Amended Order (the ''Application'') under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''1940'') for the purpose of exempting the ETFs from various provisions of the 1940 Act. (File No. 812–13003). A notice of Application was issued in Investment Company Act Release No. 26151, August 5, 2003. The information provided herein relating to the Funds is based on information regarding the Trust and the Finds/ *See* Investment Company Act Release No. 25622 (June 25, 2002) for the approval of the initial Application for additional series of the iShares Trust based on indexes of fixed income securities (the ''Original Application'').

[8] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 2, 2003. *See* in the Matter of iShares Trust, et al., Investment Company Act Release; No. 25622 (June 25, 2002) (relating to the iShares 1–3 Year Treasury Index Fund, 7–10 Year Treasury Index Fund, 20+Year Treasury Index Fund, Treasury Index Fund, Government/Credit Index Fund, Lehman Corporate Bond Fund and GS$InvesTop Corporate Bond Fund).

[9] *See supra* note 3.

reconstitutions, additions and deletions).

However, additional portfolio flexibility would benefit the Aggregate Bond Fund, while at the same time permitting it to closely track the performance of its Underlying Index. The Aggregate Bond Fund will: (1) Seek to track the performance of that portion of its Underlying Index comprised of U.S. Treasury securities, U.S. agency securities, corporate bonds, non-corporate bonds (*e.g.,* bonds issued by supra-national entities such as the International Monetary Fund), asset-backed securities, and commercial mortgage-backed securities (approximately 65% of the Underlying Index as of December 3, 2003) by investing a corresponding percentage of its net assets (*i.e.,* approximately 65%) in the Component Securities of its Underlying Index; [10] and (2) seek to track the performance of that portion of its Underlying Index invested in U.S. agency mortgage pass-through securities (approximately 35% of the Underlying Index as of December 3, 2003) by investing a corresponding percentage of its net assets (*i.e.,* approximately 35%) [11] through TBA transactions (as described below) on U.S. agency mortgage pass-through securities. Through the Aggregate Bond Fund's direct investments in Component Securities of its Underlying Index and its investment in mortgage pass-through securities through TBA transactions, the Aggregate Bond Fund will have at least 90% of its net assets invested (i) in Component Securities of its Underlying Index and (ii) and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index (*i.e.,* TBA transactions).

According to the Application, the Aggregate Bond Fund needs the investment flexibility to engage in TBA transactions as described above primarily because approximately 35% of the securities in the Aggregate Bond Fund's Underlying Index are expected to be pools of U.S. agency mortgage pass-through securities.[12] As discussed below, it is easier to trade and obtain intra-day prices of TBAs than it is to trade and obtain intra-day prices of specific pools of mortgage pass-through securities. The readily available information about intra-day pricing of TBAs and the ease with which they can be traded should make it easier to create and redeem Creation Unit Aggregations and help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism.

The Application states that, although the market or mortgage pass-through securities is extremely deep and liquid, it is impractical to trade mortgage pass-through securities on a pool-by-pool basis, particularly when large dollar amounts are involved. For this reason, the vast majority of mortgage pools are traded using ''to-be-announced'' or ''TBA'' transactions. A TBA transaction is essentially a purchase or sale of a pass-through security for future settlement at an agreed upon date.[13] It has been estimated that 90% of mortgage pass-through securities (as measured by total dollar volume) are executed as TBA trades.[14] TBA transactions increase the liquidity and pricing efficiency of transactions in mortgage pass-through securities since they permit similar mortgage pass-through securities to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

The Aggregate Bond Fund intends to use TBA transactions to acquire and maintain exposure to that portion of the Underlying Index comprised of pools of mortgage pass-through securities in either of two ways. First, and more commonly, the Aggregate Bond Fund will enter into TBA agreements and ''roll over'' such agreements prior to the settlement date stipulated in such agreements. This type of TBA transaction is commonly known as a ''TBA roll.'' In a ''TBA roll'' the Aggregate Bond Fund generally will sell the obligation to purchase the pools stipulated in the TBA agreement prior to the stipulated settlement date and will enter into a new TBA agreement for future delivery of pools of mortgage pass-through securities. Second, and less frequently, the Aggregate Bond Fund will enter into TBA agreements and settle such transactions on the stipulated settlement date by actual receipt or delivery of the pools of mortgage pass-through securities stipulated in the TBA agreement. Since intra-day-prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid than TBA agreements, the use of TBA agreements should help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism. The Aggregate Bond Fund will accept actual delivery of mortgage pools only when the Advisor believes it is in the best interests of the Aggregate Bond Fund and its shareholders to do so. In determining whether to accept actual delivery of mortgage pools, the Advisor will consider, among other things, the potential impact of such acceptance on the efficiency of the Aggregate Bond Fund's arbitrage mechanism and the Aggregate Bond Fund's ability to track its Underlying Index. For these reasons, the Advisor believes that the ability to invest a significant portion of the Aggregate Bond Fund's assets through TBA transactions and to maintain such exposure through the use of TBA rolls would increase the liquidity and pricing efficiency of the Aggregate Bond Fund's portfolio. In addition, since holding a TBA position exposes the holder to

[10] With respect to this portion of its portfolio, the Aggregate Bond Fund may invest up to 10% of its portfolio in bonds not included in its Underlying Index, but which the Advisor believes will help the Aggregate Bond Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents.

[11] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[12] As used herein, the term ''U.S. agency mortgage pass-through security'' or ''mortgage pass-through security'' refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. Government-sponsored enterprises: the Government National Mortgage Association (''GNMA''), Federal National Mortgage Association (''FNMA'') or Federal Home Loan Mortgage Corporation (''FHLMC''). In the basic pass-through structure, mortgages with similar issuer, term and coupon characteristics are collected and aggregated into a pool. The pool is assigned a CUSIP number and undivided interests in the pool are traded and sold as pass-through securities. The holder of the security is entitled to a pro rata share of principal and interest payments (including unscheduled prepayments) from the pool of mortgage loans. The portion of the Underlying Index representing the mortgage pass-through segment of the U.S. investment grade bond market is comprised of multiple pools of mortgage pass-through securities.

[13] ''TBA'' refers to a mechanism for the forward settlement of agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. TBA trades generally are conducted in accordance with widely-accepted ''Good Delivery'' guidelines published by The Bond Market Association (''TBMA''). The Good Delivery guidelines facilitate transactions in mortgage pass-through securities by establishing commonly observed terms and conditions for execution, settlement, and delivery. In a TBA trade, the buyer and seller decide on general trade parameters, such as agency, coupon, term to maturity, settlement date, par amount, and price. The actual pools delivered are determined two days prior to settlement date. TBA transactions promote efficient pricing because the Goog Delivery guidelines permit only a small variance between the face amount of the pools actually delivered and the nominal agreed upon amount. Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg L.P. (''Bloomberg'') and Trade Web. TBMA publishes standard notification and settlement dates for TBA trades specifying uniform settlement dates for specific classes of securities. The most active trading market for TBA trades is usually for next-month settlement. *See* generally *TBAs: To-Be-Announced Mortgage Securities Transactions,* TBMA (1999).

[14] *Id.* at 3.

substantially identical market and economic risks as holding a position in a corresponding pool of mortgage pass-through securities, the Advisor believes that the use of TBA transactions as described herein should permit the Aggregate Bond Fund to closely track the performance of its Underlying Index.

The use of TBA transactions is not intended to help the Aggregate Bond Fund ETF outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Aggregate Bond Fund's exposure to its Underlying Index.

b. *Issuance of Creation Unit Aggregations.*

1. *In General.* The issuance of Creation Unit Aggregations will operate, except as noted below, in a manner identical to that of the ETFs described in the Original Application.[15] Shares of each ETF (the ''iShares'') will be issued on a continuous offering basis in groups of 50,000 or more. These ''groups'' of shares are called ''Creation Unit Aggregations.'' The ETFs will issue and redeem iShares only in Creation Unit Aggregations.[16] As with other open-end investment companies, iShares will be issued at the net asset value (''NAV'') per share next determined after an order in proper form is received. The anticipated price at which both Funds will initially trade on the NYSE is approximately $100. The NYSE represents that the Aggregate Bond Fund is currently trading at $100.82 on the Amex as of December 3, 2003.[17]

The NAV per share of each ETF is determined as of the close of the regular trading session on the NYSE on each day that the NYSE is open. The Trust sells Creation Unit Aggregations of each ETF only on business days at the next determined NAV of each ETF.

Creation Unit Aggregations will be issued by each ETF in exchange for the in-kind deposit of portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the ETF's Underlying Index (the ''Deposit Securities''). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each ETF in exchange for portfolio securities of the applicable ETF (the ''Fund Securities'') and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each ETF. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant (the ''Authorized Participant''). Authorized Participants, which are required to be Depository Trust Company (''DTC'') participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable ETF and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the Prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the ETF of the Deposit Securities together with an amount of cash (the ''Balancing Amount'') specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the ETF and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the ''Deposit Amount''). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a ''Portfolio Deposit.''

The Advisor will make available to the market through the National Securities Clearing Corporation (the ''NSCC'') on each Business Day, prior to the opening of trading on the Exchange (currently 9:30 a.m. eastern time), the list of the names and the required number of shares of each Deposit Security in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant Fund. The Portfolio Deposit will be applicable to an ETF (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the ETF until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each ETF will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant ETF, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each ETF to permit or require the substitution of an amount of cash (*i.e.,* a ''cash in lieu'' amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

The Aggregate Bond Fund may invest in and hold mortgage pass-through securities on a TBA basis. Since a TBA transaction is essentially an agreement for future settlement of a mortgage security, it is not possible to accept TBAs as part of the Portfolio Deposit. Instead, the Aggregate Bond Fund will designate the mortgage pass-through TBAs to be included in a Portfolio Deposit just as it would any other Deposit Securities of a Portfolio Deposit, and will accept ''cash in lieu'' of delivery of the designated mortgage pass-through TBAs. The Aggregate Bond Fund will then enter into TBA agreements included as Deposit Securities in the Portfolio Deposit.[18]

[15] *See* Investment Company Act Release No. 25622 (June 25, 2002). Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 2, 2003.

[16] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

[17] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[18] Prior to settlement of such TBA transactions, the ''cash in lieu'' portion of the Portfolio Deposit

According to the Application, this will substantially minimize the Aggregate Bond Fund's transaction costs, enhance operational efficiencies and otherwise reduce any operational issues which the acceptance of pools of mortgage pass-through securities might otherwise present.[19]

c. *Availability of Information Regarding iShares and Underlying Indices.* On each Business Day, the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the ''Intra-day Optimized Portfolio Value'' or the ''IOPV'') will be calculated by independent third parties (such as Bloomberg) every 15 seconds during the NYSE's regular trading hours and disseminated by the NYSE every 15 seconds on the Consolidated Tape.[20] The IOPV will be updated throughout the day to reflect changing bond prices, as well as TBA prices, using multiple prices from independent third party pricing sources. Information about the intra-day prices for the Deposit Securities of the each Fund is readily available to the marketplace.[21] Applicants represent that (1) IOPV will be calculated by an independent third party; (2) IOPV will be calculated using prices obtained from multiple independent third-party pricing sources (such as broker-dealers) throughout the day; and (3) IOPV will be calculated in accordance with pre-determined criteria and set parameters so that an individual bond ''price'' based on an analysis of multiple pricing sources is obtained for each security in the Portfolio Deposit.[22] Closing prices of the ETFs' Deposit Securities are readily available from published or other public sources, such as the NYSE's Automated Bond System (ABS®), the Trace Reporting and Compliance Engine (''TRACE''), or on-line client-based information services provided by Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, IDC, Merrill Lynch, Bridge, Bloomberg, TradeWeb and other pricing services commonly used by bond mutual funds.[23]

The Indices underlying the Aggregate Bond Fund will not be calculated or disseminated intra-day because Lehman Brothers does not calculate or disseminate intra-day values for these indices. The value and return of the underlying Lehman Index is calculated and disseminated each business day, at the end of the day, by Lehman Brothers.[24]

Each Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each Fund will be calculated and disseminated daily. There will also be disseminated a variety of data with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. In addition, the website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) The prior Business Day's NAV and the mid-point of the bid-ask price[25] at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[26]

will be invested in cash equivalents, including money market mutual funds, and such investments, along with cash and other liquid assets identified by BGFA, will be segregated on the books and records of the Aggregate Bond Fund or its Custodian in accordance with Section 18 of the 1940 Act and Investment Company Act Release No. 10666. Since the price of a TBA transaction includes an assumed rate of return on the cash held in anticipation of settlement, the Aggregate Bond Fund's investment in cash equivalents prior to settlement is not expected to have a material impact on potential tracking error or the Aggregate Bond Fund's ability to track its Underlying Index. In addition, since the interest or dividends that the Aggregate Bond Fund accrues on a daily basis on its investment in cash equivalents will be relatively small and will be included as part of the Cash Component published on a daily basis according to the procedures currently used for the ICUs, Applicants expect that such dividends and interest will be reflected in the secondary market trading price of iShares of the Aggregate Bond Fund. The Commission's order relating to the Original Application permits acceptance of a ''cash in lieu'' amount to replace Deposit Securities that are unavailable for delivery or for other reasons. In addition, prior iShares orders expressly permit ''cash-only purchases of Creation Unit Aggregations'' where the Advisor believes such transactions would ''substantially minimize * * * transaction costs or would enhance * * * operational efficiencies.'' *See* Investment Company Act Release No. 24452 (May 12, 2000).

[19] Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg and TradeWeb. In addition, the fungible nature of TBAs and commonly observed execution and settlement procedures create significant pricing efficiencies and market liquidity for TBAs. TBAs typically trade at very narrow spreads on transactions of up to $300 million or more. Since intra-day pricing of TBAs is readily available and the market for mortgage pass-through TBAs is extremely liquid, the designation of TBAs in the Portfolio Deposit and their inclusion as Fund Securities should make pricing of the Aggregate Bond Fund and the Deposit Amount more efficient and transparent, thus increasing arbitrage efficiency.

[20] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[21] Authorized Participants and other market participants have a variety of ways to access the intra-day security prices that form the basis of the ETF's IOPV calculation. For example, intra-day prices for treasury securities, agency securities and TBAs are available from Bloomberg, TradeWeb, ABS® and TRACE. Intra-day prices for inflation protected public obligations of the U.S. Treasury are available from Bloomberg and TradeWeb. Intra-day prices of callable agency securities are available from TradeWeb. Intra-day prices of corporate bonds are available from ABS® and TRACE. In addition, intra-day prices for each of these securities are available by subscription or otherwise to Authorized Participants and clients of major U.S. broker-dealers (such as Credit Suisse First Boston, Goldman Sachs and Lehman Brothers). *See supra* note 6.

[22] For example, Bloomberg Generic Prices could be used. Bloomberg Generic Prices are current prices on individual bonds as determined by Bloomberg using a proprietary automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers).

[23] The Exchange understands that Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Bridge and Bloomberg provide prices for each type of Deposit Security. TradeWeb provides prices for each type of Deposit Security except mortgage backed securities and corporate bonds. ABS® and TRACE provide prices for corporate bonds. Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[24] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy, LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[25] The Bid-Ask Price of each ETF is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each ETF's NAV.

[26] The secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems. *See*, ''eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems,'' December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association's Web site: *www.bondmarkets.com.*

The primary dealers are among the most active participants in the secondary market for Treasury

Continued

d. *Redemption of iShares.* Creation Unit Aggregations of each fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the''Creation List'') and which a redeemer will receive from the Fund (the ''Redemption List''). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.[27]

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the ''Cash Redemption Payment.'' The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

e. *Clearance and Settlement.*[28] In order to simplify the creation and redemption process and align the settlement of iShares of the Fund with the settlement of the Deposit Securities and Fund Securities (*i.e.,* the underlying U.S. Government securities, corporate and other bonds) contributed or received in connection with creation and redemption transactions, Applicants plan to settle transactions in Deposit Securities and Fund Securities and iShares on the same settlement cycle. (For the sake of clarity, the Exchange notes that transactions in iShares in the secondary market will generally settle on T + 3).[29] The Deposit Securities and Fund Securities of each fund will settle via free delivery through the Federal Reserve System for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the ''CNS System''), (i) iShares of the Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (generally T + 3 for the Aggregate Bond Fund and T + 1 for the TIPS Fund), an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. Each Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the Fund's Custodian through DTC, the trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On settlement

securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker (*e.g.*, BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage). The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX, for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.

Real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors do have access to free intra-day bellwether quotes. Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm.* TBMA provides links to price and other bond information sources on its investors Web site at *http://www.investinginbonds.com.* In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial Web sites.

Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

[27] Investors redeeming Creation Unit Aggregations of the Aggregate Bond Fund will receive cash for any Component Securities that are mortgage pass-through TBAs.

[28] *See supra* note 3.

[29] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

date, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an ''in-kind'' creation of iShares. In case of a failed delivery of one or more Deposit Securities, the Funds will hold the collateral until the delivery of such Deposit Security. The Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the Funds will be protected from failure to receive Creations Unit Aggregations of iShares because the Custodian will not new effect the Funds's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations.

The Exchange represents that according to the Application and the Advisor, the clearance and settlement process will not affect the arbitrage of iShares of the Funds.

f. *Dividends and Distributions.* Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each Fund. Certain of the Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amounts received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the ''Service'') available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers my make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

g. *Other Issues.*

1. *Criteria for Initial and Continued Listing.* iShares are subject to the criteria for initial and continued listing of Investment Company Units in Section 703.16 of the Manual. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading on the NYSE. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of investment Company Units.

The NYSE believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Underlying Index.

2. *Original and Annual Listing Fees.* The NYSE's original listing fees that would be applicable to each Fund if listed on the Exchange is $5,000, and the continuing fees would be $2,000. The TIPS Fund will list on the NYSE.

3. *Stop and Stop Limit Orders.* Commentary .30 to NYSE Rule 13 provides that stop and stop limit orders in an Investment Company Unit shall be elected by a quotation, but specifies that if the electing bid on an offer is more that 0.10 points away from the list sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to Investment Company Units generally, including fixed income ETFs.

4. *NYSE Rule 460.10.* NYSE Rule 460.10 generally precludes certain business relationships between an issuer and specialist in the issuer's securities. Exceptions in the Rule permit specialists in ETF shares, including fixed income ETFs, to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor and only at the net asset value of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares; provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit, or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

5. *Prospectus Delivery.* The Commission has granted the Trust an exemption from certain prospectus delivery requirements under section 24(d) of the 1940 Act.[30] Any product description used in reliance on a section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The NYSE, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Funds.

6. *Trading Halts.* In order to halt the trading of an ETF, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in ETF shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

[30] *See* Investment Company Act Release No. 25623 (June 25, 2002).

7. *Suitability.* Pursuant to NYSE Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in ETF shares, including fixed income ETFs, such member or member organization should make a determination that such shares are suitable for such customer. If any recommendation is made with respect to such shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction. In the Exchange's Information Circular references above, the Exchange will inform members and member organizations of the requirements of NYSE Rule 405.[31]

8. *Purchases and Redemptions in Creation Unit Size.* In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the relevant Fund Prospectus and SAI, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

9. *Surveillance.* Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Investment Company Units currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Through its member organizations and otherwise through its membership in the Intermarket Surveillance Group, the Exchange is able to obtain information regarding trading on any U.S. market in both the Funds and the Component Securities.

If a broker-dealer is responsible for maintaining (or has a role in maintaining), or calculating the underlying Index, it would be required to erect and maintain a ''Fire Wall'' designed to prevent the flow of information regarding the underlying index from the index production personnel and index calculation personnel to the sales and trading personnel. In the course of member organization examinations,[32] the Exchange will examine and test the broker-dealer's ''Fire Wall'' procedures to determine whether they are reasonably designed to prevent the misuse of material non-public information by sales and trading personnel that originates from index production personnel and calculation personnel.

10. *Hours of Trading/Minimum Price Variation.* The Fund will trade on the Exchange until 4:15 p.m. (eastern time). The minimum price variation for quoting will be $.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[33] in general, and furthers the objectives of section 6(b)(5) of the Act,[34] in particular, in that 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 transaction in securities, 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 burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. NYSE–2003–39. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Commisson and any person, other than those that may be witheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–2003–39 and should be submitted by January 5, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Act[35] and the rules and regulations thereunder applicable to a national securities exchange.[36] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act.[37] The Commission believes that the availability of the Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying fixed income indices. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities.

Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[31] *See supra* note 3.

[32] The Exchange will examine the member organization's procedures for the first two years after the listing of the ETF and thereafter periodically based on its assessment of risk in planning the annual examination.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f.

[36] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[37] *Id.*

general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[38]

The Commission has granted the Funds appropriate relief under various Sections of the 1940 Act, including sections 6(c) and 17(b), so that each Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of the Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[39]

The Commission notes that the Funds will operate in substantially the same manner as the funds that were the subject of the Previous Approval Order. The Commission notes one difference is that with respect to the Aggregate Bond Fund, approximately 35% of its assets will be invested in TBA transactions, which is a purchase or sale of a pass-through security for future settlement at an agreed upon date. The Exchange represented that the use of TBA transactions is not intended to help the Aggregate Bond Fund outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Aggregate Bond Fund's exposure to its Underlying Index. Since the intra-day prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid that TBA agreements, the Commission agrees that the use of TBA agreements should help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism.

For the reasons stated in the Notice, above, the Commission finds that adequate rules and procedures exist to govern the trading of ICUs, including the Funds. For the reasons stated in the Notice, above, the Commission finds that because of the nature of the particular fixed income securities to be included in the portfolios of the Funds (*i.e.,* U.S. Government securities, investment grade corporate bonds, and TBA transactions), the pricing information should be available. However, the Commission notes that differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the Funds than have been experienced by Equity ETFs because arbitrators may wait for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions. The Commission expects the Exchange to contact Commission staff if the tracking error for these Funds exceeds the represented 5%.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in ETF shares without delivery a prospectus to the purchaser.[40] Instead, under the exemption and under NYSE's listing standards, sales in the secondary market must be accompanied by a ''product description,'' describing the ETF and its shares.[41] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any EFT under section 703.16 of the NYSE Listed Company Manual the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, fixed income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 405 (''know your customer rule'') regarding transactions in such fixed income ETFs. Exchange Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer when a transaction in the Fund shares is recommended and determine that such shares are suitable for such customer.[42] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with section 6(b)(5) of the Act.[43]

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based. Lehman has represented that it has procedures in place to prevent the misuse of material, non-public information relating to the index.[44] The Commission believes that these provisions should help to address concerns raised by Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the NYSE has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Funds will trade on the Exchange in the same manner as the funds that were the subject of the Previous Approval Order and the proposed rule change. The proposed rule change raises no novel issues. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

[38] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[39] Investment Company Act Release No. 25622 (June 25, 2002).

[40] *See* Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order).

[41] Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks (''ECNs'') would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of Funds.

[42] NYSE Rule 405.

[43] 15 U.S.C. 78f(b)(f).

[44] The Commission expects that the procedures implemented by Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

It is Therefore ordered, pursuant to section 19(b)(2) of the Act[45] that the proposed rule change (SR–NYSE–2003–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30840 Filed 12–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48883; File No. SR–PCX–2003–24]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Market-on-Close and Limit-on-Close Order Types

December 4, 2003.

I. Introduction

On June 2, 2003, the Pacific Exchange, Inc. (''PCX'') 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 establish a Closing Auction and create Market-on-Close (''MOC'') and Limit-on-Close (''LOC'') order types. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 22, 2003.[5] On December 2, 2003 the PCX submitted Amendment No. 3 to the proposed rule change.[6]

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, and issues notice of, and grants accelerated approval to, Amendment No. 3.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics,* and proposed deletions are in [brackets].

* * * * *

Text of the Proposed Rule Change: PCX Equities, Inc.

Rule 1 Definitions.

Rule 1.1 (a)–(p)—(No change.)

Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be,

(1) the term ''Imbalance'' shall mean the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time.

(A) the term ''Total Imbalance'' shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) the term ''Market Imbalance'' shall mean*:*

(i) as it relates to the Market Order Auction, the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(ii) as it relates to the Closing Auction, the imbalance of any remaining buy (sell) Market-on-Close Orders that are not matched for execution during the applicable auction.

Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be, the term ''Indicative Match Price'' shall mean for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous trading day's normal market hours (or, in the case of a *Closing Auction or a* Trading Halt Auction, the last sale during normal market hours), as determined by the [C]*c*onsolidated [T]*t*ape will establish the opening price *(or the closing price in the case of a Closing Auction)*, provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.

(s) The term ''Limited Price Order'' shall mean any order with a specified price or prices (e.g., limit orders, *Limit-on-Close Orders,* and Working Orders), other than Stop Orders.

(t)–(aaa)—(No change.)

* * * * *

Rule 7 Equities Trading—Orders and Modifiers

Rule 7.31 (a)–(cc)—(No change.)

(dd) Market-on-Close Order (''MOC''). A Market Order that is to be executed only during the Closing Auction.

(ee) Limit-on-Close Order (''LOC''). A Limited Price Order that is to be executed only during the Closing Auction.

* * * * *

Trading Sessions

Rule 7.34 (a)–(c)—No change.

(d) Orders Permitted in Each Session.

(1)—(No change.)

(A)–(H)—(No change.)

(2) During the Core Trading Session[,]*:*

(A) M[m*]*arket *O*[o]rders, Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order and Tracking Order Processes are eligible for entry into and execution on the Archipelago Exchange.

(B) Users may enter Market-on-Close Orders, Limit-on-Close Orders, and

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[45] 15 U.S.C. 78s(b)(2).

[46] 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 Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 6, 2003 (''Amendment No. 1''). In Amendment No. 1, the PCX submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Timothy Fox, Attorney, Division of Market Regulation, Commission, dated October 14, 2003 (''Amendment No. 2''). In Amendment No. 2, the PCX amended proposed PCXE Rule 7.35(g)(1) to clarify that Halt Auctions would be conducted pursuant to proposed PCXE Rules 7.35(g)(2) to (g)(6), and not pursuant to PCXE Rules 7.35(b) and (c), as previously cross-referenced. In addition, the PCX added the phrase ''and an Indicative Match Price does not exist'' to proposed PCXE Rule 7.35(g)(4)(A)(ii) for clarity, and to a related description contained Item 3 and Exhibit 1 to the filing. The PCX added a reference to the Closing Auction in Item 3 and Exhibit 1 for clarity. The PCX also made technical corrections to PCXE Rule 7.35(d)(1) and proposed PCXE Rule 7.35(g)(6).

[5] Securities Exchange Act Release No. 48630 (October 15, 2003), 68 FR 60432.

[6] *See* letter from Mai Shiver, Acting Director, Regulatory Policy, PCX, to Timothy Fox, Division of Market Regulation, Commission, dated December 1, 2003 (''Amendment No. 3''). In Amendment No. 3, the PCX withdrew the Amendment No. 3 that it filed with the Commission on November 19, 2003 and provided that this revised Amendment No. 3 and Exhibit A thereto, replace the original rule text, as amended by Amendments No. 1 and 2. Further, the PCX proposed to incorporate rule text relating to the publication of the Total Imbalance and Market Imbalance that the Commission recently approved. *See* Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR–PCX–2003–48). In addition, Amendment No. 3 clarifies that PCX will publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction. The PCX also proposed to move the Closing Auction from the Late Trading Session to the Core Session, and to change the Closing Auction's start time from 1:02 pm Pacific Time to 1:00 Pacific time. Further, the Amendment clarified that MOC and LOC orders are eligible for execution during the Closing Auction.

Limited Price Orders beginning at 4:30 am (Pacific Time) and concluding at 1:00 pm (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(2). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during the Closing Auction. Market Orders are not eligible for execution in the Closing Auction.

(C) Market-on-Close Orders and Limit-on-Close Orders that are not executed during the Closing Auction shall be cancelled. Timed Orders designated as good from 1:00 pm (Pacific Time) shall not be eligible to participate in the Closing Auction.

(3)—(No change.)

(e)–(f)—No change.

[Opening Session] Auctions

Rule 7.35 (a)–(c)—No change.

[(d) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:]

[(1) Re-Opening Time. After trading in a security has been halted, the Corporation shall disseminate the estimated time at which trading in that security will re-open (the ''Re-Opening Time'').]

[(2) Publication of Indicative Match Price and Imbalances]

[(A) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means as determined from time to time by the Corporation. If such a price does not exist (i.e., there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.]

[(B) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.]

[(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.]

[(3) Reduction of Imbalances]

[(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:]

[(i) Market orders;]

[(ii) Limited Price Orders; and]

[(iii) Auction-Only Limit Orders.]

[(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.]

[(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.]

[(D) Interaction with ITS]

[(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.]

[(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.]

[(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.]

[(4) Determination of Trading Halt Auction Price]

[(A) For exchange-listed securities:]

[(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.]

[(B) For A Nasdaq Security:]

[(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.]

[(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available,]

[(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or]

[(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or]

[(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in] [which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or]

[(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or]

[(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.]

[(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.]

[(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.]

(d) Transition to Core Trading Session.

(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(2) Market Orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).

(3) Stop Orders entered before or during the Opening Session become

eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

[(e) Transition to Core Trading Session.]

[(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

[(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C).]

[(3) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.]

(e) Closing Auction

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 12:00 pm (Pacific Time), and updated real-time thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, and the Imbalance associated with the Closing Auction, if any, will be, shall be published via electronic means. The Imbalance shall include both the Total Imbalance and Market Imbalance.

Example 1: (1) Limit-on-Close Order to buy 1000 shares at 50;

(2) Limit-on-Close Order to sell 5000 shares at 40; and

(3) Market-on-Close Order to sell 2000 shares.

The Archipelago Exchange will publish an Indicative Match Price of 40, a match volume of 1000 shares, a Market Imbalance of 1,000 shares and a Total Imbalance of 6,000 shares.

Example 2: (1) Market-on-Close Order to buy 3000 shares;

(2) Market-on-Close Order to sell 1000 shares;

(3) Limit Order to sell 1000 shares at 41; and

(4) Limit Order to sell 1000 shares at 41.25.

The Consolidated Tape last sale was 41.25. The Archipelago Exchange will publish an Indicative Match Price of 41.25 and a match volume of 3000 shares and will not publish an Imbalance.

(B) If an Indicative Match Price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(C) If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means.

(2) Reduction of Imbalances

(A) Any Imbalance in the Closing Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market-on-Close Orders;

(ii) Limit orders entered prior to the Closing Auction; and

(iii) Limit-on-Close Orders.

(B) Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders may be cancelled, but Market-on-Close Orders and Limit-on-Close Orders may not be cancelled.

(C) Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the Imbalance. Market-on-Close Orders and Limit-on-Close Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance, however, any time before the Closing Auction. Market-on-Close Orders and Limit-on-Close Orders that create equilibrium and thereafter convert the Imbalance from a buy to a sell (or convert the Imbalance from a sell to a buy) Imbalance will be rejected.

Example: (1) Limit-on-Close Order to buy 1000 shares; (2) Limit-on-Close Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A Market-on-Close Order or Limit-on-Close Order to buy 500 shares would be permitted because it achieves equilibrium. However, a Market-on-Close Order or Limit-on-Close Order to buy 1000 shares would not be permitted as it would inverse the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

(3) Determination of Closing Auction Price

(A) If there is no Imbalance, orders will be executed in the Closing Auction at the Indicative Match Price as of 1:00 p.m. (Pacific Time).

(B) If an Imbalance exists, or if equilibrium exists between buy Market-on-Close Orders and sell Market-on-Close Orders and an Indicative Match Price does not exist, as many buy Market-on-Close Orders and sell Market-on-Close Orders as possible shall be matched, on a time priority basis as follows:

(i) At the midpoint of the NBBO at 1:00 pm (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or

(ii) At the locked price if the NBBO is locked at 1:00 pm (Pacific Time); or

(iii) if the NBBO is crossed at 1:00 pm (Pacific Time) and the Archipelago Exchange is a party to the crossed market, at the bid (offer) side of the BBO which is crossed with the NBBO; or

(iv) if the NBBO is crossed at 1:00 pm (Pacific Time) and the Archipelago Exchange is not a party to the crossed market, at the last sale during the regular market hours as determined by the consolidated tape.

Such executions shall be designated with a modifier to identify them as Closing Auction trades. The Market-on-Close Orders that are eligible for, but not executed in, the Closing Auction shall be cancelled immediately upon conclusion of the Closing Auction.

[f] [Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.]

(f) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:

(1) Re-Opening Time. After trading in a security has been halted, the Archipelago Exchange shall disseminate the estimated time at which trading in that security will re-open (the ''Re-Opening Time'').

(A) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen prior to 12:55 pm (Pacific Time), the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (f)(2) through (6) of this Rule.

(B) For Nasdaq securities and securities that are dually listed on both Nasdaq and listed on the Corporation whereby trading in a security is halted and thereafter scheduled to reopen at 12:55 pm (Pacific Time) or later, no Closing Auction will occur for that security. Instead, the Archipelago Exchange will conduct a Halt Auction pursuant to the applicable procedures set forth in subsection (f)(2) through (6) of this Rule.

(2) Publication of Indicative Match Price and Imbalances

(A) Immediately after trading is halted in a security, and updated real-time thereafter, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means. If such a price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Immediately after trading is halted in a security, and updated real-time thereafter, the Market Imbalance and Total Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means.

(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means.

(3) Reduction of Imbalances

(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market Orders; and

(ii) Limited Price Orders.

(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.

(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.

(D) Interaction with ITS

(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.

(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.

(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.

(4) Determination of Trading Halt Auction Price

(A) For exchange-listed securities:

(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders and an Indicative Match Price does not exist, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.

(B) For Nasdaq securities:

(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available,

(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or

(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or

(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or

(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or

(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell Market Orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.

(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.

(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.

(g) Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.

* * * * *

II. Description of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCXE, proposes to introduce the Closing Auction, which would apply to both Nasdaq and exchange-listed securities traded on ArcaEx. The Closing Auction would take place at the end of the Core Trading Session. As originally proposed, the Closing Auction would occur at 1:02 pm (Pacific Time). In Amendment No. 3, the PCX proposes to change the Closing Auction Time to 1:00 pm (Pacific Time). The PCX also proposes to implement two new order types, designated as a MOC Order[7] and a LOC Order,[8] which would be eligible for execution only during the Closing Auction. In Amendment No. 3, the PCX clarified that these two order types would occur during the Core Trading Session.

Before the start of the Closing Auction, ArcaEx would publish the Indicative Match Price,[9] the volume of MOC and LOC orders that have been matched for execution, as well as the Market Imbalance and Total Imbalance relative to the Closing Auction.[10] In Amendment No. 3, the PCX amended the definition of ''Market Imbalance'' to clarify that MOC order that are not yet matched for execution would be published as the ''Market Imbalance'' during the time leading up to the Closing Auction. Accordingly, beginning at 12:00 pm (Pacific Time), and updated on real-time basis thereafter, the Indicative Match Price of the Closing Auction and the volume available to trade at such price, along with the Market Imbalance and Total Imbalance associated with the Closing Auction, if any, would be published via electronic means by ArcaEx.

If the difference between the Indicative Match Price and the last sale during normal market hours, as determined by the consolidated tape,

[7] *See* proposed PCXE Rule 7.31(dd) (definition of MOC Order).

[8] *See* proposed PCXE Rule 7.31(ee) (definition of LOC Order).

[9] *See* PCXE Rule 1.1(r). Pursuant to this current proposed rule change, the definition of ''Indicative Match Price'' in PCXE Rule 1.1(r) would be changed to reflect the inclusion of the Closing Auction.

[10] The proposed rule change also provides for the publication of the Indicative Match Price and Imbalance following a trading halt.

were equal to or greater than a predetermined amount, as determined from time to time by the PCXE, ArcaEx would assign a designator to identify it as significant (''SIG'') to the Indicative Match Price and publish the designator via electronic means as determined by the PCXE.

Any Imbalance in the Closing Auction would be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority: (1) MOC Orders; (2) Limited Priced Orders entered prior to the Closing Auction; and (3) LOC Orders.

Between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, Limited Price Orders eligible for the Late Trading Session may be cancelled, but MOC Orders and LOC Orders may not be cancelled.[11] In addition, between 12:58 pm (Pacific Time) and the conclusion of the Closing Auction, MOC Orders and LOC Orders that reduce the Imbalance may be entered on the opposite side of the Imbalance.[12] However, any time before the Closing Auction, MOC Orders and LOC Orders that create equilibrium and thereafter increase the Imbalance would be rejected.[13] ArcaEx would determine the price of the Closing Auction as follows: if there is no Imbalance, orders would be executed in the Closing Auction at the Indicative Match Price as of 1:00 pm (Pacific Time).[14] Conversely, if an Imbalance exists, or if equilibrium exists between buy MOC Orders and sell MOC Orders and an Indicative Match Price does not exist, as many buy MOC Orders and sell MOC Orders as possible would be matched, on a time priority basis, as follows: (1) At the midpoint of the national best bid or offer (''NBBO'')[15] at 1:00 pm (Pacific Time), provided that the NBBO of the market centers that are still open is not locked or crossed; or (2) at the locked price if the NBBO is locked at 1:00 pm (Pacific Time); or (3) if the NBBO is crossed at 1:00 pm (Pacific Time) and ArcaEx is a party to the crossed market, at the bid (offer) side of the best bid or offer (''BBO'')[16] which is crossed with the NBBO; or (4) if the NBBO is crossed at 1:00 pm (Pacific Time) and ArcaEx is not a party to the crossed market, at the last regular sale during market hours as determined by the consolidated tape.[17] Such executions would be designated with a modifier to identify them as Closing Auction trades. The MOC Orders that are eligible for but not executed in the Closing Auction would be cancelled immediately upon conclusion of the Closing Auction.

Finally, the PCX proposes that in the event that trading in a stock is halted and scheduled to re-open prior to 12:55 pm (Pacific Time), a Halt Auction and Closing Auction would be conducted. However, in the event that trading in a stock is halted and is thereafter scheduled to re-open at 12:55 pm (Pacific Time) or later, no Closing Auction would occur for that security. Instead, only a Halt Auction would be conducted.[18]

III. Discussion

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[19] and, in particular, the requirements of Section 6(b) of the Act[20] and the rules and regulations thereunder. The Commission finds that the rule change, as amended, is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of the PCX be 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 regulation, 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.

The Commission believes that this proposed rule change should provide ArcaEx Users with an order type that is already available on a number of other exchanges.[22] The Commission further believes that publishing the Match Volume, Indicative Match Price, the Market Imbalance and Total Imbalance may provide market participants with an additional source of closing price information for Nasdaq and exchange-listed securities in addition to the information disseminated by markets, which should enhance intermarket competition by enabling market participants to assess and compare pricing among different markets. In addition, the Commission believes, based upon experience of other exchanges such as the NYSE and Amex, that publishing this information before the Closing Auction should reduce the volatility that may arise from the liquidation of stock positions at the end of the day, particularly on the days when some stock index options, stock index futures, and options on stock index futures expire or settle concurrently.[23] The Commission further believes that publishing a Total Imbalance and Market Imbalance following a Trading Halt in a given security will increase the information available to Users when making investment decisions.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the PCX proposed to incorporate rule text relating to Total Imbalance and Market Imbalance publications that the Commission recently approved.[24] In addition, Amendment No. 3 clarified that PCX would publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction, move the Closing Auction from the Late Trading Session to the Core Session, and change its start time from 1:02 pm Pacific Time to 1:00 Pacific time. The Amendment further clarified that MOC and LOC orders are eligible for execution during the Closing Auction. The Commission believes that Amendment No. 3 does not raise any new regulatory issues. Further, the

[11] In Amendment No. 3, the PCX changed the relevant time from 1:00 pm (Pacific Time) to 12:58 pm (Pacific Time).

[12] *Id.*

[13] MOC Orders and LOC Orders that are of a size to ''flip'' the Imbalance from a buy to a sell would be rejected. For example, assume: (1) LOC Order to buy 1000 shares; (2) LOC Order to sell 1500 shares, creating an Imbalance of 500 shares on the sell side. A MOC Order or LOC Order to buy 500 shares would be permitted because it achieves equilibrium. However, a MOC Order or LOC Order to buy 1000 shares would not be permitted as it would invert the Imbalance of 500 shares on the sell side to an Imbalance of 500 shares on the buy side.

[14] In Amendment No. 3, the PCX changed the relevant time from 1:02 pm (Pacific Time) to 1:00 pm (Pacific Time).

[15] *See* PCXE Rule 1.1(dd) (definition of NBBO).

[16] *See* PCXE Rule 1.1(h) (definition of BBO).

[17] *See* supra note14.

[18] *See* proposed PCXE Rule 7.35(f)(1).

[19] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* American Stock Exchange (''Amex'') Rule 131(e), Boston Stock Exchange Ch. II, Section 22, Chicago Stock Exchange Article XX, Rule 44, and New York Stock Exchange (''NYSE'') Rule 123C.

[23] *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (SR–NYSE–97–36) (Order approving a revision to the NYSE's policy for entry of MOC and LOC orders and publication of imbalances); Securities Exchange Act Release No. 40123 (June 24, 1998), 63 FR 38230 (July 15, 1998) (SR-Amex-98–10) (Order approving the establishment of LOC orders on the Amex).

[24] *See* Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR–PCX–2003–48).

Commission notes that the original proposal, which was published for the full comment period, elicited no public comment. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b)(2) of the Act,[25] to approve Amendment No. 3 to the PCX's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–24 and should be submitted by [insert date 21 days from date of publication].

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change, (File No. SR–PCX–2003–24), as amended by Amendments No. 1 and 2, is approved, and Amendment No. 3 is approved on an accelerated basis.

[25] 15 U.S.C. 78s(b)(2).

[26] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30838 Filed 12–12–03; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48884; File No. SR–PHLX–2003–66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing Order Granting Accelerated Approval to Amendment No. 3 by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Nasdaq Composite Index®

December 5, 2003.

I. Introduction

On September 29, 2003, the Philadelphia Stock Exchange, Inc. (''PHLX'' 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 proposal to list and trade cash-settled, European-style options on the Nasdaq Composite Index® (the ''Nasdaq Composite Index'' or ''Index''), a capitalization-weighted, A.M.-settled index comprised of approximately 3,400 stocks listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq''). The PHLX filed Amendment Nos. 1 and 2 to the proposal on October 17, 2003.[3] and filed Amendment No. 3 to the proposal on November 13, 2003.[4]

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on October 24, 2003.[5] The Commission received two comment letters regarding the proposal.[6] On November 21, 2003, the PHLX submitted a letter responding to the issues raised in the comment letters.[7] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on and is simultaneously approving, on an accelerated basis, Amendment No. 3.

II. Description of the Proposal

The PHLX proposes to list and trade cash-settled options on the Index. In addition trading full-size options on the Index (''Full-Size Index Options''), the PHLX proposes to trade mini Index options that are 1/10th the size of Full-Size Index Options (''Mini Index Options''), Flexible Exchange Index (''FLEX®'') options on the Index (''FLEX Index Options''), and mini-FLEX Index Options (''Mini-Flex Index Options'') (the Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini-Flex Index Options may be referred to, collectively, as the ''Index Options'').[8] The PHLX will trade the Index Options pursuant to current PHLX rules governing the trading of index options.[9] The PHLX's current rules applicable to the trading of FLEX index options, including the requirement that the minimum size of a Request-for-Quote (''RFQ'') be $10

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mark I. Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated October 17, 2003 (''Amendment No. 1''); and letter from Mark I. Salvacion, Director and Counsel, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated October 17, 2003 (''Amendment No. 2''). In Amendments No. 1, the PHLX revises the position and exercise limits for the proposed options. In Amendments No. 2, the PHLX proposes to list mini-FLEX options on the Nasdaq Composite Index and provides an example of how the proposed mini-FLEX options could be used.

[4] *See* letter from Mark I. Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division. Commission, dated November 12, 2003 (''Amendment No. 3''). In Amendment No. 3, the PHLX represents that the PHLX will notify the staff of the Commission if: (1) Less than 80% of the weight of the Index is options eligible; (2) 10% of the weight of the Index is represented by stocks trading less than 20,000 shares per day; or (3) the largest component of the Index comprises 15% of the weight of the Index, or the top five components comprise 50% of the weight of the Index.

[5] *See* Securities Exchange Act Release No. 48663 (October 20, 2003), 68 FR 61029.

[6] *See* letter from Kathryn L. Beck, Senior Vice President, General Counsel, Corporate Secretary, and Chief Regulatory Officer, Pacific Exchange, Inc. (''PCX''), to Margaret H. McFarland, Deputy Secretary, Commission, dated October 24, 2003 (''PCX Letter''); and letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. (''ISE''), to Jonathan G. Katz, Secretary, Commission, dated November 10, 2003 (''ISE Letter'').

[7] *See* letter from Mark Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division, Commission, dated November 21, 2003 (''PHLX Letter'').

[8] The Full-Size Index Options and the Mini Index Options will feature European-style exercise. The FLEX Index Options and the Mini-Flex Index Options may feature American-style exercise or European-style exercise. *See* PHLX Rule 1079(a)(5).

[9] *See*, particularly, PHLX Rules 1000A through 1102A (Rules Applicable to Trading of Options on Indices) and, generally, PHLX Rules 1000 through 1090 (Options Rules of the PHLX).

million, will apply to Mini-Flex Index Options.[10]

Composition of the Index

The Index is a capitalization-weighted index comprised of approximately 3,400 stocks listed and traded on Nasdaq. The Index includes Nasdaq National Market and Nasdaq SmallCap Market securities. To be eligible for inclusion in the Index, a security must be listed on Nasdaq and must be one of the following types of securities: an American Depositary Receipt (''ADR''), common stock, ordinary share, real estate investment trust (''REIT''), share of beneficial interest, of tracking stock. The Index is comprised of all of the foreign and domestic ADRs, common stocks, ordinary shares, REITs, shares of beneficial interest, and tracking stocks listed on Nasdaq. Convertible debentures, preferred stocks, rights, warrants, units, closed-end funds, exchange-traded funds (''ETFs''), and derivative securities are not included in the Index.

The Index includes most of the stocks listed and traded on the Nasdaq SmallCap Market. Nasdaq SmallCap Market securities are ''reported securities'' for purposes of Rule 11Aa3–1 under the Act.[11] According to the PHLX, Nasdaq SmallCap Market stocks comprised 1.3% of the capitalization of the Index as of July 31, 2003.

The Index includes ten industry groups. As of July 31, 2003, the top five industry groups and their weights in the Index were: (1) computer software and hardware, 52%; (2) healthcare, 14%; (3) financials, 11%; (4) consumer discretionary, 8%; and (5) telecommunications and media, 6%.

As of July 31, 2003, the capitalization of the Index's components ranged from $284 billion to $55,000,[12] and the market capitalization of the Index totaled $2.6 trillion. The largest Index component accounted for 11.12% of the weight of the Index and the smallest component accounted for less than 1% of the weight of the Index. The median capitalization of the Index's components was $110 million.

During the period from January 1, 2003, through July 31, 2003, the average daily trading volume of the component securities representing 95% of the weight of the Index was 850,000 shares, and the average daily trading volume for all of the Index's components was 485,000 shares. The top 100 components accounted for 64% of the weight of the Index and the bottom 100 stocks accounted for 0.01% of the weight of the Index. The prices of the Index's components ranged from $0.11 per share to $780.00 per share. The average share price was $14.15. The share outstanding for each of the Index's components ranged from 10,000 shares to 11 billion shares, with an average of 43 million shares outstanding. According to the PHLX, options eligible securities represented 95% of the weight of the Index.

Calculation of the Index

The value of the Index equals the aggregate value of the Total Shares Outstanding (''TSO'') of each Index component security multiplied by each security's respective price on Nasdaq, divided by the Adjusted Base Period Market (''ABPMV''), and multiplied by the Base Value. The Index began on February 5, 1971, at a Base Value of 100.00.

The Index is disseminated every 15 seconds through the Nasdaq Index Dissemination Services℠ (''NIDS'') during normal Nasdaq trading hours (9:30 a.m. to 4:00 p.m. ET).[13] According to the PHLX, all major market data vendors carry the NIDS data feed.

The Index is calculated using Nasdaq prices (not consolidated) during the day and the Nasdaq Official Closing Price (''NOCP'') for the close.[14] Although the Index is calculated until 4:00 p.m. ET, the Index's closing value may change up until 5:15 p.m. ET due to changes or corrections to the last sale in the Index's component securities.

Maintenance

Nasdaq will maintain the Index, and the PHLX represented that it will not influence any Nasdaq decisions concerning maintenance of the Index.

An Index-eligible security (either an initial public offering or a seasoned security) is added to the Index on the business day immediately after a last sale is established (usually day two of listing on Nasdaq). A component security that is no longer traded on Nasdaq or no longer meets the security-type eligibility criteria is removed from the Index. The Index is updated on a daily basis and there is no periodic rebalancing of Index components.

Changes in the number of shares outstanding driven by corporate events, including stock dividends, splits, and certain spin-offs and rights issuances are adjusted on the ex-date. A change in the TSO arising from other corporate actions including secondary offerings, stock repurchases, conversions, and acquisitions is ordinarily made to the Index on the evening prior to the effective date of the corporate action or as soon as practicable thereafter. Changes are made after the market close and are reflected on *http://www.nasdaqtrader.com/asp/nasdaqcomp.asp* the following morning.

To ensure that there is no discontinuity in the value of the Index, Nasdaq ordinarily adjusts the ABPMV when there is a change in a component security's TSO, a component addition or deletion, or changes due to certain spin-offs and rights offerings.

Although the PHLX is not involved in the maintenance of the Index, it has represented that it will monitor the Index on a semi-annual basis and will notify Commission staff if and when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than $100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; (3) less than 80% of the weight of the Index is options eligible; (4) 10% of the weight of the Index is represented by stocks trading less than 20,000 shares per day; or (5) the largest component of the Index comprises 15% of the weight of the Index, or the top five components comprise 50% of the weight of the Index.[15] According to the PHLX, as of July 31, 2003, component securities representing 2.56% of the capitalization of the Index had market capitalizations

[10] Telephone conversation between Kelly Riley, Senior Special Counsel, Division, Commission, and Mark Salvacion, Director and Counsel, PHLX, on November 25, 2003.

[11] *See* 17 CFR 240.11Aa3–1. A ''reported security'' is defined in Rule 11Aa3–1(a)(4) under the Act as ''any listed equity security or Nasdaq security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan.'' In 2001, the Commission approved the extension of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan'') to include Nasdaq SmallCap Market securities. Accordingly, Nasdaq SmallCap Market securities became securities reported pursuant to an effective transaction reporting plan approved by the Commission.

[12] For companies that list American Depositary Shares, these values represent only the value of the outstanding American Depositary Shares and not the global market capitalization of the issuer, which is the basis for listing on Nasdaq. Nasdaq's minimum listing and maintenance standard for global market capitalization is $50 million.

[13] NIDS is a Nasdaq data feed carrying intra-day index values and valuation data for ETFs listed on Nasdaq.

[14] *See* Securities Exchange Act Release No. 47517 (March 18, 2003), 68 FR 14446 (March 25, 2003) (File No. SR–NASD–2002–158) (approving the establishment of the NOCP).

[15] *See* Amendment No. 3, note 4 *supra.*

of less than $100 million, and securities representing 2.19% of the capitalization of the Index had average daily trading volumes of less than 10,000 shares over the previous six months.

Index Option Trading

As noted above, the Exchange proposes to trade Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini-Flex Index Options. The contract multiplier for Full-Size Index Options will be $100 and the contract multiplier for Mini Index Options will be $10. Each contract will trade under separate ticker symbols and will not be fungible with the other. The size of the underlying Index will remain the same for each contract (*i.e.*, Mini Index Options will not overlie a separate index calculation reduced by 1/10th) and the PHLX represents that it will list similar strikes for each and the settlement values will be uniform.

The Exchange will list strike prices in $5.00 intervals for the Index Options. The minimum tick size for series quoted below $3.00 (*i.e.*, $300 in premium after factoring in the $100 contract multiplier for Full-Size Index Options and $30 in premium after factoring in the $10 contract multiplier for Mini Index Options) will be $.05 (*i.e.,* $5.00 for Full-Size Index Options, and $.50 for Mini Index Options), and for the series quoted above $3.00 the minimum tick size will be $.10 (*i.e.* $10.00 for Full-Size Index Options and $1.00 for Mini Index Options).

The PHLX represents that it has adequate system capacity to trade the Index Options.[16] In addition, the PHLX represents that the Options Price Reporting Authority (''OPRA'') informed the Exchange that trading in the Index Options will have minimal impact on OPRA's current quoting capacity.[17]

Settlement of Index Options

The Full-Size Index Options and Mini Index Options will expire on the Saturday following the third Friday of the expiration month.[18] Trading in the expiring contract month will normally cease at 4:15 p.m. ET on the immediately preceding Thursday. Nasdaq will calculate the exercise settlement value of the Index at option expiration based on the volume-weighted opening price (''Nasdaq VWOP'') of the component securities in the first four minutes of trading (the ''Extraction Period'') on the business day prior to expiration, which normally will be a Friday. Each Index component will have a trade extraction history independently maintained beginning with the receipt of the first day's trade in that issue and continuing for four continuous minutes. Nasdaq will record and reflect trade adjustments during the Extraction Period for each component until the four-minute window for the last component stock closes or 10:30 a.m., whichever is sooner. Nasdaq will then calculate the Nasdaq VWOP for each security based on the extracted trades and aggregate the Nasdaq VWOPs of the Index's components to calculate the Index settlement value. If a stock fails to open for trading, the last available price on the stock will be used to calculate the Index, as is done for currently listed indexes. A stock will be deemed to have failed to open for trading when it does not open for trading prior to 10:30 a.m. on such trading day.

Surveillance

To monitor trading in the Index Options, the Exchange will use the same surveillance procedures it uses currently for the Exchange's sector index options. These procedures include complete access to trading activity in the underlying securities. The Intermarket Surveillance Group (''ISG'') Agreement, dated July 14, 1983, as amended, will be applicable to the trading of the Index Options. According to the PHLX, as of July 31, 2003, 315 Index components representing 3.27% of the weight of the Index are the securities of entities incorporated outside the United States. Of those securities, only 125, or 0.64% of the capitalization of the Index, are the securities of companies incorporated in countries whose domestic equity exchange is not a member of ISG.

Position Limits

The PHLX proposes to amend PHLX Rule 1001A, ''Position Limits,'' to establish position limits of 50,000 contracts for Full-Size Index Options, with 30,000 contracts in the nearest expiration month, and 500,000 contracts for Mini Index Options on either side of the market, with 300,000 contracts total in the nearest expiration month. Exercise limits will be set at the same level as position limits. The proposed amendment to PHLX Rule 1001A will require that the position limits in Full-Size Index Options and Mini Index Options be aggregated for the purpose of determining compliance with position and exercise limits. The PHLX proposes to establish the position limit of the index hedge exemption at 150,000 contracts for Full-Size Index Options and 1,500,000 contracts for Mini Index Options.

The Exchange proposes to amend PHLX Rule 1079, ''FLEX Index and Equity Options,'' to establish a separate position limit of 50,000 contracts on the same side of the market for FLEX Index Options, with 30,000 contracts on the same side of the market in the nearest expiration month. For Mini-Flex Index Options, the PHLX proposes to establish a position limit of 500,000 contracts on the same side of the market, with 300,000 contracts on the same side of the market in the nearest expiration month.

III. Summary of Comments

The Commission received two comment letters [19] regarding the proposal, which raise several concerns with respect to the exclusive licensing agreement PHLX entered into with Nasdaq, the Index licensor, to list and trade the Index Options.[20] The commenters maintain that the PHLX's proposal fails to explain why, in light of the exclusive licensing agreement, the proposal does not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as required in Form 19b–4. One commenter also expresses concern that the terms of the exclusive licensing agreement could create a conflict between the PHLX's financial interests and its obligation to fairly monitor trading in the Index Options, because, according to the commenter, the licensing agreement might impose financial penalties on the PHLX if trading in the Index Options fails to meet specified volume thresholds.[21] In addition, the commenter asserts that the exclusive licensing agreement could lead to order routing biases.[22]

In response, the PHLX argues that its exclusive licensing agreement with Nasdaq will not inhibit competition.[23] Specifically, the PHLX maintains that the Index Options will compete with other index options and other investment products, such as equity options and options on ETFs. Further,

[16] *See* letter from Thomas A. Wittman, Senior Vice President, Trading Floor Development, PHLX, to Yvonne Fraticelli, Division, Commission, dated October 7, 2003.

[17] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Matthew Holm, Director, PHLX, dated September 16, 2003.

[18] Under PHLX Rule 1079(a)(6), a FLEX option on the Index may not expire on any day that falls on or within two business days prior to or subsequent to an expiration day for a non-FLEX option on the Index.

[19] *See* note 6 *supra*.

[20] The Commission notes that ISE specifically stated that it did not object to the PHLX's proposal to trade the Index Options. *See* ISE Letter, note 6 *supra*.

[21] *See* PCX Letter, note 6, *supra*.

[22] *See* PCX Letter, note 6, *supra*.

[23] *See* PHLX Letter, note 7, *supra*.

PHLX argued that the Commission should consider comments relating to its exclusive licensing agreement in light of other similar investment products, such as the Nasdaq 100 Index Tracking Stock, Nasdaq 100 Index Tracking Stock options, and the Fidelity Nasdaq Composite Index Tracking Stock. PHLX believes that the existence of these similar competing products negates the argument that the exclusive licensing agreement imposes a burden on competition. In addition, the PHLX states that Nasdaq and the PHLX have limited the term of exclusively to three years, thereby preserving the PHLX's incentives to promote and facilitate the sale of the Index Options while allowing Nasdaq to seek other promoters of its intellectual property if the PHLX's performance fails to meet expectations. The PHLX believes that its exclusive licensing agreement with Nasdaq increases the PHLX's incentive to promote the Index Options, which should enhance competition.

In response to the commenter's concerns about potential conflicts of interest, the PHLX argues that the Exchange has no conflict of interest because it intends to pass on the licensing fees in pays Nasdaq to the specialist to whom the PHLX allocates the Index Options.[24] Because the PHLX will pass on the licensing fees to the specialist, the PHLX will not experience any financial penalty as a result of a disappointing performance in the licensed product. In addition, the PHLX maintains that its executive licensing agreement with Nasdaq eliminates any conflict of interest between the PHLX's regulatory and financial obligations because the agreement imposes no financial penalties of the PHLX if it fails to reach certain volume thresholds. The PHLX also states that the exclusing licensing agreement provides no incentive for the PHLX to inflate trading volumes artifically.

IV. Discussion

After careful review, 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 and, in particular, the requirements of Section 6(b)(5) of the Act.[25] The Commission finds that the trading of Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini-Flex Options will permit investors to participate in the price movements of the securities listed and traded on Nasdaq. The Commission also believes that the trading of the Index Options will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios, and that the trading of FLEX Index Options and Mini-Flex Index Options will provide investors with additional flexiblity in hedging the risks associated with holding some or all of the Index's component securities.[26] Accordingly, the Commission believes that Index Options will provide investors with an important trading and hedging mechanism. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Index Options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[27]

The trading of Index Options, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the PHLX has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based for purposes of index option trading, and therefore appropriate to permit PHLIX rules applicable to the trading of broad-based options to apply to the Index Options. Specifically, the Commission believes that the Index is broad-based because it reflects a substantial segement of the U.S. equities market. First, as described more fully above, the Index is comprised of approximately 3,400 securities and includes all of the foreign and domestic ADRs, common stocks, ordinary shares, REITs, shares of beneficial interest, and tracking stocks listed and traded on Nasdaq. According to the PHLX, as of July 31, 2003, component securities representing 95% of the weight of the Index were options eligible.[28] Second, the Index includes ten industry groups, with the top five industry groups weighted in the Index as of July 31, 2003, as follows: (1) computer software and hardware, 52%; (2) healthcare, 14%; (3) financials, 11%; (4) consumer discretionary, 8%; and (5) telecommunications and media, 6%. Third, as of July 31, 2003, the total capitalization of the Index was $2.6 trillion, the capitalization of the Index's components ranged from $284 billion to $55,000,[29] and the medium capitalization of the Index's components was $110 million. As of July 31, 2003, the largest Index component accounted for 11.12% of the weight of the Index, and the five highest weighted securities accounted for 29.76% of the weight of the Index. Fourth, the selection and maintenance criteria for the Index's components should serve to ensure that the Index maintains its broad representative sample of stocks.

The Commission also believes that the general broad diversification, capitalizations, liquidity, and relative weighting of the Index's component securities minimize the potential for manipulation of the Index. First, the Index is comprised of approximately 3,400 securities listed and traded on Nasdaq, and no single security dominates the Index. Second, as of July 31, 2003, the total Index capitalization

[24] *See* PHLX Rule 511(b)(ii). According to PHLX, it may condition the allocation of an options book on the specialist's undertaking to pay the Exchange and/or any third party any amounts related to the licensing of the product or any amounts related to the use of intellectual property.

[25] 15 U.S.C. 78f(b)(5). 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).

[26] The Commission previously has approved the listing and trading by the PHLX of FLEX equity and index options. *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (order approving File No. SR–PHLX–96–38) (''January 23, 1998'') (order approving File No. SR–PHLX–96–38) (''FLEX Order''). The Commission's findings and discussion in the FLEX Order with respect to FLEX index options are incorporated by reference herein.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighted by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of Index Options will provide investors with a hedging vehicle that should reflect the overall movement of the Nasdaq market. The Commission also believes that the Index Options will provide investors with a means by which to make investment decisions in the Nasdaq market, allowing them to establish positions or increase positions in Nasdaq market stocks in a cost effective manner.

[28] The option listing standards, which are uniform among the U.S. options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7 million shares; (2) there must be a minimum of 2,000 holders of the underlying security; (3) trading volume must have been at least 2.4 million shares over the preceding 12 months; and (4) the market price per share must meet specified levels. *See, e.g.,* PHLX Rule 1009, ''Criteria for Underlying Securities,'' Commentary .01.

[29] For companies that list American Depository Shares, these values represent only the value of the outstanding American Depository Shares and not the global market capitalization of the issuer, which is the basis for listing on Nasdaq. Nasdaq's minimum listing and maintenance standard for global market capitalization is $50 million. *See* note 12 *supra*.

was $2.6 trillion, the median capitalization of the Index's components was $110 million, the capitalizations of the Index's ten most heavily weighted components (representing 37.68% of the weight of the Index) ranged from approximately $32 billion to approximately $284 billion, and only 2.56% of the capitalization of the Index was comprised of securities with a market capitalization of less than $100 million. Third, during the period from January 1, 2003, through July 31, 2003, the average daily trading volume of the component securities representing 95% of the weight of the Index was 850,000 shares and only 2.19% of the capitalization of the Index was comprised of components with an average daily trading volume of less than 10,000 shares. Fourth, as of July 31, 2003, component securities representing 95% of the weight of the Index were options eligible.[30] Fifth, the PHLX has represented that it will monitor the Index on a semi-annual basis and will notify Commission staff if and when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than $100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; (3) less than 80% of the weight of the Index is options eligible; (4) 10% of the weight of the index is represented by securities trading less than 20,000 shares per day; or (5) the largest component of the Index comprises 15% of the weight of the Index, or the top five components comprise 50% of the weight of the Index.[31] In the event the Index fails to satisfy any of these criteria, the PHLX will notify the Commission to determine the appropriate regulatory response.[32]

The Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index's components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect as well as deter potential manipulations and other trading abuses.

Finally, the Commission believes that the position and exercise limits for the Index Options are designed to minimize the potential for manipulation and other market impact concerns. The position and exercise limits for the Index Options are comparable to the position and exercise limits approved for other broad-based index options.[33]

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the Index Options, can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index Options, including FLEX Index Options and Mini-Flex Index Options, will be subject to the same regulatory regime as the other standardized options traded currently on the PHLX, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index Options.[34]

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the market(s) trading the stocks underlying the derivative product is an important measure for the surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the PHLX and the National Association of Securities Dealers, Inc. (''NASD'') are members of the ISG and the ISG Agreement will apply to the trading of Index Options.[35] In addition, the PHLX will apply to the Index Options the same surveillance procedures it uses currently for existing index options trading on the PHLX.

D. Market Impact

The Commission believes that the listing and trading of Index Options will not adversely impact the underlying securities markets.[36] First, the Index is broad-based and comprised of approximately 3,400 securities, no one of which dominates the Index. Second, as described above, the Index components representing a significant portion of the weight of the Index are highly capitalized and actively traded. Third, the position and exercise limits should serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index Options, like other standardized options traded in the U.S., will be issued and guaranteed by the Options Clearing Corporation (''OCC''). Fifth, existing PHLX index options rules and surveillance procedures will apply to the Index Options.

The Commission also believes that settling expiring Full-Size Options and Mini Index Options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than on closing prices may help to reduce adverse effects on markets for securities underlying Full-Size Index Options and Mini Index Options.[37]

E. FLEX Index Options and Mini-Flex Index Options

The Commission believes that the listing and trading of FLEX Index Options and Mini-Flex Index Options

[30] *See* note 28 *supra* for a description of the PHLX's options eligibility standards.

[31] *See* Amendment No. 3, note 4 *supra.*

[32] If the composition of the Index's underlying securities were to change substantially, the Commission's decision regarding the appropriateness of the Index's current maintenance standards would be reevaluated, and additional approval under Section 19(b) of the Act might be necessary to continue to trade the Index Options.

[33] *See, e.g.,* Securities Exchange Act Release No. 48591 (October 2, 2003), 68 FR 58728 (October 10, 2003) (File No. SR–CBOE–2003–17) (approving options on 11 broad-based Russell Indexes, with position limits for each index option of 50,000 contracts on either side of the market and no more than 30,000 contracts in the series in the nearest expiration month).

[34] The Commission previously has designated FLEX index options as standardized options for the purposes of the options disclosure framework established under Rule 9b–1 of the Act. *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993) (File Nos. SR–CBOE–92–17; SR–OCC–92–33; ODD–93–1).

[35] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the NASD are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of ISG. As noted above, the PHLX represents that Index component securities comprising only 0.64% of the weight of the Index are incorporated in countries where the domestic equity exchange is not a member of the ISG.

[36] As noted above, both the PHLX and OPRA have represented that they have the necessary systems capacity to support the new series of index options that would result from the introduction of the Index Options. *See* notes 16 and 17, *supra,* and accompanying text.

[37] *See, e.g.,* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving File No. SR–CBOE–92–09) (''1992 Order'').

should provide investors with more tailored options on the Index and extend to investors the benefits of a listed, exchange market in customized index options.[38] The benefits of the PHLX's options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the PHLX. In addition, the Commission believes that the proposal to list and trade FLEX Index Options and Mini-Flex Index Options could help the PHLX to compete with the over-the-counter (''OTC'') market in customized index options and help the PHLX to meet the demands of portfolio managers and other institutional investors who may use the OTC market to meet their hedging needs. The Commission notes that the PHLX rules governing the trading of FLEX index options, including the minimum size requirement for an RFQ, will apply to Mini-Flex Index Options.[39]

Under the PHLX's rules, FLEX Index Options and Mini-Flex Index Options can be constructed with expiration exercise settlement based on the closing values of the Index's component securities, which potentially could result in adverse effects for the markets in these securities.[40] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps to alleviate stock market volatility,[41] these market impact concerns are reduced in the case of FLEX Index Options and Mini-Flex Index Options because the expiration of these options will not correspond to the normal expiration of any non-FLEX options (including options overlying the Index), stock index futures, and options on stock index futures. In particular, FLEX options may never expire on any ''Expiration Friday'' because under the PHLX's rules the expiration date of a FLEX option may not occur on a day that is on, or within, two business days of the expiration date of a non-FLEX option.[42] The Commission believes that this should reduce the possibility that the exercise of FLEX Index Options or Mini-Flex Index Options at expiration will cause any additional pressure on the market for the underlying securities at the same time non-FLEX Index Options expire.

F. Exclusive Licensing Agreement

As noted above, both commenters raised concerns about the PHLX's exclusive licensing agreement with Nasdaq to trade the Index Options. The Commission notes that the ISE has filed a petition for rulemaking to amend Rule 19c–5 under the Act[43] to prohibit options exchanges from entering into exclusive licensing agreements with respect to index option products.[44] The Commission believes that the issues raised by the commenters and by ISE in its petition for rulemaking regarding the exclusive licensing of index option products should be considered comprehensively rather than on an *ad hoc* basis in the context of a particular index option product or products, such as the Index Options. In addition, the Commission believes that investors will benefit from the availability of the Index Options because, as described above, they will provide investors with additional hedging and trading vehicles. Accordingly, the Commission believes that it is appropriate in the public interest to approve the current proposal in order to make the Index Options available to investors while the Commission considers the issues presented by the exclusive licensing of index option products in the context of the ISE's petition for rulemaking.

G. Accelerated Approval of Amendment No. 3

The Commission finds good cause to approve Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 strengthens the proposal by representing that the PHLX will notify the Commission staff upon the occurrence of certain changes in the Index. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[45] to approve Amendment 3 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PHLX–2003–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods. 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–2003–66 and should be submitted by January 5, 2004.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that Amendment No. 3 be approved on an accelerated basis and that the proposed rule change (SR–PHLX–2003–66), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[38] FLEX options allow investors to customize certain terms, including size, term to expiration, exercise style, exercise price, and exercise settlement value.

[39] *See* note 10 *supra* and accompanying text.

[40] *See* 1992 Order.

[41] *See* 1992 Order.

[42] *See* PHLX Rule 1079(a)(6).

[43] 17 CFR 240.19c–5.

[44] *See* letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan Katz, Secretary, Commission, dated November 1, 2002.

[45] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3555, Amdt. 3]

State of California

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective December 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning October 21, 2003 and continuing through December 2, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 9, 2004, and for economic injury the deadline is July 27, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 8, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30847 Filed 12–12–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Questionnaire About Employment or Self-Employment Outside the United States—20 CFR 404.401(b)(1), 404.415, and 404.417—0960–0050. The information collected on form SSA–7163 is used by SSA to determine whether work performed by beneficiaries outside the United States (U.S.) is cause for deductions from their monthly benefits; to determine which of two work tests, foreign or regular, is applicable; and to determine the months, if any, for which deductions should be imposed. The respondents are beneficiaries living and working outside the U.S.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

2. Beneficiary Interview and Auditor's Observation Form—0960–0630. The Beneficiary Interview and Auditor's Observations form, form SSA–322, collects information that will be used by the SSA's Office of Inspector General to interview beneficiaries and/or their caregivers and to determine whether representative payees are complying with their duties and responsibilities. Respondents to this collection are randomly selected Supplemental Security Income (SSI) recipients and Social Security beneficiaries who have representative payees.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 50 hours.

3. Site Review Questionnaire for Volume Payees (SSA–637); Site Review Questionnaire for Fee-for-Service Payees (SSA–638); Site Review Beneficiary Interview Form (SSA–639)—20 CFR 404.2035, 404.2065, 416.665, 416.701, and 416.708—0960–0633. In situations where a Social Security beneficiary is incompetent or physically unable to take care of his or her own affairs, SSA may make payment of Social Security and SSI benefits to a relative, other person, or organization when the best interest of the beneficiary will be served. In certain situations, SSA conducts site reviews in order to ensure that payees are carrying out their responsibilities in accordance with representative payment policies and procedures. This enables SSA to identify poor payee performance, to uncover misuse, and to initiate corrective action. Triennial site reviews are conducted for fee-for-service payees and all volume payees (*i.e.*, organizations serving 100 or more beneficiaries and individuals serving 20 or more beneficiaries). The reviews include a face-to-face meeting with the payee (and appropriate staff), examination/verification of a sample of beneficiary records and supporting documentation, and usually include beneficiary (if competent adult) or custodian (if different from payee) interviews. Forms SSA–637, SSA–638, and SSA–639 are used to record the information collected during these interviews. The respondents are certain representative payees and competent Social Security beneficiaries.

Type of Request: Extension of an OMB-approved collection.

Type of respondent	Number of respondents	Frequency of response	Average burden per response minutes	Estimated annual burden hours
Volume and Fee-for-Service Payees	680	1	60	680
Beneficiaries	2,040	1	10	340
Total	2,720			1,020

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at

410–965–0454, or by writing to the address listed above.

1. Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, and 416.665—0960–0576. Form SSA–6233 is used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that the expenditures of funds from the dedicated account are in compliance with the law. The respondents are individuals and organizational representative payees who are required by law to establish a separate (''dedicated'') account in a financial institution for certain past-due SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

2. Employment Relationship Questionnaire—20 CFR 404.1007—0960–0040. SSA uses the information collected on Form SSA–7160 to determine whether the Social Security number-holder is self-employed or is an employee. The respondents are applicants for Social Security benefits and/or their employers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 19,792 hours.

3. Continuation of Full Benefit Standard for Persons Institutionalized—20 CFR 416.212—0960–0516. SSA is required by law to establish procedures for collecting information on whether an SSI recipient who becomes institutionalized (*e.g.* hospital, nursing home) is eligible for continued benefits, based on the full federal rate, if a physician certifies that he expects the period of medical confinement to last no more than 90 days. The individual, or someone acting on his behalf, must demonstrate that he needs to pay some or all of the expenses of maintaining the home to which he expects to return. The respondents are applicants for SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 5,000 hours.

Dated: December 8, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–30825 Filed 12–12–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program Update and Request for Review, Louisville International Airport, Louisville, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Regional Airport Authority of Louisville and Jefferson County, Kentucky for Louisville International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Louisville International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 16, 2004.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 18, 2003. The public comment period ends February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Airports District Office, 2862 Airport Business Park Drive, Bldg. G, Memphis, Tennessee 38118; 901–322–8184. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Louisville International Airport are in compliance with applicable requirements of part 150, effective November 18, 2003. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 16, 2004. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Regional Airport Authority of Louisville and Jefferson County, Kentucky, submitted to the FAA on February 12, 2003, noise exposure maps, descriptions and other documentation that were produced during the FAR part 150 Noise Study Update, dated January 30, 2003. It was requested that the FA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the nose exposure maps and related descriptions submitted by the Regional Airport Authority of Louisville and Jefferson County, Kentucky. The specific documentation determined to constitute the noise exposure maps includes:

Existing Noise Exposure Map, 2003, Figure 10–1;

Future Noise Exposure Map, 2008, Figure 10–2;

Noise Monitoring Sites, appendix E, part 2 of volume 2 and accompanying Figure 6;

Flight Tracks for the existing condition, 2003, and 5-year, 2008 are depicted in Figures 6–3 through 6–6 and Figures 10–1 and 10–2;

Table 6–1 provides the Aviation Forecast and appendices D and G

updates and justifies the forecast, the forecast is consistent and reasonable;

Existing Land Use depicted by Figures 5–1; Future Land Use depicted by Figures 5–2 and 5–2, Noise Exposure Map 2003 Impacts are tabulated in Table 10–3 and Noise Exposure Map 2008 Impacts are tabulated in Table 10–5;

Consultation Methodology and Program are presented in appendix A.

National Register of Historic Places described, section 5.3 at pages 5–7 through 5–9, Figure 5–4, Table 5–1 and appendix C.

The FAA has determined that these maps for Louisville International Airport are in compliance with applicable requirements. This determination is effective on November 18, 2003. FAA's determination on an airport opertor's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properites should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatiblity program for Louisville International Airport, also effective on November 18, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 16, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden of interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of these noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 2862 Business Park, Bldg G, Memphis, Tennessee 38118-1555.

Regional Airport Authority of Louisville and Jefferson County, P.O. Box 9129, Louisville, Kentucky 40209–0129.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis Airports District Office, Memphis, Tennessee, November 18, 2003.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 03–30911 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–74]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on December 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–15749.

Petitioner: Qantas Airways, Ltd.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/Disposition: To permit Qantas Airways, Ltd., to make its inspection procedures manual available to its supervisory, inspection, and other relevant personnel rather than give an individual copy to each of its supervisory and inspection personnel. *Grant, 11/12/2003 , Exemption No. 8173.*

Docket No.: FAA–2003–16532.

Petitioner: Avigate, LLC.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Avigate, LLC, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 11/21/2003, Exemption No.8179.*

Docket No.: FAA–2003–16486.

Petitioner: CJPJ Associates, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit CJPJ Associates, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 11/21/2003, Exemption No. 8178.*

Docket No.: FAA–2002–12137.

Petitioner: Rockwell Collins, Inc.

Section of 14 CFR Affected: 14 CFR 21.327(a).

Description of Relief Sought/Disposition: To permit Rockwell

Collins, Inc., to use a printout from its Order Management System for a Class II product instead of the Application for Export Certificate of Airworthiness. *Grant, 11/20/2003, Exemption No. 6604D.*

Docket No.: FAA–2001–9142.
Petitioner: Honeywell International, Inc., Engines, Systems, and Services.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit Honeywell International, Inc., Engines, Systems, and Services to issue export airworthiness approval tags for class II and class III products manufactured at Honeywell's Singapore facility. *Grant, 11/17/2003, Exemption No. 7075C.*

Docket No.: FAA–2003–16196.
Petitioner: Alaska Air Carriers Association.
Section of 14 CFR Affected: 14 CFR 43.3(g), 121.709(b)(3), and 135.443(b)(3).
Description of Relief Sought/ Disposition: To permit certificated and appropriately trained pilots employed by an Alaska Air Carriers Association-member airline to remove and reinstall passenger seats in aircraft type certificated for 10 to 19 passengers. *Grant, 11/12/2003, Exemption No. 8176.*

Docket No.: FAA–2003–16403.
Petitioner: PSA Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit PSA Airlines, Inc., to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command while that pilot in command is performing prescribed duties during at least one flight leg that includes a takeoff and landing when completing or upgrading training as specified in § 121.424. *Grant, 11/14/ 2003, Exemption No. 8175.*

Docket No.: FAA–2003–16435.
Petitioner: Quest Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Quest Aviation, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in those aircraft. *Grant, 11/13/2003, Exemption No. 8172.*

Docket No.: FAA–2001–9441.
Petitioner: Bombardier Services Corporation.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Bombardier Services Corporation to assign copies of its inspection procedures manual (IPM) to key individuals within departments and to strategically place an adequate number of IPMs for access by all employees, rather than giving a copy of the IPM to all supervisory and inspection personnel. *Grant, 11/12/ 2003, Exemption No. 8171.*

Docket No.: FAA–2001–10169.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit the Boeing Company to give copies of its inspection procedures manual (IPM) to key individuals and make the IPM available electronically to all other employees, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 11/12/2003, Exemption No. 7065B.*

Docket No.: FAA–2003–15806.
Petitioner: Ameristar Air Cargo, Inc.
Section of 14 CFR Affected: 14 CFR 47.49 and 91.203(a) and (b).
Description of Relief Sought/ Disposition: To permit Ameristar Air Cargo, Inc., to operate its U.S.-registered aircraft in domestic operations temporarily following the incidental loss or mutilation of that aircraft's airworthiness certificate or registration certificate, or both. *Grant, 9/4/2003, Exemption No. 8127.*

Docket No.: FAA–2003–15862.
Petitioner: John Drew Atkin, IV.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit John Drew Atkin, IV, to conduct certain flight training in certain Beechcraft Bonanza/Debonair airplanes that are equipped with a functioning throw-over control wheel. *Grant, 9/4/2003, Exemption No. 8126.*

Docket No.: FAA–2003–16009.
Petitioner: Richard E. Druschel.
Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Richard E. Druschel to conduct certain flight training and to provide simulated instrument experience in certain Beech airplanes that are equipped with a functioning throw-over control wheel. *Grant, 9/4/2003, Exemption No.8125.*

Docket No.: FAA–2001–11253.
Petitioner: TykeTube Industries, Inc.
Section of 14 CFR Affected: 14 CFR 91.107(a)(3)(i), (iii)(B), and (iii)(C)(3), 121.311(b)(1), (b)(2)(ii), (b)(2)(iii)(C), and (c), 125.211(b)(1), (b)(2)(ii), (b)(2)(iii)(C), and (c), and 135.128(a)(1), (a)(2)(ii), (a)(2)(iii)(C), and (b).
Description of Relief Sought/ Disposition: To permit any person who operates any aircraft, and any person aboard any U.S.-registered civil aircraft to use TykeTube's onboard child restraint system that is not manufactured to U.S. standards, does not conform to all applicable Federal motor vehicle safety standards, and is not certified for use in motor vehicles and aircraft; and has not been accepted by the FAA during all phases of flight, including critical phase of flight. *Denial, 9/5/2003, Exemption No.8130.*

Docket No.: FAA–2001–10798.
Petitioner: Michelin Aircraft Tire Corporation.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit the Michelin Aircraft Tire Corporation to issue U.S. export airworthiness approvals for aircraft tires manufactured and located at their Nong Khae, Thailand facility. *Grant, 9/8/2003, Exemption No.7099D.*

Docket No.: FAA–2001–10918.
Petitioner: The Goodyear Tire and Rubber Company.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit the Goodyear Tire and Rubber Company to issue export airworthiness approvals for aircraft tires manufactured and located at their Thailand facility under Technical Standard Order TSO–C62D. *Grant, 9/8/2003, Exemption No. 6682F.*

Docket No.: FAA–2003–15175.
Petitioner: TACA International Airlines, S.A.
Section of 14 CFR Affected: 14 CFR 61.58(b) and (c).
Description of Relief Sought/ Disposition: To permit TACA International Airlines, S.A., to rely upon completion of International Civil Aviation Organization-approved proficiency checks to satisfy FAA requirements. Additionally it would allow U.S.-licensed pilots in command to be included under § 61.58(b) and (c). *Denial, 9/10/2003, Exemption No.8129.*

Docket No.: FAA–2002–11286.
Petitioner: Vintage Flying Museum.
Section of 14 CFR Affected: 14 CFR 91.315, 119.21(a), and 119.5(g).
Description of Relief Sought/ Disposition: To permit the Vintage Flying Museum to operate its Boeing B–17G for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 9/12/52003, Exemption No. 7411B.*

Docket No.: FAA–2000–8468.
Petitioner: Yankee Air Force, Inc.
Section of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To permit the Yankee Air

Force to operate its B–25 and Boeing B–17 for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 9/12/2003, Exemption No. 6631E.*

Docket No.: FAA–2001–12484.
Petitioner: Dynamic Aviation.
Section of 14 CFR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/Disposition: To permit pilots employed by Dynamic Aviation to conduct aerial applications of insecticides or pheromones from aircraft not equipped with a load jettisoning system. *Grant, 9/15/2003, Exemption No. 7827C.*

Docket No.: FAA–2002–11965.
Petitioner: Executive Jet Management, Inc.
Section of 14 CFR Affected: 14 CFR 61.3(a) and (c).
Description of Relief Sought/Disposition: To permit Executive Jet Management, Inc., pilots to operate aircraft, on a temporary basis, without their pilot and medical certificates in their physical possession or readily accessible in the aircraft. *Denial, 9/15/2003, Exemption No. 8131.*

Docket No.: FAA–2003–15251.
Petitioner: The North American Powered Parachute Association, Inc.
Section of 14 CFR Affected: 14 CFR 61.3(a) and 61.31(c) and (d)(1).
Description of Relief Sought/Disposition: To provide a means to establish training and pilot certification requirements for powered parachutes and would permit persons to operate and provide training in an FAA-certificated powered parachute without a pilot certificate or rating for that aircraft. *Denial, 9/17/2003, Exemption No. 8132.*

Docket No.: FAA–2001–10283.
Petitioner: TBM, Inc., and Butler Aircraft Company.
Section of 14 CFR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/Disposition: To permit the Butler Aircraft Company to operate its McDonnell Douglas DC–6 and DC–7 airplanes without a flight engineer during flightcrew training, ferry operations, and test flights that are conducted to prepare for firefighting operations carried out under part 137. *Grant, 9/17/2003, Exemption No. 2989L.*

Docket No.: FAA–2003–16068.
Petitioner: Intricate Bay Air Services.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Intricate Bay Air Services to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/22/2003, Exemption No. 8134.*

Docket No.: FAA–2003–16067.
Petitioner: Corporate Air.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Corporate Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/22/2003, Exemption No. 8133*

Docket No.: FAA–2001–10364.
Petitioner: Grand Aire Operations, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Grand Aire Operations, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/22/2003, Exemption No. 6723C.*

Docket No.: FAA–2001–11177.
Petitioner: Hawaiian Airlines.
Section of 14 CFR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F to part 121.
Description of Relief Sought/Disposition: To permit Hawaiian Airlines to conduct an annual single-visit training program for its pilots. *Grant, 9/25/2003, Exemption No. 7108B.*

Docket No.: FAA–2003–16242.
Petitioner: Albuquerque International Balloon Fiesta, Inc.
Section of 14 CFR Affected: 14 CFR 61.56.
Description of Relief Sought/Disposition: To permit foreign pilots to act as pilot in command without accomplishing a flight review, given in an aircraft for which that pilot is rated, by an authorized instructor during the Albuquerque International Balloon Fiesta. Grant, 9/26/2003, *Exemption No. 8135.*

Docket No.: FAA–2003–16242.
Petitioner: Albuquerque International Balloon Fiesta, Inc.
Section of 14 CFR Affected: 14 CFR 61.56.
Description of Relief Sought/Disposition: To permit foreign pilots to act as pilot in command without accomplishing a flight review, given in an aircraft for which that pilot is rated, by an authorized instructor during the Albuquerque International Balloon Fiesta. *Grant, 9/29/2003, Exemption No. 8135A.*

Docket No.: FAA–2001–10289.
Petitioner: EVA Airways Corporation.
Section of 14 CFR Affected: 14 CFR 61.77(a) and (b), and 63.23(a) and (b).
Description of Relief Sought/Disposition: To permit the issuance of U.S. special purpose pilot authorizations and U.S. special purpose flight engineer certificates to airmen employed by EVA Airways Corporation without those airmen meeting the requirements to hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation, provided the airmen hold appropriate certificates issued by Taiwan's Civil Aeronautics Administration. *Grant, 9/30/2003, Exemption No. 6689D.*

Docket No.: FAA–2003–14955.
Petitioner: Leading Edge Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Leading Edge Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 9/30/2003, Exemption No.8138.*

Docket No.: FAA–2003–14637.
Petitioner: Goodrich Corporation.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit the Goodrich Corporation to assign its inspection procedures manual (IPM) to fixed locations in its repair station and make the IPM available electronically to all personnel rather than a paper copy of the IPM to each supervisory and inspection personnel. *Grant, 10/1/2003, Exemption No. 8026A.*

Docket No.: FAA–2001–8805.
Petitioner: NetJets Sales, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit NetJets Sales, Inc., to place and maintain its inspection procedures manual (IPM) in strategic locations throughout its repair station facility, rather than give a copy of its IPM to each of its supervisory and inspection personnel. *Grant, 10/1/2003, Exemption No. 8117A.*

Docket No.: FAA–2001–10410.
Petitioner: Columbia Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Columbia Helicopters, Inc., to make its inspection procedures manual (IPM) available electronically or in paper format in fixed locations, rather than give a copy to each of its supervisory and inspection personnel. *Grant, 10/1/2003, Exemption No. 7622B.*

Docket No.: FAA–2001–10555.
Petitioner: ASTAR Air Cargo, Inc.

Section of 14 CFR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F to part 121.

Description of Relief Sought/ Disposition: To permit ASTAR Air Cargo, Inc. (ASTAR), to combine recurrent flight and ground training and proficiency checks for ASTAR's flight crewmembers into a single annual training and proficiency evaluation program. *Grant, 10/3/2003, Exemption No. 6727C.*

Docket No.: FAA–2002–12501.

Petitioner: Butler, Dallas E. *et al.*

Section of 14 CFR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition: To permit the petitioners to act as pilots in operations conducted under part 121 after reaching their 60th birthdays. *Denial, 10/6/2003, Exemption No. 8141.*

Docket No.: FAA–2001–10609.

Petitioner: Tulsa Technology Center.

Section of 14 CFR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75(a) and (b).

Description of Relief Sought/ Disposition: To permit Tulsa Technology Center (TTC) to administer the FAA oral and practical tests to students at times and places identified in TTC's operations handbook; approve students for retesting within 30 days after failure without requiring a signed statement certifying additional instruction has been given in the failed area; administer the aviation mechanic general written test to students immediately following successful completion of the general curriculum, before they meet the experience requirements of § 65.77; and conduct oral and practical tests as an integral part of the education process rather than conducting the tests on students' successful completion of the written tests. *Grant, 10/9/2003, Exemption No. 6569D.*

Docket No.: FAA–2002–12931.

Petitioner: Saudi Arabian Airlines Corporation.

Section of 14 CFR Affected: 14 CFR 63.2.

Description of Relief Sought/ Disposition: To permit Saudi Arabian Airlines Corporation to be examined for and issued U.S. airmen certificates and rating required to operate its fleet as if Saudi Arabian Airlines Corporation were a certificated U.S. air carrier. *Grant, 10/8/2003, Exemption No. 8150.*

Docket No.: FAA–2003–15528.

Petitioner: Honeywell International, Inc.

Section of 14 CFR Affected: 14 CFR 21.603(a) and 21.607(d).

Description of Relief Sought/ Disposition: To permit Honeywell International Inc., to continue production and support of products for which it has not been granted a Technical Standard Order Authorization (TSOA) during the TSOA application process. *Denial, 10/10/2003, Exemption No. 8148.*

Docket No.: FAA–2003–14780.

Petitioner: Ronald DiGiovanni.

Section of 14 CFR Affected: 14 CFR 61.113(c).

Description of Relief Sought/ Disposition: To permit members of Ronald DiGiovanni's family to cover all of his operating expenses when being carried as passengers on an airplane that he is operating as pilot in command under his private pilot certificate. *Denial, 10/10/2003, Exemption No. 8149.*

Docket No.: FAA–2003–16111.

Petitioner: Clayton P. Janosek.

Section of 14 CFR Affected: 14 CFR 61.83.

Description of Relief Sought/ Disposition: To permit Clayton P. Janosek to obtain a student pilot certificate for operation of an aircraft other than a glider or balloon. *Denial, 10/9/2003, Exemption No. 8143.*

Docket No.: FAA–2003–16112.

Petitioner: Logan E. Hoff.

Section of 14 CFR Affected: 14 CFR 61.83.

Description of Relief Sought/ Disposition: To permit Logan E. Hoff to obtain a student pilot certificate for operation of an aircraft other than a glider or balloon. *Denial, 10/9/2003, Exemption No. 8144.*

Docket No.: FAA–2003–16129.

Petitioner: Nord Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Nord Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/9/2003, Exemption No. 8146.*

Docket No.: FAA–2003–16254.

Petitioner: Sunset Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sunset Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/9/2003, Exemption No. 8147.*

Docket No.: FAA–2003–16004.

Petitioner: PACE Airlines.

Section of 14 CFR Affected: 14 CFR 91.513(b)(4), and 121.309(b)(4).

Description of Relief Sought/ Disposition: To permit PACE Airlines to operate its aircraft with emergency and floatation equipment listed in §§ 121.309, 121.310, 121.339, and 121.340 that are not marked as to the date of last inspection. *Denial, 10/9/2003, Exemption No. 8145.*

Docket No.: FAA–2001–9371.

Petitioner: Sunrise Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sunrise Airlines, Inc., to operate certain aircraft under part 135 without a TSO–112C (Mode S) transponder installed in those aircraft. *Grant, 10/9/2003, Exemption No. 7061B.*

Docket No.: FAA–2003–14582.

Petitioner: Brainerd Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 133.33(d) and (e), and 133.45(d).

Description of Relief Sought/ Disposition: To permit Brainerd Helicopters, Inc. to operate its Sikorsky S70C helicopters, a restricted-category helicopter, in external-load operations. *Denial, 10/9/2003, Exemption No. 8137.*

Docket No.: FAA–2001–10446.

Petitioner: Homestead Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Homestead Helicopters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/14/2003, Exemption No. 6733C.*

Docket No.: FAA–2002–11655.

Petitioner: IHC Life Flight.

Section of 14 CFR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought/ Disposition: To permit IHC Life Flight to conduct Class D rotorcraft-load combination rescue operations with an Augusta A 109K–2 helicopter certificated in the normal category under part 27. *Grant, 10/14/2003, Exemption No. 7118B.*

Docket No.: FAA–2003–15925.

Petitioner: AirTran Airways, Inc.

Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought/ Disposition: To permit AirTran Airways, Inc. to conduct 10 operations at LaGuardia Airport without the required slots. *Denial, 10/3/2003, Exemption No. 8139.*

Docket No.: FAA–2001–9581.

Petitioner: Goodrich Aviation Technical Services, Inc.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Goodrich Aviation Technical Services, Inc., to

make its inspection procedures manual (IPM) available to its supervisory and inspection personnel in lieu of giving a copy of the IPM to each supervisory and inspection personnel. *Grant, 10/14/2003, Exemption No. 7024B.*

Docket No.: FAA–2003–16270.
Petitioner: Evergreen Helicopters International, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Evergreen Helicopters International, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/16/2003, Exemption No. 8155.*

Docket No.: FAA–2001–10831.
Petitioner: Pomona Valley Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/Disposition: To permit the Pomona Valley Pilots Association to conduct local sightseeing flights at Cable Airport, Upland, California, on January 10 and 11, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 10/16/2003, Exemption No. 8154.

Docket No.: FAA–2002–12010.
Petitioner: Taunton Airport Association, Inc.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/Disposition: To permit the Taunton Airport Association, Inc., to conduct local sight seeing flights at the Taunton Municipal Airport, for its annual charity fundraising event on October 25, 2003, with a rain date of October 26, 2003, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/16/2003, Exemption No. 8152.*

Docket No.: FAA–2002–13888.
Petitioner: Western North Carolina Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/Disposition: To permit the Western North Carolina Pilots Association to conduct local sightseeing flights at the Asheville Regional Airport, Asheville, North Carolina, on October 25, 2003, and October 26, 2003, for compensation or hire, without complying with certain anti-drug an alcohol misuse prevention requirements of part 135. *Grant, 10/16/2003, Exemption No. 8153.*

Docket No.: FAA–2001–9457.
Petitioner: Century Aviation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Century Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/17/2003, Exemption No. 8156.*

Docket No.: FAA–2002–11494.
Petitioner: Segrave Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Segrave Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/21/2003, Exemption No. 7723A.*

Docket No.: FAA–2003–14960.
Petitioner: Mark Gunther.
Section of 14 CFR Affected: 14 CFR 65.77.
Description of Relief Sought/Disposition: To permit Mark Gunther to apply for the FAA mechanic certificate with airframe rating without the required graduation certificate or completion from a certificated Aviation Maintenance Technician School. *Denial, 10/14/2003, Exemption No. 8158.*

Docket No.: FAA–2001–10469.
Petitioner: United Air Lines, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit United Airlines, Inc., to make one copy of its inspection procedures manual (IPM) available to its supervisory and inspection personnel rather than give a copy of the IPM to each of its supervisory and inspection personnel. *Grant, 10/20/2003, Exemption No. 6393D.*

Docket No.: FAA–2003–16215.
Petitioner: Arkansas Aviation Technologies Center.
Section of 14 CFR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75(a).
Description of Relief Sought/Disposition: To permit the Arkansas Aviation Technologies Center, under contract to The Aviation Tech Center (TATC) to administer the FAA oral and practical mechanic examinations to students at times and places identified in TATC's FAA-approved operations manual; conduct oral and practical mechanic examinations as an integral part of the education process rather than conducting the tests upon students' successful completion of the mechanic written examinations; allow applicant to apply for retesting within 30 days after failure without presenting a signed statement certifying that additional instruction has been given in the failed area; and administer the Aviation Mechanic General written test to students immediately following successful completion of the general curriculum, prior to meeting the experience requirements of § 65.77. *Grant, 10/27/2003, Exemption No. 8162.*

Docket No.: FAA–2003–16331.
Petitioner: Minuteman Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Minuteman Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *Grant, 10/30/2003, Exemption No. 8163.*

[FR Doc. 03–30909 Filed 12–12–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16629]

Notice of Receipt of Petition for Decision That Nonconforming 2000 Ford F150 Pickup Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 Ford F150 pickup trucks are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 Ford F150 pickup trucks 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 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.

DATE: The closing date for comments on the petition is January 14, 2004.

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 a.m. to

5 p.m.]. 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 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**.

Automobile Concepts, Inc. of North Miami, Florida (''AMC'') (Registered Importer 01–278) has petitioned NHTSA to decide whether 2000 Ford F150 pickup trucks manufactured in the United States for export to foreign markets are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2000 Ford F150 pickup trucks that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 Ford F150 pickup trucks 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.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2000 Ford F150 pickup trucks, 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 2000 Ford F150 pickup trucks 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*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 108 *Lamps, Reflective Devices and Associated Equipment*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power Window Systems*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control 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.*

The 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: replacement of the instrument cluster with a U.S.-model component so that the speedometer reads in miles per hour.

Standard No. 120 Tire Selection and Rims: installation of a tire information placard.

Standard No. 208 Occupant Crash Protection: inspection of all vehicles and replacement of any seat belts, air bag control units, air bags, and knee bolsters with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicle should be equipped with an automatic restraint system consisting of driver's and passenger's air bags and knee bolsters, air bag crash sensors, and an air bag control unit. Petitioner also states that the vehicle should be equipped with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicle is equipped with a seat belt warning lamp identical to that on the vehicle's U.S.-certified counterpart.

The petitioner also 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 to the edge of the driver's side door or to the latch post nearest the driver to meet the requirements of 49 CFR Part 565. In addition, a certification label must be affixed to the driver's side doorjamb to meet the requirements of 49 CFR Part 567.

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: December 9, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30830 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16672]

Notice of Receipt of Petition for Decision That Nonconforming 2003 Saab 9.3 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Saab 9.3 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 2003 Saab 9.3 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 January 14, 2004.

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 a.m. to 5 p.m.]. 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 of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 2003 Saab 9.3 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2003 Saab 9.3 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003 Saab 9.3 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 2003 Saab 9.3 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 2003 Saab 9.3 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*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control 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*, 225 *Child Restraint Anchorage Systems*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release.*

Petitioner states that the vehicles also comply with the Bumper Standard found at 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: reprogramming of the instrument cluster to comply with the requirements of this standard.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: installation of U.S.-model front sidemarker lamps.

Standard No. 110 Tire Selection and Rims: installation of a tire information placard.

Standard No. 111 Rearview Mirror: inscription of the required warning statement on the passenger side rearview mirror, or replacement of that mirror with a U.S.-model component.

Standard No. 208 Occupant Crash Protection: inspection of all vehicles to ensure that the front and rear seat belts are U.S.-model components and installation of those components in vehicles that are not already so equipped. The petitioner states that the vehicles comply with the standard in all other respects.

The petitioner states that all vehicles must be inspected to ensure compliance with the Theft Prevention Standard at 49 CFR part 541, and that anti-theft markings must be added to vehicles that are not already so marked.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles 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: December 9, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30831 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16656; Notice 1]

Hyundai America Technical Center, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Hyundai America Technical Center, Inc. (Hyundai), has determined that the rims on certain vehicles that it produced in 2000 through 2003 do not comply with S5.2(a) and S5.2(c) of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire selection and rims for motor vehicles other than passenger cars.'' Hyundai has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hyundai has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Hyundai's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 250,348 model year 2001, 2002, 2003 and 2004 Hyundai Santa Fe 4-door multipurpose passenger vehicles produced between March 31, 2000 and October 1, 2003. S5.2 of FMVSS 120, rim marking, requires that each rim be marked with certain information on the weather side, including:

S5.2(a) A designation which indicates the source of the rim's published nominal dimensions, and S5.2(c) The symbol DOT.

The rims installed on the affected vehicles do not contain the markings required by S5.2(a) or S5.2(c).

Hyundai believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted. Hyundai states that the affected rims are 6.5J x 16″ aluminum alloy, which are commonly available and utilized in the United States. They are a correct specification for mounting the P225/70R16 tires specified for all Santa Fe models, and are capable of carrying the GVWR of the vehicle. Hyundai first became aware of this noncompliance of Santa Fe vehicles during a regulatory compliance review during August 2003.

Hyundai states that no accidents or injuries have occurred, and no customer complaints have been received related to the lack of the markings or any problem that may have resulted from the lack of the markings. Hyundai further states that the missing markings do not affect the performance of the wheels or the tire and wheel assemblies.

The rims are marked in compliance with S5.2(b), rim size designation; S5.2(d), manufacturer identification; and S5.2(e), month, day and year or month and year of manufacture. The rims are also marked with the Hyundai part number.

The tire size is marked on the tire sidewalls, and the owner's manual and tire inflation pressure label contain the appropriate tire size to be installed on the original equipment rims. Therefore, Hyundai does not believe there is a possibility of a tire and rim mismatch as a result of the missing rim markings.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The application, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 14, 2004.

Authority: (49 U.S.C. 301118, 301120: delegations of authority at CFR 1.50 and 501.8)

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30912 Filed 12–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–64

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 Notice 97–64, Temporary Regulations To Be Issued Under Section 1(h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice 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: Temporary Regulations To Be Issued Under Section 1(h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

OMB Number: 1545–1565.

Notice Number: Notice 97–64.

Abstract: Notice 97–64 describes temporary regulations that will permit Regulated Investment Companies (RICs)

and Real Estate Investment Trusts (REITs) to distribute multiple classes of capital gain dividends.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

The burden for the collection of information in sections 9 and 10 of Notice 97–64 is reflected in the burden for Form 1099–DIV and Form 2439.

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: December 8, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30822 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Announcement 97–122

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 Announcement 97–122, Interim Guidance for Roth Individual Retirement Accounts.

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the announcement 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: Interim Guidance for Roth Individual Retirement Accounts.

OMB Number: 1545–1568.

Announcement Number: Announcement 97–122.

Abstract: Announcement 97–122 provides interim guidance concerning the establishment of Roth Individual Retirement Accounts (described in section 408A of the Internal Revenue Code as added by section 302 of the Taxpayer Relief Act of 1997). The guidance is directed mainly at banks, etc., that will market prototype Roth IRAs to the public.

Current Actions: There are no changes being made to the announcement at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 8,000.

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.

December 8, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30823 Filed 12–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2003–75

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 Notice 2003–75, Registered Retirement Savings Plans (RRSP) and Registered Retirement Income Funds (RRIF) Information Reporting.

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice 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: Registered Retirement Savings Plans (RRSP) and Registered Retirement Income Funds (RRIF).

OMB Number: 1545–1865.

Notice Number: Notice 2003–75.

Abstract: Notice 2003–75 announces an alternative, simplified reporting regime for the owners of certain Canadian Individual retirement plans that have been subject to reporting on Forms 3520 and 3520–A, and it describes the interim reporting rules that taxpayers must follow until a new form is available.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 750,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,500,000.

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: December 8, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30824 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–178–78]

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–178–78 (TD 7898), Employers' Qualified Educational Assistance Programs (section 1.127–2).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, 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: Employers' Qualified Educational Assistance Programs.

OMB Number: 1545–0768.

Regulation Project Number: EE–178–78.

Abstract: Internal Revenue Code section 127(a) provides that the gross income of an employee does not include amounts paid or expenses incurred by an employer if furnished to the employee pursuant to a qualified educational assistance program. This regulation requires that a qualified educational assistance program must be a separate written plan of the employer and that employees must be notified of the availability and terms of the program. Also, substantiation may be required to verify that employees are entitled to exclude from their gross income amounts paid or expenses incurred by the employer.

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, and individuals or households.

Estimated Number of Respondents: 5,200.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 615.

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: December 4, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30895 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–58–83]

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–58–83 (TD 7959), Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations (§§ 1.955A–2, and 1.955A–3).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, 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: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

OMB Number: 1545–0755.

Regulation Project Number: LR–58–83.

Abstract: This regulation concerns the election made by a related group of controlled foreign corporations to determine foreign base company shipping income and qualified investments in foreign base company shipping operations on a related group basis. The information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to the shareholder.

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: 100.

Estimated Time Per Respondent: 2 hours, 3 minutes.

Estimated Total Annual Burden Hours: 205.

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: December 4, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30896 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–115795–97]

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–115795–97 (TD 8870), General Rules for Making and Maintaining Qualified Electing Fund Elections (§§ 1.1295–1 and 1.1295–3).

DATES: Written comments should be received on or before February 13, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, 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 (202) 622–3179, or through the Internet *(Larnice.Mack@irs.gov)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: General Rules for Making and Maintaining Qualified Electing Fund Elections.

OMB Number: 1545–1555.

Regulation Project Number: REG–115795–97.

Abstract: This regulation provides guidance to a passive foreign investment company (PFIC) shareholder that makes the election under Code section 1295 to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis. Guidance is also provided on revoking such elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit

organization, and not-for-profit institutions.

Estimated Number of Respondents: 1,290.

Estimated Time Per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 623.

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: December 4, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30897 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Tuesday, January 6, 2004 from 9 a.m. Pacific Time to 10 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 10, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30898 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Thursday, January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, January 8, 2004 from 3 p.m. EDT to 4:30 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 10, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30899 Filed 12–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (NVVLS)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to follow-up on the National Vietnam Veterans Readjustment Study conducted in 1986 through 1987.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before February 13, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (19E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (NVVLS) in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff, (202) 273–8310 or FAX (202) 273–9386. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. National Vietnam Veterans Longitudinal Study, (all components), VA Form 10–21064a.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing), VA Form 10–21064b.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c.

OMB Control Number: 2900–New (NVVLS).

Type of Review: New collection.

Abstract: The National Vietnam Veterans Longitudinal Study (NVVLS) is a follow-up to the National Vietnam Veterans Readjustment Study (NVVRS) conducted in 1986 through 1987 to sample veterans who served in the U.S. Army, Navy, Air Force, or Marines between August 5, 1964, and May 7, 1975. The NVVRS found that 15.2 percent of the men and 8.5 percent of the women who had served in Vietnam were current cases of posttraumatic stress disorder (PTSD). The rates of PTSD for those veterans exposed to high levels of war-zone stress were dramatically higher than the rates for those with low/moderate levels of war-zone stress exposure. Because of the high rates of PTSD, the strong evidence for the persistence of this syndrome, and the strength of its association with war-zone stress exposure, it is imperative that the VA has information about the current functioning of the participants in the original study. To address the important need for followup data and for an understanding of the current functioning of Vietnam veterans, the VA has contracted with Research Triangle Institute to conduct the NVVLS, follow-up study of the original cohort from the NVVRS. This follow-up of the NVVRS sample will be unique in the field and will enhance and supplement the original findings. The specific aims of this study are to assess:

a. Current prevalence of PTSD, with particular attention to changes in caseness from initial assessment and to variables that might be associated with such changes;

b. Current prevalence of cardiovascular disorders and their precursors and risk factors, with particular attention to their relationship to war-zone stress exposure and PTSD;

c. Current prevalence of other psychiatric disorders and other postwar readjustment problems, with particular attention to their relationship to chronic disease outcomes; and

d. Healthcare utilization patterns, with particular attention to sociodemographic and other variable that moderate service use.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,426 hours.

a. National Vietnam Veterans Longitudinal Study (all components), VA Form 10–21064a—3,261.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing) VA Form 10–21064b—1,154.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c—11.

Estimated Average Burden Per Respondent: a. National Vietnam Veterans Longitudinal Study (all components), VA Form 10–21064a—11.50 hours.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing) VA Form 10–21064b—6.75 hours.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c—20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,605.

a. National Vietnam Veterans Longitudinal Study (all components), VA Form 10–21064a—650.

b. National Vietnam Veterans Longitudinal Study, (all components with the exception of psychological testing) VA Form 10–21064b—855.

c. National Vietnam Veterans Longitudinal Study, Non-Response Telephone Interview, VA Form 10–21064c—100.

Dated: December 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30873 Filed 12–12–03; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether an eligible person who enrolled in a program at one school is entitled to receive education benefits for enrollment at a second school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 or e-mail comments to: *nancy.kessinger,VBAVACO @mail.va.gov*. Please refer to ''OMB Control No. 2900–0118'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Transfer of Scholastic Credit (Schools), VA Form Letter 22–315.

OMB Control Number: 2900–0118.

Type of Review: Extension of a currently approved collection.

Abstract: When a student receiving VA education benefits is enrolled at two training institutions, the institution at which the student pursues his or her approved program of education must verify that courses pursued at a second or supplemental institution will be accepted at full credit toward the student's course objective. Educational payment for courses pursued at the second institution is not payable until evidence is received verifying that the student is pursuing his or her approved program while enrolled in these courses. VA Form Letter 22–315 serves as this certification of acceptance. VA claims examiner send the form letter to the student to have the certifying official of his or her primary institution to list the course or courses pursued at the second institution for which the primary institution will give full credit. Without this information, benefits cannot be authorized for any courses pursued at other than the primary institution.

Affected Public: Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 3,550 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Occasion.

Estimated Number of Respondents: 21,300.

Dated: December 3, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30874 Filed 12–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0021]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to justify the extension of forbearance to the veteran-borrower as opposed to foreclosure.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0021'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Notice of Default, VA Form 26–6850.

b. Notice of Default and Intention to Foreclose, VA Form 26–6850a.

c. Notice of Intention to Foreclose, VA Form 26–6851.

OMB Control Number: 2900–0021.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of guaranteed loans are required to notify VA within 45 days of a loan default due to nonpayment of any installment for a period of 60 days from the date of the first uncured default. Holders are also required to notify VA of their intention to foreclose. After delivery of such notice to VA and 30 days has passed, the holder can begin court proceedings, give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security.

VA Forms 26–6850 and 26–6851 require that servicing efforts are fully explained so that VA can determine whether supplemental servicing could develop further information to justify the extension of forbearance to the veterans-borrower as opposed to foreclosure. The information provided is used to coordinate the actions of VA and the holder to ensure that all legal requirements regarding foreclosure and claim payment are met. VA Form 26–6850a is filed by holders when defaults are determined insoluble by holders at the time the notice of default is filed with VA. This form provides both notice of default and intent to foreclosure together on one form.

Affected Public: Individuals or households, and Business or other for profit.

Estimated Annual Burden: 66,166

a. VA Form 26–6850–20,166 hours.
b. VA Form 26–6850a–26,000 hours.
c. VA Form 26–6851–20,000 hours.

Estimated Average Burden Per Respondent:

a. VA Form 26–6850–10 minutes.
b. VA Form 26–6850a–20 minutes.
c. VA Form 26–6851–15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 279,000 hours.

a. VA Form 26–6850–121,000 hours.
b. VA Form 26–6850a–78,000 hours.
c. VA Form 26–6851–80,000 hours.

Dated: December 3, 2003.

By direction of the Acting Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30875 Filed 12–12–03; 8:45 am]

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Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 192

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines); Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Amendment 192–95]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires operators to develop integrity management programs for gas transmission pipelines located where a leak or rupture could do the most harm, *i.e.,* could impact high consequence areas (HCAs). The rule requires gas transmission pipeline operators to perform ongoing assessments of pipeline integrity, to improve data collection, integration, and analysis, to repair and remediate the pipeline as necessary, and to implement preventive and mitigative actions. RSPA/OPS has also modified the definition of HCAs in response to a petition for reconsideration from industry associations. This final rule comprehensively addresses statutory mandates, safety recommendations, and conclusions from accident analyses, all of which indicate that coordinated risk control measures are needed to improve pipeline safety.

DATES: This final rule takes effect January 14, 2004. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of January 14, 2004.

Privacy Act Information: 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 the Dockets Management System (DMS) Web site at *http://dms.dot.gov.* You may 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.*).

General Information: You may contact the Dockets Facility by phone at (202) 366–9329 for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov/search.* Once you access this address, type in the last four digits of the docket number shown at the beginning of this notice (7666), and click on search. You will then be able to read and download comments and other documents related to this final rule.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov,* regarding the subject matter of this final rule. General information about the RSPA/OPS programs may be obtained by accessing RSPA's Internet page at *http://RSPA.dot.gov.*

SUPPLEMENTARY INFORMATION: RSPA/OPS believes it can ensure the integrity of gas transmission pipelines by requiring each operator to: (a) Develop and implement a comprehensive integrity management program for pipeline segments where a failure would have the greatest impact on the public or property; (b) identify and characterize applicable threats to pipeline segments that could impact a high consequence area; (c) conduct a baseline assessment and periodic reassessments of these pipeline segments; (d) mitigate significant defects discovered from the assessment; and (e) continually monitor the effectiveness of its integrity program and modify the program as needed to improve its effectiveness. This final rule does not apply to gas gathering or to gas distribution pipelines.

This final rule satisfies Congressional mandates that require RSPA/OPS to prescribe standards that establish criteria for identifying each gas pipeline facility located in a high-density population area and to prescribe standards requiring the periodic inspection of pipelines located in these areas, including the circumstances under which an inspection can be conducted using an instrumented internal inspection device (smart pig) or an equally effective alternative inspection method. The final rule also incorporates the required elements for gas integrity management programs mandated in the Pipeline Safety Improvement Act of 2002, which was signed into law on December 17, 2002, and codified at 49 U.S.C. 60109.

Background

Notice of Proposed Rulemaking

On January 28, 2003, RSPA/OPS published a Notice of Proposed Rulemaking (68 FR 4278) that proposed pipeline integrity management requirements for gas transmission pipelines. In the preamble to that Notice, RSPA/OPS explained in great detail the history of the proposed rule and how the proposal addressed statutory mandates, National Transportation Safety Board (NTSB) recommendations, and safety conclusions drawn from accident analyses. RSPA/OPS had finalized the definition of HCAs for gas transmission pipelines in a prior rulemaking on August 6, 2002 (67 FR 50824).

The American Gas Association (AGA), the American Public Gas Association (APGA), the Interstate Natural Gas Association of America (INGAA), and the New York Gas Group (NYGAS) filed a petition for reconsideration of the HCA final rule. Issues raised in the petition are discussed in the section titled, *Petition for Reconsideration of the final rule on the definition of High Consequence Areas.* RSPA/OPS addressed certain aspects of the petition in the published notice of proposed rulemaking on gas transmission pipeline integrity management program requirements (68 FR 4278; January 28, 2003). The remaining issues were addressed in two notices published on July 17, 2003—*Response to Petition for Reconsideration* (68 FR 42456) and *Issuance of Advisory Bulletin* (68 FR 42458).

Pipeline Safety Improvement Act of 2002

On November 15, 2002, Congress passed the Pipeline Safety Improvement Act of 2002, which was signed into law on December 17, 2002, and codified at 49 U.S.C. 60109. This law requires RSPA/OPS to ''issue regulations prescribing standards to direct an operator's conduct of a risk analysis and adoption and implementation of an integrity management program'' no later than 12 months after December 17, 2002. The statute sets forth minimum requirements for integrity management programs for gas pipelines located in HCAs. These requirements have been incorporated into this final rule. Statutory requirements for an integrity program include conducting baseline and reassessment testing of each covered transmission pipeline segment at specified intervals, conducting an integrated data analysis on a continuing basis, taking actions to address integrity concerns, addressing issues raised by RSPA/OPS and by state and local authorities under an interstate agent agreement, conducting testing in an environmentally appropriate manner, providing notification of changes to a program, and permitting a State interstate agent access to the risk analysis and integrity management program.

Petition for Reconsideration of the Final Rule on the Definition of High Consequence Areas

RSPA/OPS issued a final rule defining HCAs for gas transmission pipelines on August 6, 2002 (67 FR 50824). On September 5, 2002, the American Gas Association (AGA), the American Public Gas Association (APGA), the Interstate Natural Gas Association of America (INGAA), and the New York Gas Group (NYGAS) filed a petition for the reconsideration of the final rule defining HCAs for gas transmission pipelines. This petition is in the docket. The petition raised the following issues:

(1) The splitting of the gas integrity rule into two rulemakings—the definition and the integrity requirements—causes confusion, particularly, since the *Potential Impact Zone* concept was not included in the definition.

(2) The high consequence area definition should clarify that it applies to gas transmission pipelines that have the potential to impact high population density areas and does not apply to distribution pipelines.

(3) The ''identified site'' component of the definition (buildings and outside areas) is overly broad. The definition should instead use the current language in § 192.5 for Class 3 outside areas.

When this petition was received, RSPA/OPS was in the final stages of developing the NPRM on pipeline integrity management for gas transmission pipelines in HCAs. In addition to the proposed substantive requirements, the NPRM proposed an expanded definition of HCAs and proposed to include a definition of a Potential Impact Zone, the area likely to be affected by a failure. In the NPRM, RSPA/OPS discussed the issues raised in the petition for reconsideration and its belief that the proposal, and the final rule to follow, would address the more significant of the issues (68 FR 4278, 4295–4296; January 28, 2003). RSPA/OPS requested comments on several aspects of the final definition, particularly with respect to the ''identified sites'' component. In two notices published on July 17, 2003—*Response to Petition for Reconsideration* (68 FR 42458) and *Issuance of Advisory Bulletin* (68 FR 42456)—RSPA/OPS addressed the remainder of issues raised by the petitioners, and provided guidance to operators of gas transmission pipelines on how to identify HCAs.

Comments received in response to the NPRM on integrity management programs, comments at the public meetings following issuance of the NPRM, and advice from the Technical Pipeline Safety Standards Committee (TPSSC or Committee), the statutory gas pipeline advisory committee, indicated the need for greater clarification of how operators are to implement the ''identified sites'' aspect of the HCA definition. The advisory bulletin published on July 17, 2003 (68 FR 42456) provides guidance to gas transmission operators on the steps RSPA/OPS expects them to take to determine ''identified sites'' along their pipelines. ''Identified sites'' include buildings housing people who are confined and of limited mobility who would be difficult to evacuate, and outside areas and buildings where people gather. The guidance allows operators to identify these sites for purposes of planning integrity management programs. RSPA has agreed that the intent of the regulation will be satisfied if an operator follows the guidance. The guidance has been incorporated into this final rule.

Public Meetings Following the NPRM

On January 28, 2003 (68 FR 4278), RSPA/OPS proposed integrity management program requirements for gas transmission pipelines in HCAs. The comment period for this proposal was scheduled to close on March 31, 2003, but RSPA/OPS extended this comment period to April 30, 2003. Because the proposal was complex, a series of public meetings were held to educate the industry and public about the proposed requirements and to listen to comments and concerns.

On February 20–21, 2003, RSPA/OPS participated in a public workshop sponsored by the INGAA and AGA in Houston, and on February 26, 2003, in an audio conference jointly sponsored by AGA, APGA, and other pipeline trade associations, to give an overview of the proposed rule and clarify certain proposed requirements. On March 19, 2003, RSPA/OPS held a public meeting in Washington, DC, to address issues raised at the INGAA/AGA workshop and to better explain the proposed rule. Participants included representatives from the National Association of Pipeline Safety Representatives (NAPSR), INGAA, AGA, APGA, and other Federal government agencies. Summaries of these meetings are in the docket.

On March 25, 2003, RSPA/OPS briefed the TPSSC members about issues raised in the public meetings and heard additional briefings on integrity management issues, including the HCA definition. On May 28–29, 2003, the TPSSC met to vote on the proposed gas integrity management rule and the recommend changes.

On April 25, 2003, RSPA/OPS held another public meeting to discuss possible courses of action on issues that had been raised during the previous meetings. Participants included State pipeline safety representatives, industry representatives, and the general public.

The comments at the public meetings closely tracked the comments received to the docket and the discussions by the TPSSC at its May 2003 meeting. These issues and the advisory committee's recommendations are discussed in the section titled, *Gas Advisory Committee Considerations.* The 12 issues addressed in the comments to the docket are discussed below in *Comments to NPRM.*

Gas Advisory Committee Considerations

The Technical Pipeline Safety Standards Committee is the Federal advisory committee charged with responsibility for advising on the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed gas pipeline safety standards. The 15-member Committee is comprised of individuals from industry, government, and the general public.

On May 28–30, 2003, the TPSSC met to review the proposed gas pipeline integrity management rule and the associated cost-benefit analysis. The Committee voted unanimously to accept the proposed integrity management rule as technically reasonable, feasible, and practicable, subject to the recommended changes identified during committee discussion. The Committee decided that before it could vote to accept the cost-benefit analysis, RSPA/OPS must revise it in compliance with the recommendations at the May 28–30 meeting. RSPA/OPS sent a revised cost-benefit analysis to the committee. On July 31, 2003, the Committee voted to accept the revised cost-benefit analysis. The transcripts from both meetings are in the docket.

Discussion on the HCA Definition and Proposed Rule

The TPSSC made the following recommendations during the May 28–30 meeting with respect to the HCA definition and the language in the proposed integrity management program rule. RSPA/OPS discusses how it addressed each recommendation in the final rule.

The Committee discussed how to best identify those segments of a pipeline that present the greatest potential hazard to people so that operators could focus integrity management efforts on those segments. The Committee considered the bifurcated approach

INGAA had presented in its comments. The Committee discussed whether rural buildings, such as rural churches, should be designated as Moderate Risk Areas. Much of the meeting was spent on the industry's petition for reconsideration. The Committee held an extensive discussion on the ''identified sites'' component of the HCA definition, focusing on places where people congregate and on buildings containing persons of limited mobility. The TPSSC made the following recommendations with respect to the definition of and identification of HCAs:

Allow a bifurcated option for building count as part of the definition of HCAs.

RSPA adopted this recommendation into the final rule and modified § 192.903 to allow two methods of identifying HCAs. This is discussed below in section 3 of *Comments to NPRM.*

Address rural buildings in the same manner as any HCA.

RSPA has adopted this recommendation by modifying the ''identified sites'' component of the HCA definition as it relates to outside areas where people gather. The definition now differentiates between outside areas, open structures, and rural buildings, which provide more protection. This is discussed below in *Comments to NPRM.*

In the HCA definition, substitute ''public safety officials, emergency response officials, or local emergency planning committees'' for ''local officials.''

RSPA accepted this recommendation and modified the ''identified sites'' component of the high consequence area definition to incorporate this change.

Define an identified site as any of the following within a Potential Impact Circle:

1. A facility housing persons of limited mobility that is known to public safety officials, emergency response officials, or local emergency planning committee, and which meets one of the following three criteria: (a) Is visibly marked, (b) is licensed or registered by a Federal, state, or local agency, or (c) is listed on a map maintained by or available from a Federal, State, or local agency, or

2. An outdoor area where people congregate that is known to public safety officials, emergency response officials or local emergency planning committee and which is occupied by 20 or more people on at least 50 days per year, or

3. A building occupied by 20 or more people 5 days per week, 10 weeks in any 12-month period (the days and weeks need not be consecutive).

RSPA accepted this recommendation and modified the ''identified site'' component of the HCA area definition. This revision is consistent with the Class 3 definition of outside area in § 192.5.

The Committee discussed whether the criterion for determining the population density component of a high consequence area should be 10 or 20 buildings intended for human occupancy within the impact circle. The Committee recommended that RSPA/OPS:

Use 20 buildings intended for human occupancy occurring within a Potential Impact Circle as a criterion for determining high consequence areas.

RSPA adopted this recommendation and modified the definition of HCA.

The TPSSC discussed whether an additional safety margin should be applied to the Potential Impact Circle radius calculated using the C–FER model and recommended that:

To define an HCA use the C–FER radius without additional safety margin to define the Potential Impact Circle, and extend by one additional radius on either side of the segment that could potentially impact an HCA.

RSPA adopted this recommendation and modified the definition of HCA to incorporate this additional length of pipeline.

The TPSSC discussed whether the rule should allow an operator to use data regarding the number of buildings within 660 feet of the pipeline (available now to operators because of the existing definition of Class Locations at § 192.5) to extrapolate the building density in Potential Impact Circles larger than 660 feet, and what the interim period should be for operator to collect the additional data on buildings beyond 660 feet. The Committee voted that the rule should:

Allow a three-year period for operators to use existing house count data out to 660 feet to infer the number of houses in impact circles exceeding 660 feet in radius.

RSPA accepted this recommendation and intends to allow operators three years to collect actual data and to revise the HCA to reflect this data.

The Committee discussed what assessment requirements should be applicable to plastic transmission pipelines and recommended that the rule should:

Allow operators to conduct a reliability analysis as a baseline assessment for plastic pipeline, and require appropriate preventive and mitigative measures.

RSPA revised the final rule to require additional preventive and mitigative measures for plastic transmission pipelines.

The Committee discussed the assessment methods and intervals that should be required for low-stress pipelines and then voted for RSPA/OPS to:

Use the approach suggested by AGA as described on pages 6 and 7 of its April 30, 2003 letter, ''Amendment to Low-Stress Pipeline Requirements.''

RSPA adopted this recommendation and created a new section in the gas rule (§ 192.941) on low-stress reassessment for pipelines operating below 30% of specified minimum yield strength (SMYS). This recommendation provides for additional analysis focused on third-party damage and increases the frequency of leak surveys as an alternative form of reassessment. This is discussed below in section 7 of *Comments to NPRM.*

The TPSSC discussed whether a requirement to pressure test a pipeline to verify its integrity against material and construction defects be limited to pipeline segments for which information suggests a potential vulnerability. The Committee recommended that RSPA/OPS:

Incorporate into the rule the concepts of B31.8S pertaining to material and construction defects and increased operating pressure.

RSPA has incorporated ASME/ANSI B31.8S–2001, *Managing System Integrity of Gas Pipelines,* into the regulation.

The TPSSC discussed the proposed direct assessment requirements and ways to ensure that the method provides an understanding of pipeline integrity comparable to that provided by other assessment methods. In particular the discussion focused on whether it should be allowed as a primary assessment method only to address certain threats, and whether the assessment intervals should be the same as those allowed for the other assessment methods. The TPSSC recommended that the rule:

Allow direct assessment as a primary assessment method contingent only on applicability to the threats and have assessment intervals the same as those for other methods, subject to clarification on how confirmatory direct assessment fits into the process and relates to the NACE Recommended Practice.

RSPA/OPS has accepted this recommendation and revised the final rule to allow direct assessment as a primary assessment method for certain threats and to have the same assessment intervals as the other assessment

methods. This is discussed below in section 4 of *Comments to NPRM.*

The Committee discussed some of the proposed requirements for remediation of anomalies found during an assessment, including whether repair criteria for dents located on the bottom of the pipeline should be different from those for top dents and whether the presence of stress risers or metal loss should affect this decision. The Committee voted that RSPA/OPS:

Modify the proposal to require remediation of dents without stress risers in one year to allow treating bottom-side dents as monitored conditions if the operator runs the necessary tools to perform strain calculations, meets B31.8 strain criteria, and [ensures] that the dent involves no corrosion or stress riser.

RSPA accepted this recommendation and revised § 192.933 to address remediation requirements.

A member of the Committee noted that the proposed waiver language did not exactly track the language in the statue. The Committee recommended that RSPA/OPS:

Revise the proposed waiver language to be consistent with the language in the statute.

RSPA/OPS revised the waiver language in § 192.943 to track the language in the statute. This is discussed below in section 5 of Comments to NPRM.

The TPSSC discussed how to cost-effectively protect against delayed failures from third-party damage and whether additional third-party damage prevention methods should be used instead of assessments for third-party damage. The Committee recommended that RSPA/OPS:

Use the language proposed by INGAA, in its April 17, 2003, letter (as modified by Committee comments) as the basis for requiring additional preventive and mitigative measures to address third-party damage.

RSPA accepted this recommendation and revised the third-party damage requirements.

The Committee discussed how to clarify the requirements for an operator to look beyond the HCA segment to address segments outside the HCA that are likely to have similar integrity concerns. After discussion the Committee voted that the rule should:

Require that operators use the risk assessment process as described in ASME B31.8S as the basis for deciding when actions need to be taken for pipeline segments not in HCAs.

RSPA incorporated this recommendation into the final rule.

The TPSSC discussed at what frequency and by what means operators should report performance measures. The recommendation was to:

Require operators to submit performance measures electronically (instead of merely maintaining the information) on a semi-annual frequency.

RSPA revised § 192.945 to incorporate this recommendation.

The Committee discussed the proposed rule's treatment of earlier integrity assessments to allow only assessments conducted after December 17, 1997, to be used as a baseline assessment. The TPSSC recommend that the rule:

Allow, without a time limit, an assessment conducted prior to the rule as a baseline assessment as long as the prior assessment substantially meets the requirements of the rule, and provide that the reassessment for such a segment not be required until December 17, 2009 to the extent allowed by law.

For the reasons discussed below in section 4 of *Program Requirements,* RSPA/OPS is allowing as a baseline assessment any prior assessment conducted in accordance with the requirements of the subpart on integrity management. RSPA/OPS has further revised the rule to specify that the reassessment on a covered segment for which a prior assessment is credited as a baseline be completed by December 17, 2009.

Discussion on Cost-Benefit Analysis

The TPSSC met via conference telephone call on July 31, 2003, to discuss the draft cost-benefit analysis prepared in support of the final rule. RSPA/OPS presented a summary of the benefits and costs of the rule. Because of the integrity requirements in the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60109), this rule does not impose integrity management requirements from a baseline condition in which no such requirements exist. The law required pipeline companies to develop and follow integrity management programs. This rule takes advantage of the implementation flexibility allowed in the law to focus integrity management efforts on the highest risk areas.

RSPA/OPS estimates that implementing the requirements in the law, without any additional flexibility, would cost approximately $11 billion over 20 years. Using the same basic assumptions, implementing the provisions of this rule is estimated to cost $4.7 billion over 20 years, which is $6.2 billion less than implementation of the law without a regulation. The $6.2 billion savings represents a benefit of the rule, since the requirements of the law would have to be implemented in the absence of regulatory action. RSPA/OPS informed the Committee that:

- Changes in the definition of HCAs focuses pipeline operator resources on areas of high consequence. Class 3 areas that are sparsely populated have been deleted.
- Confirmatory direct assessment (CDA) is allowed to perform assessments at the seven-year intervals specified in the Act. This method is not among those listed in the law.
- The rule explicitly recognizes the scientific conclusion that low-pressure pipelines are more likely to leak than to rupture. Outside force damage is therefore a relatively more important threat for low-pressure pipelines. The rule provides for assessments and actions that emphasize damage protection, leak surveys, and electrical surveys to better address the relevant integrity threats.

The direct safety benefits of the rule will be realized in reduced consequences of accidents, including deaths, serious injuries, and property damage. RSPA/OPS has estimated the value of this benefit at $800 million over 20 years. There are a number of other potential benefits of the rule as described to the TPSSC:

- Improved ability to site new pipelines in certain high-volume markets because of the improvements in public confidence. RSPA/OPS informed the Committee that this benefit is difficult to quantify, and would be qualitatively described in the final regulatory analysis.
- Averting accidents with larger consequences than any experienced to date. The quantitative estimate of this safety benefit is based on the historical accident record. Population growth along some transmission pipelines puts more people at risk and exposes the pipelines to increased chances of third-party damage. Therefore, it is possible that accidents larger than any in the historical record could occur. This rule will act to significantly reduce the likelihood of such accidents, because it is focused on precisely the high population areas in which they could occur. RSPA/OPS informed the Committee that this benefit would be analyzed further and quantified in the final regulatory analysis.
- The final rule exceeds the requirements of the law in ways that will avert accidents. This includes the requirement that consensus standards be used, and that a threat-by-threat analysis be performed to ascertain needed protections.

• Avoiding the economic impact of unexpected supply interruptions. The Federal Energy Regulatory Commission (FERC) has estimated the impact of the 2000 Carlsbad, New Mexico accident on California spot gas prices. RSPA/OPS has used this estimate to calculate that the increase in gas prices resulted in an economic impact to California of approximately $17.25 million per day.

• The rule will provide a better technical justification for increasing operating pressure in pipelines to alleviate future supply crises.

• The rule will provide a better technical justification to support waivers from existing requirements that mandate replacement of pipeline when population increases cause a change in class location. Experience may lead to future changes in the existing requirements. For now, estimation of the value of this benefit will be based on the use of waivers to eliminate pipe replacement after a class location change where there is adequate safety justification.

The TPSSC suggested that a reduction in the time required to return pipelines to service after accidents or regulatory shutdowns is another benefit of the rule. The premise is that implementation of the rule will provide better information about the pipeline. When pipelines are ordered shutdown, much of the time is used to gather additional information about the pipeline's integrity to support a return to service. Implementation of this rule will make more information readily available and will lead to less shutdown time. We expect shutdown times to be reduced by 50%.

The TPSSC agreed that the cost estimates presented by RSPA/OPS were reasonable. The committee commented that it is reasonable to assume that the benefits from implementing the law and the final rule would be similar, but that they are also very uncertain.

The TPSSC commented that the Pipeline Safety Improvement Act of 2002 imposes restrictions on what can be done within this rule. The Committee concluded that RSPA/OPS had reasonably exercised the authority it was afforded under the Act. The Committee also recommended that provisions in the Act that impose the most hardships—requirements to perform assessments at seven-year intervals and to perform reassessments before baseline assessments—be revisited in discussions with Congress.

The TPSSC unanimously approved the draft cost-benefit analysis, subject to the comments noted above.

Comments to NPRM

We received over 700 comments from 90 different sources in response to the NPRM. Some commenters submitted several comments, each comment addressing a different topic in the proposed rule. The commenters were as follows:

Seven (7) Trade associations with members affected by this rulemaking: American Gas Association (AGA), American Public Gas Association (APGA), Association of Texas Intrastate Natural Gas Pipelines, Energy Association of Pennsylvania, Interstate Natural Gas Association of America (INGAA), Inline Inspection Association (IIA), and Northeast Gas Association (NEGA).

50 U.S. pipeline operators: AGL Resources, Air Products and Chemicals, Inc., Arkansas Oklahoma Gas Corporation, Atmos Energy Corp., Baltimore Gas and Electric Company, ChevronTexaco, CMS Panhandle Eastern Pipe Line Company, CMS Sea Robin Pipeline Company, CMS Trunkline Gas Company, Consolidated Edison Company of New York, Consumers Energy, Dominion Delivery, Duke Energy Gas Transmission Corporation, El Paso Pipeline Group, Enbridge Energy Company, Enron Transportation Services, Equitable Gas Company and Equitrans LP, Houston Pipe Line Company, Intermountain Gas Company, Kansas Gas Service, Kern River Gas Transmission Company, Laclede Gas Company, Metropolitan Utilities District, MidAmerican Energy Company, National Fuel Gas Supply Corporation, New Jersey Natural Gas Company, Nicor Gas, NiSource Corporate Services, North Shore Gas Company, Northern Natural Gas Company, Oklahoma Natural Gas, ONEOK, Paiute Pipeline Company, PECO Energy, Peoples Gas Light and Coke Company, PG&E Corporation, Piedmont Natural Gas, PSNC Energy, Public Service Electric and Gas Company, Puget Sound Energy, Questar Regulated Services, Sempra Energy Utilities, South Carolina Pipeline Corporation, Southwest Gas Corporation, TXU Gas Company, Vectren Utility Holdings, Inc. Williams Gas Pipeline, Williston Basin Interstate Pipeline Company, and Xcel Energy.

One (1) Canadian pipeline operator: TransCanada Pipelines Limited.

Five (5) state agencies: Florida Department of Environmental Protection, Iowa Utilities Board New York State Department of Public Service, State of Connecticut Department of Public Utility Control, Washington Utilities and Transportation Commission.

Three (3) advocacy groups: Citizens for Safe Pipelines, Cook Inlet Keeper, and Washington State Citizens Advisory Committee on Pipeline Safety.

Three (3) consensus standards organizations: Gas Piping Technology Committee (GPTC), NACE International, and Standards-Developing Organizations Coordinating Council (SDOCC).

One (1) Federal agency: National Transportation Safety Board (NTSB).

One (1) city/county: Washington City and County Pipeline Safety Consortium.

Two (2) consultant/contractors: Accufacts, and Oleska & Associates.

Three (3) businesses: Advanced Technology Corporation, Controlotron, and Kaempen Pipe Corporation.

One (1) private citizen: Carol M. Parker.

General Comments

Most commenters supported the need for integrity management program requirements, and provided comments to the proposed rule that focused on specific details and language. Most commenters asserted that the proposed rule was too complicated and, to ensure safety and ease of compliance, should be simplified and clarified.

Some of the broader comments included one from a private citizen, Carol Parker, who asserted that the new pipeline safety law was written to ensure ''adequate protection against risks to life and property posed by pipeline transportation'' and that RSPA should use this new law as a guide to ensure adequate protection. Similarly, the Washington State Advisory Committee commented that the new rule should not sacrifice rule credibility and enforceability for timeliness, and recommended that RSPA slow down the process to ensure proper rule development. The NTSB stated that it generally supported the elements of the proposed rule including the baseline assessments, threat risk assessments, determination of assessment methods, and remediation and reassessment provisions. More specific comments are discussed under the applicable topic.

We have organized the comments into the following twelve groups, and will summarize both the comments and our responses on an individual basis.

1. Need for Clarity and Specificity
2. Applicability (Coverage) of the Rule
3. High Consequence Areas
4. Program Requirements and Implementation, including Integrity Assessment Time Frames, Assessment Methods and Criteria
5. Review, Notification and Enforcement Processes

6. Consensus Standard on Pipeline Integrity
7. Low-Stress Pipelines
8. Remedial Actions
9. Additional Preventive and Mitigative Measures, including, Leak Detection Devices and Automatic Shut-off and Remote Control Valves
10. Methods to Measure Program Effectiveness
11. Information for Local Officials and the Public
12. Cost-Benefit Analysis

1. Need for Clarity and Specificity

Several commenters, including the Public Service Electric and Gas Company (PSE&G), maintained that the formatting of the proposed rule makes it difficult to follow, which could lead to a lower level of understanding and less compliance. PSE&G suggested that the final rule be simplified and reformatted, with clearly numbered sections and an index. Piedmont Natural Gas recommended the use of several sections to present the regulations because the proposed cross-references and formatting make the proposed rule difficult to read and understand.

Some commenters, including Peoples Energy, suggested that we better define terms that are subjective and possibly vague. Some of those terms included: state-of-the-art, comprehensive additional preventive measures, expected future corrosion conditions, critical stage, and additional extensive inspection and maintenance programs.

Numerous other commenters, including Northeast Gas Association, Puget Sound Energy, and the Iowa Utilities Board, suggested rewriting the rule as a separate subpart of part 192 in a clearer, more simplified form.

Response: RSPA/OPS agrees that the proposed rule was complicated and often difficult to follow. There are a large number of interrelated requirements. Including all of those requirements under a single section of part 192, as was done in the proposed rule, required use of many sub-paragraphs and divisions. RSPA/OPS has adopted the suggestion that the final rule be rewritten as a separate subpart of part 192.

The final rule has been recast as new Subpart O, *Pipeline Integrity Management,* of part 192, in which we have consolidated all of the requirements applicable to gas transmission pipeline integrity management programs. The definition of HCAs, previously § 192.761, has been relocated to the new subpart (with changes as described below). This revised structure allows each of the major elements of the rule to be described in a separate, numbered section. The use of subparagraphs and divisions in the final rule is very limited. RSPA/OPS believes that the structure of the final rule makes it much easier to follow and understand, and will better support compliance by operators.

The rule has also been revised to improve its clarity and specificity. For example, we deleted terms such as ''state-of-the-art.'' And we specify which ''comprehensive additional preventive measures'' an operator must implement. We eliminated the section containing the phrase ''expected future corrosion conditions'' in favor of referencing an applicable consensus standard. At the time we proposed the rule, relevant industry consensus standards were under development. These standards have since been finalized and we have incorporated them into the rule.

This rule uses, as did the corresponding rule for hazardous liquid pipelines, a mix of performance-based and prescriptive requirements. As described in the final rule on integrity management programs for hazardous liquid pipelines (65 FR 73832), RSPA/OPS believes that performance-based regulation will result in effective integrity management programs that are sufficiently flexible to reflect pipeline-specific conditions and risks. Pipeline conditions vary. It is impractical to specify requirements that will address all circumstances. In some cases, they would impose unnecessary burdens. In others, they might not achieve the desired level of safety. Including performance-based requirements is the best means to ensure that each pipeline develops and implements effective integrity management programs that address the risks of each pipeline segment.

2. Applicability (Coverage) of the Rule—§ 192.901 (Formerly § 192.763(a)(b))

The proposed integrity management program requirements were intended to apply to all gas transmission pipelines. Other gas pipelines were not included in the scope of the proposed rule.

NTSB commented that gathering pipelines in populated areas should be included. The New York State Department of Public Service maintained that only those gathering pipelines in HCAs and operating above 20% of SMYS should be included.

At the public meetings and advisory committee meeting, participants noted that the NPRM and pipeline safety statute did not address plastic gas transmission pipelines. At the advisory committee meeting, a representative of APGA prepared a handout on plastic transmission pipelines. The handout included recommendations from Southwest Gas that RSPA/OPS should exclude plastic pipelines from the integrity management regulation or, as an alternative, exclude these pipelines from the assessment requirements because the assessment methods are not applicable to plastic. In addition, the handout noted that the proposed additional preventive and mitigative measures for corrosion are not applicable to plastic pipe because it is not subject to corrosion. The handout suggested that third-party excavation damage is the primary threat to plastic pipe.

Both Cook Inlet Keeper and the Washington Utilities and Transportation Commission (WUTC) commended OPS's goal to promote safety throughout pipeline systems. They recommended that the proposed rule require that lessons learned from assessments on pipeline segments in HCAs be applied to all segments of pipeline and all operators. Although INGAA agreed with the concept of applying lessons learned to pipeline segments outside the scope of the proposal, it recommended modifying the requirement to clarify how data and information developed from covered segments will be applied to non-covered segments. INGAA suggested an approach for applying this concept using the framework of standard ASME/ANSI B31.8S. Several industry commenters agreed with INGAA, but numerous commenters asserted that expanding the requirements of the rule to entire pipelines is inappropriate. NiSource contended that an expansion conflicts with the intent of Congress to focus resources on high risk areas. NiSource also suggested that the final rule should incorporate ASME/ANSI B31.8S as it relates to collection, review, and integration of data to update risk assessments.

Response: The final rule prescribes minimum requirements for integrity management programs on any gas transmission pipeline subject to Part 192. The requirements do not apply to gas gathering or distribution pipelines. Although some requirements are of broad applicability, they apply mainly to segments of gas transmission pipelines in HCAs. RSPA/OPS agrees with Cook Inlet Keeper and WUTC that lessons learned in developing and applying the integrity management program in HCAs should be applied to other portions of the pipeline. It would not be prudent to fail to address known problems that could challenge the integrity of a pipeline simply because they did not occur in HCA pipeline segments. The rule requires that all operators evaluate and remediate non-

covered segments of their pipelines that have similar characteristics to covered sections on which corrosion is found (§ 192.917(e)(5) and § 192.927(c)(3)(iii)). The rule further requires that operators who qualify for the performance-based option have a procedure for applying lessons learned from assessment of covered pipe segments to pipe segments not covered. (§ 192.913(b)(1)(iv).)

The rule does not require integrity assessment, but it does require evaluation of risk associated with non-covered segments and appropriate actions to address those risks. Such a requirement would divert resources away from pipeline segments that pose the most risk (*i.e.*, those located in HCAs) to those which pose lesser risks. ASME/ANSI B31.8S, the consensus standard on *Managing System Integrity of Gas Pipelines,* provides a method by which operators can perform these evaluations.

Although it is necessary to apply lessons learned on covered segments to non-covered segments of pipeline, it is equally appropriate that knowledge gained in segments of pipeline that cannot affect HCAs be used in the evaluation of covered segments. The rule requires this as part of an operator's data gathering and integration activities (§ 192.917(b)). The operators must, at a minimum, evaluate the set of data specified in ASME/ANSI B31.8S.

When RSPA/OPS proposed the integrity management program requirements for gas transmission pipelines, it had not considered plastic transmission pipelines. The statute does not allow an exemption for such pipelines. However, based on the information developed after issuance of the NPRM, we recognize that these pipelines typically operate at very low pressures and are not subject to corrosion. Internal inspection tools are not useful for evaluating the condition of these pipelines. Corrosion protection measures are not required because plastic does not corrode. Therefore, in the final rule we have recognized that these pipelines cannot be assessed by the methods allowed for metallic transmission pipelines. An operator of a plastic transmission pipeline will have to conduct, on a continual basis, a threat analysis to evaluate the threats unique to the integrity of plastic pipe. If the analysis shows that the pipeline is susceptible to failure from a cause other than third-party damage, the operator must conduct a baseline assessment by a method demonstrated to characterize the risks, and must apply additional preventive and mitigative measures as necessary.

A government/industry Plastic Pipe Database Committee (PPDC) has been formed to develop and maintain a voluntary plastic pipe data collection process to support the analysis of the frequency and causes of in-service plastic pipe material failures. The PPDC monitors failure experience to characterize any failure trends in older plastic pipe materials. Thorough analysis of data on plastic pipelines having similar fabrication, construction, and operational characteristics will alert operators of these pipelines to integrity threats other than third-party damage.

3. High Consequence Areas—§ 192.903 (Formerly § 192.761)

The definition of HCAs for gas transmission pipelines was set forth in a final rule on August 6, 2002. The definition included Class 3 and 4 locations, and ''identified sites'', *i.e.*, buildings housing people who have limited mobility or are difficult to evacuate and outside areas where there is sufficient evidence of people congregating. The rule listed ways for an operator to identify these sites, including visible marking, licensure or registration by a Federal, State, or local agency, knowledge of public safety officials, or a list or map maintained by or available from a Federal, State, or local agency.

The definition generated numerous comments. And, as discussed elsewhere in this document, industry trade associations filed a petition for reconsideration of the definition. At the public meetings following the issuance of the integrity management NPRM, meeting participants commented in great detail about problems with the definition. At the TPSSC meeting, members discussed the definition and issues raised in the petition for reconsideration.

Comments on the proposed definition of HCAs for gas transmission pipelines addressed the complexity of the definition and difficulty in identifying HCAs; additional areas to be included; the role of public officials in ''identified sites;'' numbers of people congregating in outside areas and in ''identified site'' buildings; C–FER model; Threshold Radius; system considerations; and calculation of Moderate Risk Areas, Potential Impact Circle (PIC), Potential Impact Radius (PIR), and Potential Impact Zone (PIZ). The comments on each of these topics are discussed below.

The Definition's Complexity and Difficulty in Identifying HCAs

The high consequence area definition included Class 3 and 4 areas because these areas are currently defined in the gas pipeline safety regulations. The definition also included ''identified sites'' and a list of methods for identifying them. These sites included facilities with people who are confined, of limited mobility or would be difficult to evacuate, and outside areas and buildings where there is evidence that at least 20 or more people congregate on at least 50 days in any 12-month period.

In the NPRM for integrity management program, RSPA/OPS proposed to add another area to the definition—a circle of Threshold Radius 1,000 feet or larger that has a cluster of 20 or more buildings intended for human occupancy.

In their petition for reconsideration of the HCA definition, the petitioners argued that RSPA should clarify the definition, particularly with regard to ''identified sites,'' because the definition is so broad and vague as to make compliance impractical. Comments at the post-NPRM public meetings also suggested that the definition needed to be clarified.

Many commenters noted the complexity of the proposed expanded definition and asked that it be simplified. Baltimore Gas and Electric (BG&E) asserted that the number of variables and data requirements related to the definition make it unworkable. BG&E explained that distribution system operators maintain data on population and buildings near their pipelines, but would have difficulty identifying facilities with persons who are confined or of limited mobility and areas where people congregate. The company recommended that the definition only reference verifiable criteria in determining areas to be covered under the integrity management requirements. Northeast Gas Association requested clarification on whether the proposed expanded definition only applied to large diameter, high pressure pipe.

Dominion supported the use of current Class designations to define HCAs because it believes smaller pipeline companies do not have access to sophisticated geographic information systems (GIS). The State of New York also supported the use of the current Class designations, supplemented by the use of the C–FER model to identify HCAs outside of Class 3 and 4 areas.

INGAA argued that the proposed addition to the HCA definition added complexity and additional practices that would not improve pipeline safety. INGAA proposed a bifurcated option, which would allow the operator some flexibility in determining its cumulative HCA sites. Under this proposal, an

operator could choose from two approaches to determine HCAs. Both approaches would require that an operator identify potential HCAs for certain ''identified sites'' located within a Potential Impact Circle. In addition to the ''identified sites,'' the operator would either identify the remaining HCAs by selecting all Class 3 and 4 areas or by determining all Potential Impact Circles containing 20 or more buildings intended for human occupancy. Potential Impact Circles would be based on the C–FER model. When the size of the pipeline requires that the radius is greater than 660 feet, INGAA's proposal would allow prorating the number of buildings in the circle based on an increased circle size. INGAA's proposed proration scheme would allow operators additional time to collect the expanded population data—until as late as 2007.

AGA supported this approach because it is simpler, allows operators to use existing data from house count surveys, and provides safety benefits to unsheltered areas. At least 30 other commenters endorsed this alternative approach.

Response: RSPA/OPS has adopted a bifurcated definition, as suggested by INGAA. It gives an operator two options to define HCAs. In both options ''identified sites'' are treated the same. However, an operator will now be allowed to identify the HCAs associated with high population density either by including all Class 3 and 4 areas or by counting the residences within a potential impact circle to determine whether the threshold number is present. Changes made to the ''identified sites'' definition are described further below. We agree that this approach is less complex, allows flexibility to operators (particularly local distribution companies who may wish to designate all Class 3 and 4 areas), and better focuses on areas where people could be most affected by pipeline ruptures, fires, and explosions.

RSPA/OPS has decided to allow operators to prorate the number of buildings in Potential Impact Circles larger than 660 feet in radius for a period of three years. We believe that the recommended five-year period for proration is too long, but acknowledge that collecting all of the additional data in one year would be an unreasonable resource burden. Operators now have data on the number of buildings located within 660 feet from their pipelines because they have needed this information for identifying Class Location areas pursuant to § 192.5. The three-year period is adequate for operators to gather additional information for the large-diameter, high-pressure pipelines for which Potential Impact Circle(s) will exceed 660 feet.

RSPA/OPS expects that many, perhaps most, operators will follow the Potential Impact Circle option for defining HCAs. Under this approach, an operator would calculate the heat affected zones along its pipeline that would result from a pipeline rupture. An operator would determine the radius of the Potential Impact Circle for the pipeline, identify segments of pipeline within a Potential Impact Radius of ''identified sites,'' and identify segments of pipeline having 20 or more residences within a Potential Impact Circle. Such segments would be HCAs, and the length of pipeline included in the HCA would be the pipe within the HCA plus the length of pipe extending one Potential Impact Radius in both directions beyond the HCA.

For transmission pipelines operating at low pressures, like much of the pipeline operated by distribution companies, the radius of the Potential Impact Circle calculated with the C–FER model will be small. For example, the radius for a 6-inch diameter pipeline operating at 150 psi would be 50 feet. It is unlikely that 20 buildings intended for human occupancy could be found in circles of such small radius. It is also less likely that ''identified sites'' will be found within the circles as the radius decreases. As a result, using the Potential Impact Circle option will tend to exclude much low-pressure pipeline from the assessment requirements of this rule. Because accidents along these pipelines in developed areas can affect people and property, the rule requires an operator of a low-stress pipeline in these developed area to take additional preventive and mitigative actions.

Additional Areas

Several commenters suggested adding other sites as HCAs. The Florida State Clearinghouse, the Washington City and County Safety Consortium, and the New York State Department of Public Service all asserted that certain critical infrastructure facilities be included as HCAs. These included, but were not limited to, interstate interchanges, bridges, tunnels, certain railway facilities, electric transmission substations, drinking water plants, and sewer facilities. They asserted that impacts to these types of facilities could detrimentally impact a wide range of people. The Washington City and County Safety Consortium further contended that environmentally sensitive areas, particularly those critical to endangered species, should be included as well.

Response: RSPA/OPS has not included these additional areas in the final rule. We addressed comments such as this in the rulemaking on high consequences areas. Other than the issues that had been raised in the petition for reconsideration, and the areas in the NPRM for integrity management program requirements we proposed to add, or requested comment, we did not open the final definition up for changes. When we issued the final rule defining these areas, we agreed that impacts to critical infrastructure could have detrimental impact but that such impacts would not likely include death or serious injury. A major purpose of the integrity management rule is to focus the highest level of operator attention on those portions of its pipeline that can have the most severe safety consequences, *i.e.*, can cause death and injury.

However, to protect vital infrastructure, the rule provides for applying lessons learned through integrity management to areas outside HCAs. The ASME/ANSI B31.8S process provides that operators use their risk assessments to guide them in applying these lessons. Proper risk assessments will identify portions of pipeline that have a higher likelihood of failure.

Similarly, as we explained when we finalized the definition of HCAs (67 FR 50824), we did not include environmentally sensitive areas in the definition. The impact of gas pipeline accidents on such areas is expected to be significantly less than a similar accident involving a hazardous liquid pipeline because of the different nature of gas and hazardous liquids.

Public Officials and Identified Sites

For the ''identified sites'' component of the high consequence area definition, the definition listed various means by which an operator could identify these areas. The list included a site being visibly marked, being licensed or registered by a Federal, State, or local agency, being known to public safety officials or being on a list or map maintained by or available from a Federal, State, or local agency. In the preamble to the NPRM, RSPA/OPS invited comment on whether we should use the term public safety officials and/or emergency response officials instead of public officials (68 FR 4278, 4295).

In the petition for reconsideration of the high consequence area definition, petitioners objected to relying on public safety officials for identifying these sites because these officials might not be able to convey accurate information.

PECO, PG&E, and Peoples Energy all concurred that the phrase ''public safety

officials and/or emergency response officials'' was preferable to ''public officials.'' PG&E maintained the term ''public officials'' was too broad and provided too much variance for interpretation.

Both the Washington State Advisory Committee on Pipeline Safety and the Washington City and County Pipeline Safety Consortium suggested that operators work with local cities or municipalities to identify additional HCAs within their territories. They asserted that the cities and municipalities have the best information on facilities and on growth trends in their areas and would be in the best position to identify HCAs.

The Association of Texas Intrastate Natural Gas Pipelines and several other commenters asserted that the requirement to identify a site under the HCA definition by reference to commercially available databases is not reasonable. Kern River suggested that the rule needs to be expanded to define the exact process to follow to identify locations of people with limited mobility. Kansas Gas Service commented that the methods to identify these sites are unduly burdensome and impractical.

Several commenters sought more specificity in the procedure to identify outdoor areas and buildings requiring consideration as ''identified sites,'' and recommended that local public safety officials be relied upon in making these identifications.

Discussion at the public meetings and the May 2003 meeting of the advisory committee further highlighted industry concerns about locating buildings housing populations of limited mobility and areas where people congregate. The TPSSC recommended that local emergency planning committees (LEPC) be considered in addition to public safety and emergency response officials and that local public safety and emergency response officials or LEPCs be relied on as a principal source of information in identifying buildings containing populations of limited mobility. The TPSSC recommended that the focus for such buildings be those known to these local safety officials and meeting one of the tests: Be visibly marked, be licensed or registered, or be listed on a government map.

Response: RSPA/OPS agrees that specifying public safety officials, emergency response officials, or local emergency planning committees is clearer than the term ''public officials'' for purposes of this rule. These are the officials and agencies charged with protecting the health and safety of the community, and they are most likely to have information relevant to identifying and protecting areas where people could be affected by pipeline accidents. Other employees of local governments, who might be considered ''public officials,'' would be less likely to know the relevant information. The final rule has been revised to use this more focused terminology, and to make these officials a principal source of information regarding places where people congregate and buildings housing populations of limited mobility. RSPA/OPS is working to inform local emergency responders about the need to be knowledgeable about the ''identified sites.'' This change is consistent with the advisory bulletin RSPA/OPS issued on July 17, 2003.

The ''identified sites'' component of the definition included a list of methods operators could use to identify facilities with persons of limited mobility. However, the definition caused consternation because many operators saw it as an exclusive list. To address this concern, in the advisory bulletin issued on July 17, 2003 (68 FR 42458) we explained that it was never intended that operators perform an exhaustive search of every possible source of information. Rather, operators who consult public safety or emergency response or planning officials who indicate that they have knowledge of the ''identified sites'' need not do more (68 FR 42458, 42460).

In the final definition, we have clarified that local safety officials are the principal source of information on places where people congregate and buildings housing populations of limited mobility. This change is consistent with the guidance in the advisory bulletin issued on July 17, 2003. If these officials do not have the information to identify these sites, then an operator must use at least one of the other methods, such as visible marking or registration lists to identify the sites. These methods are explained in the new § 192.905 on how an operator is to identify a high consequence area. Rather than include these methods in the high consequence area definition in § 192.903, we moved them to the new section that explains the methods for identifying these sites. For outdoor areas, the final rule also relies on the knowledge of local safety officials to identify these areas.

People in Outside Areas and in Identified Site Buildings—§ 192.903 (Formerly § 192.763(i))

In the petition for reconsideration of the high consequence area definition, petitioners argued that RSPA should clarify the definition, particularly with regard to ''identified sites,'' because the definition is so broad and vague as to make compliance impractical. Petitioners noted that the definition references two standards for identifying places as HCAs because people congregate at those places. Petitioners requested that for consistency the same standard be used as the one used in the Class 3 definition, *i.e.*, 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period.

We had included rural churches in the example of outside areas under the HCA definition. In the petition for reconsideration, petitioners contended that the definition would pick up isolated and infrequently occupied buildings. In the Preamble to the NPRM on integrity management program requirements, RSPA/OPS acknowledged it did not know how many rural buildings would be covered and requested comment on whether to include these buildings, instead, as Moderate Risk Areas. The definition did not require a minimum number of confined or mobility-impaired people needed to occupy a facility. The definition did require that for outside gathering areas, there be 20 or more persons on at least 50 days in any 12-month period. The NPRM did not propose a new threshold for the number of persons needed to occupy an identified site. Nonetheless, we received a variety of comments on the number that had been included in the final definition.

Citizens for Safe Pipelines was adamant that Congress intended to protect sites similar to the Carlsbad accident site and, as support, referenced statements made by members of Congress. Citizens for Safe Pipelines contended that the definition is under-inclusive of places where pipelines should be inspected. Cook Inlet Keeper, along with the Washington City and County Pipeline Safety Consortium commented that the threshold for persons in outside areas of congregation should be 10 instead of 20. Accufacts supported having the outside area threshold as 10 instead of 20, but keeping the building threshold at 20. Most of industry sided with INGAA which supported 20 or more persons in outside areas of congregation with a much stricter frequency of 5 days a week, 10 weeks a year.

INGAA also proposed that we change the ''identified sites'' component to differentiate between rural buildings and outside areas, and to use different occupancy rates. The definition had grouped rural buildings and outside areas together, subject to a minimum use by 20 persons on at least 50 days in

any 12-month period. INGAA proposed changing the HCA definition to define an identified site as a building occupied by 50 or more persons at least 5 days a week, 10 weeks a year with the days and weeks not necessarily consecutive, and as an outside area that is small, well-defined and occupied by 20 or more persons at least 5 days a week, 10 weeks a year with the days and weeks not necessarily consecutive.

Industry generally shared INGAA's position that the building should be occupied by 50 or more persons at least 5 days a week 10 weeks a year and the buildings would not be limited to those containing persons of limited mobility. Both Accufacts and Cook Inlet Keeper said the threshold number of persons should be no less than what was specified in the HCA definition.

Response: When RSPA/OPS defined the number of people needed to gather in an outside area, we intended that areas, like the camping area in Carlsbad, would be covered. The number of people and the frequency of use was intended to pick up areas used for recreation on weekends. We did not open for discussion the threshold number of people needed to occupy a building with persons of limited mobility or to gather in an outside rural gathering area or building. The definition did not specify an occupancy rate for buildings with persons who would be hard to evacuate, and specified 20 persons for a rural building or outside area. Nor did we open for comment the specified frequency in an outside area (50 days in any 12-month period). We have not changed the occupancy threshold in these outside gathering areas.

However, we reopened the issue of how to treat rural buildings. In the final rule, we have modified the definition of outside gathering areas to address the rural building issue. The identified site definition in the final rule includes an outside area or open structure that is occupied by twenty (20) or more persons on at least 50 days in any twelve (12)-month period. The days need not be consecutive. Examples of these areas would be beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, recreational areas near a body of water, or areas outside a rural building such as a religious facility where 20 or more people congregate regularly for bazaars or civic activities at least 50 days a year.

We did not change the occupancy threshold for these outside areas and open structures. A threshold of 10, as recommended by several commenters, is too low to be practical and would lose the focus on higher consequence areas. Current regulations for protecting outdoor areas in which people congregate (*i.e.,* by designating them as Class 3 areas) use a threshold of 20 persons, and this threshold is consistent with that practice. The high consequence area definition differs from current practice in using a criterion of 50 days per year, which need not be consecutive, rather than 5 days per week and 10 weeks per year. This recognizes the patterns by which people congregate, including weekend use of outdoor areas. This frequency is intended to pick up areas similar to the camping area where the Carlsbad accident occurred, where local officials know that people gather regularly.

To further address the rural building issue, the identified site definition in the final rule has been revised to differentiate between outside open structures and rural buildings. The definition in the final rule includes buildings housing 50 or more people 5 days per week and 10 weeks per year (the days and weeks need not be consecutive). This modification is intended to pick up buildings outside populated areas where people gather during the week, or on weekends for recreational activities. Because buildings provide some protection from the effects of a pipeline accident, RSPA/OPS finds it appropriate that the threshold be based on a higher number of people and occupancy criteria consistent with current class location regulations. This will allow operators to make maximum use of the data they already have regarding buildings containing concentrations of people, and further reduce the burden of implementing this rule.

The identified site component also included buildings housing people who would be difficult to evacuate or are of limited mobility. The definition did not include an occupancy threshold for those buildings. We have not modified that component of the definition, rather we are relying on the knowledge of local emergency officials.

C–FER Model, Potential Impact Circle (PIC), Potential Impact Radius (PIR), and Potential Impact Zone (PIZ) Calculations, and Threshold Radius

Many comments related to the proposed use of the C–FER model and the various other calculation methods referenced in the NPRM. The high consequence area definition had been based on the heat affected zone from a rupture calculated using the C–FER model, with an added margin of safety—thresholds of 300 feet for small-diameter, low-pressure pipelines, and 1,000 feet for higher-pressure, larger-diameter pipelines. The NPRM further proposed to add populated areas at distances greater than 660 feet from large-diameter, high-pressure pipelines. The C–FER model used a heat flux of 5,000 Btu/hr/ft^2. RSPA/OPS has questioned whether a more conservative heat flux rate of 4,000 Btu/hr/ft^2, the heat flux rate used in the liquefied natural gas regulations (Part 193), should be used instead.

The proposed regulations also included calculations for determining the Potential Impact Radius of a covered segment, for determining the Threshold Radius associated with the Potential Impact Radius, and for identifying the Potential Impact Circle(s) and Potential Impact Zone(s) for the pipeline.

A number of commenters, such as Consolidated Edison and the Iowa Utilities Board, suggested that calculations should be based on the maximum operating pressure and not on the Maximum Allowable Operating Pressure (MAOP).

Several commenters noted that the term, ''diameter,'' should be clarified as inside diameter, outside diameter, or nominal diameter and pressure should be clarified as gage or absolute. Consolidated Edison suggested that the PIR formula for natural gas should be simplified to $r = 0.69d\sqrt{p}$. Air Products suggested operators be allowed to rederive the C–FER model considering product, size of pipeline, and operation of emergency flow restricting devices (EFRDs).

Several commenters supported the use of the C–FER model. Williston Basin asserted the model was reliable and should be used over the full spectrum of pipeline conditions.

Northeast Gas Association, Gas Piping Technology Committee, Peoples Energy and several other commenters contended that there was no justifiable reason to impose an additional safety margin on top of the C–FER calculation. In contrast, NTSB argued that an adequate and uniform safety margin should be applied for all pipelines and noted that the farthest building burned from the Edison, NJ rupture would be within the 1,000 foot threshold. NTSB further suggested that RSPA/OPS consider the effects of horizontal jetting along the pipeline as demonstrated at the Carlsbad, New Mexico rupture site.

Panhandle Eastern, Williams, and other commenters contended that utilizing 5,000 BTUs in the equation was appropriate and there was no technical basis for utilizing 4,000 BTUs. The State of New York alleged that 5,000 BTUs is too high and the value should be an appropriate value to

eliminate the possibility of fatality and ignition of protective wooden structures.

A large number of commenters were opposed to the use of a Threshold Radius, and asserted that its use is unjustified and with no technical basis. Northeast Gas Association commented that the wording is confusing and asked for clarification as to whether the Threshold Radius becomes 1,000 feet when the PIR exceeds 660 feet and when the diameter is also 36 inches and the pressure is 1,000 psig or greater. The Iowa Utilities Board concurred that the PIC and Threshold Radius should be based on the distance of the actual hazard and not on arbitrary distances that include areas outside of the Potential Impact Radius. The Iowa Utilities Board further contended that burdens on small pipelines and operators should be minimized. PECO asked for additional clarification as to whether the radius of all Class 3 and 4 locations is effectively 1,000 feet.

AGA and several operators, including Baltimore Gas and Electric, suggested that operators of pipelines operating below 30% SMYS should not be required to go beyond the actual impact zone calculations in their identification of HCA areas. Laclede Gas stated that there should be no margin above the C–FER calculation, especially for pipelines operating below 30% SMYS.

Response: The appropriateness of the C–FER model was the subject of considerable discussion at the public meetings held during the comment period on the proposed rule. As a result of these discussions and comments to the docket, RSPA/OPS has concluded that the C–FER model is sufficiently conservative for use in the screening process to identify HCAs. RSPA/OPS believes the model adequately reflects the distance, lateral to the pipeline, at which significant effects of accidents will occur. In the final rule, we have adopted the model as the basis for calculating Potential Impact Circles under the bifurcated option for defining HCAs (discussed in prior section) with the addition of the one radius at either end (discussed below).

Discussion at the public meetings and with the advisory committee, and analysis of recent pipeline accidents, also identified that pipeline accidents have sometimes affected an elliptical area, with the long axis of the ellipse along the pipeline. The NTSB noted that this likely results from horizontal jetting in the direction of the pipeline. The elliptical nature of the burn pattern means that the C–FER radius is not always conservative in identifying the maximum distance from a potential pipe rupture, measured along the pipeline, at which the effects from the rupture will be felt. Following careful analysis of the burn patterns near pipeline ruptures, RSPA/OPS determined that it is appropriate to add an additional length of pipeline equal to the C–FER radius on either side of a high consequence area, *i.e.,* increase its extent along the pipeline, rather than increase the lateral distance. INGAA concurred with this approach. We have incorporated this this approach into the final rule. Where Potential Impact Circle(s) are used to define HCAs, the pipeline segment in the high consequence area extends from the outermost edge of the first circle to the outermost edge of the last contiguous circle. This is illustrated in Appendix, Figure E.I.A to the final rule. Under the proposed rule, the segment would have been limited to the pipe between the centers of these circles.

The concept of Threshold Radius has been eliminated from the final rule. This concept was intended to apply some margin to C–FER calculations and to simplify the identification of HCAs. As described above, RSPA/OPS is convinced that the C–FER model is conservative enough for this purpose. We are also convinced by the comments that the use of Threshold Radius complicated, rather than simplified, the identification of HCAs. With the elimination of this approach, pipeline segments are included or not included on the basis of the calculated distance of the actual hazard, as recommended by many commenters.

RSPA/OPS has not adopted the suggestion that maximum operating pressure, instead of MAOP, be used in C–FER calculations. MAOP reflects the pressure at which the pipeline can be operated, and thus the hazard that could be experienced. This is an inherent conservatism in the C–FER model, and has likely contributed to the successful validation of the equation against accident experience.

The final rule specifies that nominal pipeline diameter is to be used in C–FER calculations. It also provides, as did the proposed rule, that a different constant factor must be used when making the calculation for gases other than natural gas, and refers to ASME/ANSI B31.8S for this determination. RSPA/OPS does not agree that further derivation of a unique equation for other gases is necessary.

System Considerations

Numerous operators, including Peoples Energy, Houston Pipeline and Puget Sound, asked for clarification on the need to do additional studies or calculations if and when they deem their entire systems to be HCAs. They asserted there would be no need for the additional effort if all parts of their system were designated as HCAs and any additional effort would be a waste of company resources and time. Oleska and Associates shared this sentiment and recommended allowing operators to classify pipelines as being in an HCA without going through any analysis.

The Iowa Utilities Board commented that the rule should allow a pipeline operator to exclude its own facilities when determining if pipeline is in a high consequence area.

Response: RSPA/OPS agrees that further analysis to identify HCAs is not necessary if an operator elects to treat its entire system as a high consequence area. The final rule requires that identification of HCAs include documentation of the Potential Impact Radius ''when utilized.''

The high consequence area definition, as modified by this rule, focuses on identifying areas where large numbers of people could be at risk from a pipeline rupture. RSPA/OPS expects that pipeline operator facilities should be treated the same way as other facilities. The only operator facilities that could affect the determination are facilities in which more than 20 operator employees gather for the number of days appropriate to the type of gathering place (*i.e.,* at least 50 days per year if outdoors, 5 days per week in at least 10 weeks per year if indoor). The number of such facilities is expected to be small. Where they exist, however, RSPA/OPS believes it is appropriate to provide consideration of those gatherings in the same manner as for gatherings of non-operator personnel.

Moderate Risk Areas (MRAs)

The NPRM proposed to include Moderate Risk Areas, areas located within a Class 3 or 4 location but not within the Potential Impact Zone. These areas would require less frequent assessment or enhanced preventive and mitigative measures. In the preamble to the NPRM, RSPA/OPS requested comment on two issues related to these areas:

- Comments on designating rural buildings, such as rural churches, as Moderate Risk Areas instead of as High Consequence Areas (68 FR 4278, 4296).
- Comments and cost information on an option to not require an assessment of a segment located within a Moderate Risk Area, but, rather, to require enhanced preventive and mitigative measures on the segment (68 FR 4278, 4284). The premise was that if houses are mostly clustered in one area of a

Class 3 rectangle, a pipeline failure in an area beyond the cluster may have little, if any, impact on the area with the cluster of homes.

Comments on MRAs ranged from urging elimination to full support for their use. Williston Basin and National Fuel recommended eliminating MRAs because they require significant resources and provide few safety benefits. Both the Northeast Gas Association and Kern River saw potential value in MRAs but suggested their use and implementation should be optional. PECO recommended that the MRA definition be clarified because it was unclear when buildings should or should not be designated as MRAs when they are located in HCAs.

Northeast Gas Association responded that rural buildings, such as churches, in Class 3 and 4 areas, should be designated as MRAs whether or not they fall within an impact circle and that such areas should be subjected to less frequent assessment and lesser mitigation requirements. Several other industry commenters concurred, including Southwest Gas and Paiute. PG&E would not support the inclusion of churches in the examples of outside areas.

Taking the opposite position, the Washington City and County Pipeline Safety Consortium commented that if such facilities incorporate outside areas that are HCAs fall under the definition of an HCA, then such rural churches should be captured in the HCA definition.

Vectren and PG&E noted that areas outside the Potential Impact Zones have little probability of being affected by a failure and concurred with the suggested option. Northeast Gas Association, Southwest Gas Corporation, and other commenters maintained that if MRAs remain in the regulation, these areas should be subject only to enhanced preventive and mitigative measures.

Response: The concept of Moderate Risk Areas is not included in the final rule. This concept was intended to address areas that met the definition as HCAs, but because the areas were more remote and less populated, the potential risk of an accident was less than in other HCAs. The likelihood of this occurring has been reduced, or eliminated, by the changes made in the definition of HCAs. These areas are defined in the final rule based on the calculated hazard for operators using the Potential Impact Circle option. Additional margin, in the form of threshold radii, designation of all Class 3 and 4 areas, or an arbitrary margin applied to C–FER calculations, has been eliminated. Accordingly, all areas meeting the definition of HCAs require treatment as such, and no category of reduced actions is needed.

As explained in the section on ''identified sites,'' we have modified the definition of HCAs to clarify the differences between outside open structures and rural buildings. In both cases the occupancy threshold is 20 people. For rural buildings, people must congregate five days a week for at least ten weeks in year as in the current class location 3 definition. For open structures and outside gathering areas, people must congregate at least fifty days in a year.

4. Program Requirements and Implementation, Including Integrity Assessment Time Frames, Assessment Methods, and Criteria

The topics covered in this section encompass the majority of the comments that addressed the requirements for and implementation of an integrity management program. We have grouped in this subsection comments addressing general program requirements and compliance time frames, baseline assessments and their quality, the use of prior assessments, the requirements associated with using Direct Assessment, Confirmatory Direct Assessment, and Internal Corrosion Direct Assessment, reassessment intervals and overlap, pressure testing requirements, cyclic loading, ERW pipe seam issues, and training requirements.

Time Frame for compliance. The proposed rule required operators to identify all covered segments within one year from the rule's effective date. Northeast Gas Association asked that operators be allowed two years after the final rule to identify all pipeline segments and conduct a risk analysis.

Response: The statute requires that RSPA/OPS issue regulations prescribing integrity management program standards. These regulations must require operators to conduct a risk analysis and adopt an integrity management program no later than 24 months after the date of enactment, *i.e.,* by December 17, 2004. Therefore, RSPA/OPS does not have the flexibility to allow operators two years to complete the segment identification. RSPA/OPS has tried to accommodate concerns about the time frame for developing a program through use of the framework concept.

Framework: The proposed rule required an operator to develop and follow a written integrity management program within one year from the effective date of a final rule. However, the proposal allowed the operator to begin with a framework addressing each of the required program elements. Puget Sound Energy suggested that the requirement for a framework should be deleted. The company commented that a framework is either an additional document above and beyond the integrity management plan or is telling the operator how to develop a plan. The company noted that the term is used in ASME/ANSI B31.8S as an umbrella for the elements of a plan and not to describe a separate document. The Northeast Gas Association requested that a rule have enough flexibility to allow operators the time necessary to develop a thorough and effective plan. The Association further commented that it may not be possible for operators to develop a plan within the time frame specified in the proposed rule.

Response: The intent of allowing a framework was to acknowledge that an operator cannot develop a complete, fully mature integrity management plan in a year. Nevertheless, it is important that an operator have thought through how the various elements of its plan relate to each other early in the development of its plan. The framework serves this purpose. Each operator is required to develop a framework within one year that describes the process for implementing each program element, how relevant decisions will be made and by whom, and a time line for completing the work to implement the program element. It need not be fully developed or at the level of detail expected of final integrity management plans. The framework is an initial document that evolves into a more detailed and comprehensive program. A separate document is not necessary. For some operators (*e.g.,* those with only a few miles of covered pipeline) it may be possible to prepare a fully-developed integrity management plan within a year. In that case, no separate framework is required. The discussion of the framework in the final rule has been modified to reflect these expectations.

Communications Plan: One of the proposed elements of an integrity management program was a communications plan that includes the elements from ASME/ANSI B31.8S. Northeast Gas Association questioned the need for a communications plan requirement because a consensus standard on a Recommended Practice for Pipeline Public Awareness Programs is now being developed under the auspices of the American Petroleum Institute (API).

Response: This rule requires that integrity management plans include communications plans that follow the

guidelines in ASME/ANSI B31.8S, a standard that has been incorporated by reference into the final rule. Industry and government representatives working on the API standard are aware of the ASME/ANSI B31.8S guidelines, and RSPA/OPS expects that the final API standard will not conflict with them. RSPA/OPS will consider adoption of the API standard, for public awareness, not IMP communications, including whether changes to the communication provisions in this rule are appropriate, when that standard is approved.

Best Practices. Northeast Gas Association commented on proposed requirements that operators adopt ''best practices.'' The Association noted that the best practices for one company are not always applicable to other companies, because of the variability in system configurations, physical pipeline attributes, and business perspectives. Northeast Gas recommended elimination of all references to incorporation of best practices.

Response: RSPA/OPS recognizes that practices applicable at one operator might not be as useful or effective at another. Nevertheless, RSPA/OPS believes that it is important that operators learn from the experience of the industry at large. The standards development process is a means of combining industry experience to identify lessons that should be applied to other operators. RSPA/OPS has modified the final rule to rely on that process. The rule requires that practices in ASME/ANSI B31.8S be used. The consensus process of gathering, reviewing, and publishing best practices in a manner suitable for use at all operators should resolve the applicability questions.

Baseline and Prior Assessments. The proposed rule allowed an assessment conducted up to five years before the date of enactment of the Pipeline Safety Improvement Act of 2002 as a baseline assessment. The Act was signed into law on December 17, 2002. The proposed rule established time periods for the baseline assessment. If the assessment were done by pressure test or internal inspection, the operator would have to complete the baseline by December 17, 2012, with 50% of the highest risk pipe being done by December 17, 2007. However, if the segment were in a Moderate Risk Area, the assessment would have to be done by December 17, 2015. If the operator used direct assessment, the baseline would have to be done by December 17, 2009, with 50% of the highest risk segments assessed by December 17, 2006, or by December 17, 2012 if it was in a Moderate Risk Area.

Southwest Gas Corporation and Paiute Pipeline noted there was no provision to incorporate new pipelines into an integrity management plan and recommended that for pipelines installed after December 17, 2002, the installation pressure test be accepted as the baseline inspection. Northeast Gas Association supported the proposed requirement that 50% of the facilities posing the highest risk be baseline-assessed during the first half of the assessment cycle. Dominion commented that the proposed language is not clear about when a baseline assessment is complete. It suggested the baseline assessment start when the first inspection tool is run and that the start of the reassessment interval would be when the company runs the final assessment tool, analyzes the data from the final tool report, and remediates all immediate indications for the baseline assessment.

Several commenters noted that the date for prior assessments was incorrectly listed as 2007 rather than1997. El Paso asserted there is no technical basis for the five-year limit on a previous assessment and argued that an assessment conducted before December 17, 2002 should be allowed as a baseline if it substantially meets the requirements of the rule and referenced standards. Dominion concurred with El Paso and added that the proposed rule penalizes operators for using prior assessments because it requires an operator to reassess immediately or within the next 2 years. Instead, Dominion suggested that the reassessment interval of seven years should start after the baseline assessment information is realigned and analyzed based on the operator's current program. INGAA took exception to the proposed 1997 cutoff date and argued that RSPA/OPS was judging the applicability of earlier assessment technology without providing technical rationale. INGAA commented that RSPA/OPS should allow operators to use prior assessment data to encourage them to use the performance-based option.

Response: Commenters are correct that the date listed for prior assessments was incorrect and should have been listed as December 17, 1997 in the NPRM. However, that date is no longer relevant because the final rule has been revised to allow an assessment conducted any time prior to the date the Pipeline Safety Improvement Act was signed into law, December 17, 2002, as a baseline assessment if the prior assessment satisfies the requirements of Subpart O. There is no longer a five-year cut-off date for prior assessments.

The final rule also allows prior assessments as part of the qualification basis for the performance-based option. For this option, an operator must demonstrate that the prior assessments effectively addressed the identified threats to the covered segment. Although these assessments may not meet all the requirements for a baseline, because the performance-based option sets additional and more stringent requirements, RSPA/OPS believes it could allow some flexibility in relying on prior assessments.

RSPA/OPS has clarified the language concerning the time period for conducting the baseline assessment. The final rule no longer requires the baseline period to depend on the assessment technique used. The period is now the same, no matter the assessment method. Furthermore, as discussed earlier in this document, RSPA/OPS has eliminated the concept of Moderate Risk Areas. An operator must complete the baseline assessment of all covered segments by December 17, 2012, and assess at least 50% of the covered segments, beginning with the highest risk segments, by December 17, 2007. Consistent with the advisory committee's recommendation, we have revised the final rule to require that the first reassessment for a pipeline segment on which a prior assessment is credited as baseline must occur by December 17, 2009, seven years after enactment of the Pipeline Safety Improvement Act of 2002.

Any new pipeline that is installed in a high consequence area would be subject to the requirements of the rule. The final rule has been revised to require that newly-installed pipeline be included in the integrity management plan, and that the baseline assessments on any high consequence area segment be completed within ten years of installation. The rule provides that the installation pressure test, conducted in accordance with subpart J of part 192, would satisfy the requirements of a baseline assessment. Intervals for reassessment would be measured from the date of the baseline assessment, as for any other covered pipeline segment.

RSPA/OPS has not specified in the rule what constitutes completion of an assessment on a covered segment, and therefore the date from which future assessment requirements toll. Such details were not included in the integrity management rule for hazardous liquid pipelines, but rather were addressed through additional guidance for implementing the rule. That guidance specifies that the end of field activities, *e.g.*, completion of the final

tool run or completion of a hydrostatic test, is considered the end of an assessment. RSPA/OPS will issue similar guidance for this rule.

Pressure Testing. We received comments on the proposal to allow pressure testing as an assessment method and that to address manufacturing and construction defects, a pressure test be conducted at least once in the life of the segment.

NTSB noted that although defining HCAs can help to set priorities, risk management programs should ensure that pipelines are appropriately tested at all locations where there is public exposure and cited Carlsbad as an example. Advanced Technology Corporation asserted that there are other fracture mechanics assessment methods which would be preferable to pressure testing, which can cause crack growth.

The majority of comments centered on the proposal to pressure test all segments once in the life of the pipeline. INGAA asserted, with numerous commenters echoing INGAA's comments, that experience has shown manufacturing and construction threats to be stable unless activated through a change in operations or the environment. The Association of Texas Intrastate Natural Gas Pipelines commented that once-in-a-lifetime pressure testing should be eliminated and that testing conducted upon installation (post 1971) or based upon historical operation, provides adequate evidence of safety. Several commenters, including INGAA, suggested that the rule should be aligned with ASME/ANSI B31.8S.

Response: Pressure testing has long been considered the definitive method of testing pipeline integrity. RSPA/OPS has received no information that would challenge this historical practice, and pressure testing remains an acceptable assessment method in the final rule. RSPA/OPS has been convinced by the public comments, including discussions at the public meetings, that it is not necessary to require a once-in-a-lifetime pressure test to address the threat of material and construction defects. Historical safe operation, which in many cases involves several decades, provides confidence that latent defects will not result in pipeline failure as long as operating conditions remain unchanged. The final rule requires that an assessment be performed if operating pressure is increased above the historic level or if operating conditions change in a manner that would promote cyclic fatigue.

Direct Assessment. There were numerous comments about the proposed requirements for using Direct Assessment (DA). In the proposed rule, direct assessment was allowed to address the threats of external corrosion, internal corrosion or stress corrosion cracking, and then only if certain preconditions were met. The proposed assessment intervals using this method were shorter than the ones proposed using the other assessment methods.

In the NPRM, RSPA/OPS also requested comments on:

- Whether it should allow an operator using Direct Assessment on a pipeline operating at less than 30% SMYS a maximum ten-year reassessment interval regardless of whether the operator excavates and remediates all anomalies on that pipeline, or at least remediates the highest risk anomalies. (68 FR 4278, 4281)
- Whether the benefits of the proposed requirements for External Corrosion Direct Assessment, which were more extensive than the NACE Recommended Practices under development, were worth the cost. (68 FR 4278, 4282)

Several commenters expressed serious concerns. Carol Parker commented that the method needs further study before being approved and Cook Inlet Keeper maintained that more stringent criteria are needed as compared to other assessment methods. Accufacts supported the proposed shorter assessment period for DA because it is a developing and unproven technology and further asserted that the related ICDA approaches are seriously deficient.

In contrast, at least 125 comments, primarily from the pipeline industry, supported the use of Direct Assessment. For example, Northeast Gas Association supported using DA in the integrity management process because its research had showed that DA has a high degree of reliability. Numerous commenters asked that we incorporate the new NACE DA standard into the rule rather than duplicate the requirements. Most of the same commenters argued that DA should be considered equal to inline inspections and hydrostatic tests as an assessment method. Laclede Gas, along with other operators, asserted that DA is the only practical option for many local distribution companies and is better than inline inspection at finding coating damage that has not yet resulted in corrosion with wall loss. Other commenters maintained that DA should be explicitly identified as a technique for detecting potential third-party damage, and that the proposed treatment of DA is so prescriptive as to effectively eliminate it as an option.

Commenters, including Southwest Gas, Paiute, Peoples Energy, PG&E, Kansas Gas Service, and Puget Sound commented that the proposed additional requirements were unnecessary, and were not beneficial. More than 20 commenters recommended incorporating by reference the NACE DA standard.

Nine commenters agreed with the proposal to allow low-stress pipelines a ten-year reassessment interval. Over 30 commenters maintained that DA should be allowed the same schedules as those for inline inspections and hydrostatic tests. Other commenters, such as Sempra and the Iowa Utilities Board, supported less stringent rules for pipelines operating below 30% SMYS because of the lesser hazard posed by failure of such pipelines.

Response: The process of Direct Assessment for evaluating the integrity of pipelines is new. Therefore, the proposed rule included restrictions on use of DA, including shorter baseline and reassessment intervals, because of concerns about the efficacy of the process. The NACE DA standard was still being developed when the proposed rule was issued.

Although the process is new, the techniques involved in DA are not new. There are no new and untested technologies involved. Pipeline operators have used indirect examination tools in DA for many years, and there is a wealth of experience. Although exposing a pipeline for direct observation and evaluation of potential problems is the most reliable means of understanding pipeline condition, it is not practical to excavate and examine entire pipelines. The DA process is a method that involves structured use of the time-tested indirect examination tools, and integration of the information gained from use of those tools with other information about the pipeline, to determine where it is necessary to excavate and examine the pipe.

A group of operators coordinated by Battelle and Gas Technology Institute, and co-funded by RSPA/OPS, conducted and documented additional research and validation of direct assessment after the proposed rule was published. RSPA/OPS personnel reviewed the results of this research, recognized the importance of careful inspections to ensure effective application of direct assessment, and recommended focused training of RSPA/OPS inspectors in the characteristics of an effective DA program. In addition, RSPA/OPS has included qualification requirements in the final rule for individuals that carry

out DA for those that interpret the results.

Early results from the research have underlined the importance of operator vigilance in applying DA and of continuous incorporation of lessons learned in implementation procedures. The results of this research were discussed at the public meetings held during the comment period. These efforts have significantly improved RSPA/OPS's confidence in this method for assessing pipelines. RSPA/OPS has additionally been persuaded that many distribution companies operating transmission pipelines will need to rely heavily on this method. These companies' transmission pipelines are closely integrated with their distribution systems, are generally not amenable to inline inspection, and are often impractical to remove from service for pressure testing. Most also operate at low pressures, presenting relatively smaller risks than other transmission pipelines. Placing more restrictive requirements on use of DA would increase the burden, and costs, for operators of these low-risk pipelines without commensurate benefits.

For all of these reasons, RSPA/OPS has concluded that it is unnecessary to place significant restrictions on the use of direct assessment. The final rule has been revised to make the required baseline and reassessment periods the same for DA as for other assessment methods. Conditions on the use of DA as a primary assessment method have been eliminated. These changes have rendered moot the question of whether a ten-year reassessment interval should be allowed for low-pressure pipelines even if all anomalies are not excavated.

In the proposed section on using direct assessment to address external corrosion, we had drawn from a draft of the NACE standard on external corrosion that was close to completion. Since the proposed rule was published, NACE issued its recommended practice on external corrosion direct assessment (NACE Recommended Practice RP–0502–2002). RSPA/OPS has reviewed the recommended practice and concluded it has all the necessary requirements and safeguards to ensure the efficacy of the process.

The NACE ECDA recommended practice (RP) has been incorporated into the final rule in the section addressing requirements for external corrosion direct assessment. The existence of NACE RP has allowed us to eliminate constraints on use of DA that were the subject of the questions in the preamble. Incorporating the standard is responsive to public comments, contributes to simplifying the rule, and is consistent with our overall practice of referencing consensus standards where they are available and meet regulatory needs. In addition, the rule specifies requirements beyond those in the NACE RP. Requirements in the rule that go beyond the NACE recommended practice address documentation criteria used in making decisions in implementing direct assessment. This documentation is needed to support oversight by RSPA/OPS and state pipeline safety authorities.

NACE has not completed development of recommended practices for internal corrosion and stress corrosion cracking. The final rule references requirements in ASME/ANSI B31.8S applicable to these methods and includes additional requirements. RSPA/OPS will consider incorporating NACE standards for these techniques when those standards have been completed.

Confirmatory Direct Assessment (CDA). The NPRM proposed allowing an operator to use Confirmatory Direct Assessment (CDA) as an assessment method at seven-year intervals if the operator established a longer reassessment interval using one of the other assessment methods. CDA is a more focused application of DA to address known threats in a pipeline segment.

Industry generally embraced the concept of CDA. Dominion recommended allowing CDA as the first reassessment following a baseline assessment conducted after December 17, 2002. Houston Pipeline maintained that CDA should also be available for use on all pipelines previously assessed, not just those assessed using pressure testing or inline inspection. Sempra supported the use of CDA and suggested utilizing Section 5.10 of NACE RP0502 to determine the number and locations of excavations and direct examinations to be made if ECDA was used for the previous assessment.

Although Northeast Gas Association supported the CDA concept, it suggested basing the CDA process on a technical industry standard, and streamlining the process so that only one dig in each segment is required as per the NACE standard instead of the proposed two digs. Peoples North Shore Gas stated that the proposed process only provides minimal relief as compared to full DA, echoed the need for streamlining, and provided several streamlining suggestions.

Opposing the use of CDA, Cook Inlet Keeper maintained that CDA is not as effective as internal inspection or pressure testing. Cook Inlet suggested OPS compare the results for pipelines using CDA for reassessment to the results for pipelines using internal inspection or pressure testing for reassessment, and should CDA prove less effective than the latter two methods, reevaluate allowing its use.

Response: CDA is a more focused version of Direct Assessment. The additional research and validation conducted in a project managed by the Gas Technology Institute, carried out by several operators working with Battelle, and funded by RSPA/OPS and the industry has increased RSPA/OPS's confidence in DA (as described above), as well as our confidence in CDA. The research had overview and partial funding by RSPA/OPS. It included comparison of results from various above-ground assessment tools with internal inspection runs completed on the same segments. The results are compelling enough to allow RSPA/OPS to support use of the technology under very careful oversight and with the assumption of continuing development and validation. The final rule requires that the baseline assessment on all covered segments must be by internal inspection, pressure testing, Direct Assessment, or other equivalent technology (with prior notice to RSPA/OPS) and that the reassessment must be by one of these methods at intervals specified in the rule and in ASME/ANSI B31.8S. CDA is an interim assessment technique designed for use when the reassessment interval by one of these methods exceeds seven years.

The rule provides that CDA for external corrosion can be conducted using only one indirect measurement tool, rather than two complementary tools as required for Direct Assessment. The rule also provides for a more limited number of excavations, requiring excavation of only one scheduled indication in each ECDA region. Any ''immediate indications'' that are identified must also be excavated. The final rule also provides that additional assessment, using one of the other methods, must be performed if the CDA results do not confirm the integrity of the pipeline.

Internal Corrosion Direct Assessment (ICDA). The NPRM proposed requirements for the use of Direct Assessment to address internal corrosion in a pipeline segment.

Numerous commenters noted problems with the proposed ICDA language used in some of the requirements. Suggestions included: Rewording to clarify that internal corrosion can result from more than upset conditions, deleting references to chlorides, replacing ''moisture'' with ''electrolytes,'' replacing ''MIC'' with

''microorganisms,'' allowing the use of other measurement techniques that may be developed, referencing Graph E.III.1 when it is not a complete flow model, and replacing the word fluids with liquids, because gas is also a fluid.

Both Paiute Pipeline and Southwest Gas asserted that ASME/ANSI B31.8S should be exclusively referenced rather than writing a procedure for ICDA within Part 192. The Northeast Gas Association questioned the need to excavate additional locations if, upon excavation of the first location most likely to corrode, no internal corrosion was found.

NTSB commented that its investigation of the Carlsbad pipeline accident revealed areas where cleaning pigs had not been used that were likely locations for internal corrosion. NTSB suggested that RSPA/OPS highlight the increased corrosion potential of pipeline sections not subject to the periodic use of cleaning pigs.

Response: NACE is developing recommended practices for ICDA, but none has yet been finalized. Discussion of ICDA in ASME/ANSI B31.8S is limited, but the final rule does reference the requirements in Appendix B2 of that standard. The final rule includes basic requirements consistent with the recommended practices now under development. These recommended practices, when completed, will provide additional guidance for implementing these requirements. The requirements provide for a minimum of two excavations in each ICDA region. RSPA/OPS has concluded that more than one excavation is needed, because predicting the locations at which internal corrosion could occur is not an exact science. There are different types of locations in which such corrosion can occur. Multiple excavations, and direct examination of potentially affected pipe, are necessary to ensure that internal corrosion will be found.

RSPA/OPS has revised the language in the final rule to incorporate many of the suggested editorial comments. The final rule has also been revised to highlight the potential for increased corrosion of locations not subject to periodic use of cleaning pigs or in which cleaning pigs could deposit collected liquids.

Reassessment Intervals: RSPA/OPS proposed that the reassessment interval begin when the baseline assessment of a covered segment was completed. This had been proposed consistent with the statutory requirement in 49 U.S.C. 60109(c)(3)(A) that an integrity management program include ''[a] baseline integrity assessment of each of the operator's facilities * * *.'' The length of the proposed reassessment intervals depended on the assessment method, although some form of reassessment would have to be done by the seventh year of the interval. If an operator used pressure testing or internal inspection, the maximum reassessment interval proposed was ten years for a pipeline operating at or above 50% SMYS and 15 years if operating below 50% SMYS. If an operator established the maximum interval, the notice proposed that a Confirmatory Direct Assessment would have to be done in the seventh and fourteenth years. If an operator used DA, the notice proposed a five-year interval if examining and remediating defects by sampling, or ten years if directly examining and remediating all anomalies. Again, if the ten-year interval were established, the notice proposed a CDA be conducted by the seventh year.

In the NPRM, OPS requested comment on whether a rule should allow a maximum 20-year reassessment interval on pipelines operating at less than 30% SMYS, and reassessment by CDA method every seven years, without the need for reassessment by some other method, for pipelines operating below 20% SMYS (68 FR 4278, 4281). RSPA/OPS also sought comment on whether the rule should allow a maximum ten-year reassessment interval when DA is used on a pipeline operating at less than 30% SMYS.

Cook Inlet Keeper supported the proposal to reassess a covered segment every seven years, rather than to begin the reassessment interval only after the baseline assessment of all covered segments in a transmission system was complete. Cook Inlet maintained the proposal was consistent with the Congressional intent to ensure covered segments are reassessed every seven years. Cook Inlet argued that without such an interpretation, a segment assessed early during the baseline assessment period might be assessed late during the reassessment period, resulting in over 16 years between assessments.

Contrary to Cook Inlet's position, the vast majority of commenters argued that reassessment intervals should begin after the initial ten-year baseline period, *i.e.*, the reassessment interval should not begin until all segments have been initially assessed. INGAA requested that the rule clarify that the initiation of the first reassessment is not mandatory until completion of the baseline period for the system. INGAA asserted that without this change, operators will be conducting reassessments on their systems in HCAs at the same time as they are conducting baseline assessments, resulting in a potential for significant gas price spikes caused by outages on multiple pipeline systems occurring at the same time. INGAA claimed this would conflict with the intent of the legislation and preclude the ability to adjust priorities based on prior findings. Numerous commenters echoed INGAA's comments.

Expanding on INGAA's position, NiSource asserted that without the change, outages in overlap years are likely to make it difficult to refill storage during summer months and lead to shortages and price spikes the following winters. Kansas Gas Service maintained that if the overlap were not eliminated, a bubble of demand for assessment services much greater than any other year would be created during the overlap years and would not be sustained beyond the bubble, resulting in operators facing difficulty obtaining services and experiencing supply interruptions. PSNC Energy also recommended eliminating the overlap because it would cause economic and labor-related hardships and lead to shortcomings from cutbacks in remaining baseline assessments. Northeast Gas Association and several other commenters noted that the reassessment intervals should be the same as identified in ASME/ANSI B31.8S.

AGA proposed that the rule incorporate the maximum interval set for pipelines operating below 30% SMYS in the ASME/ANSI B31.8 standard, with interim preventive and mitigative measure being applied every seven years. Ten commenters, including Vectren, Dominion, and Northeast Gas Association, supported AGA's proposal that the rule allow a maximum 20-year reassessment period for pipelines operating under 30% SMYS. Northeast Gas Association also recommended the 20-year interval also apply for Direct Assessment. Sempra, the Iowa Utilities Board, and other commenters supported less stringent requirements for pipelines operating below 30% SMYS because of the lesser hazard posed by failure of these low-stress pipelines.

There were many comments on the proposed shorter reassessment intervals for operators using Direct Assessment. American Public Gas Association, American Gas Association, and several other commenters argued that DA reassessment intervals should be the same as for other methods. Williams Gas Pipeline maintained that having shorter DA intervals is not justified and Panhandle Eastern suggested that the reassessment intervals should be based on ASME/ANSI B31.8S. PG&E

supported a ten-year DA interval on pipelines operating at less than 30% SMYS, which would be consistent with ASME/ANSI B31.8S. Sempra asserted that accelerating DA assessment schedules could result in assessment on some higher risk pipelines being deferred and suggested basing assessments on risk ranking of the various pipeline segments independent of the assessment method. The Association of Texas Intrastate Natural Gas Pipelines contended that Congress treated DA as equivalent to other methods of assessment and that RSPA cannot do differently. The Energy Association of Pennsylvania claimed the proposed seven-year interval is not consistent with the statute or Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.*

In contrast, the New York Department of Public Service contended that extending the DA reassessment interval from five to ten years is unreasonable because external corrosion direct assessment is an immature process. New York asserted that although the Northeast Gas demonstration on the ECDA process showed that the process was reliable in identifying locations of current or potential corrosion activity, more experience is needed to characterize uncertainties and increase confidence that serious anomalies will be detected.

With respect to the proposed CDA reassessment intervals, the State of New York asserted that CDA should not be considered a reliable assessment method and that full DA should be required every seven years. In contrast, Duke Energy opined that CDA should count as a valid reassessment and that a subsequent follow-up reassessment to CDA should not be scheduled for another seven years. Duke Energy recommended changing the rule to reflect that CDA is a valid reassessment technique on its own.

Response: Congress required ''[a] baseline integrity assessment of each of the operator's facilities in areas identified pursuant to subsection (a)(1) [*i.e.*, high consequence areas],'' and ''periodic reassessment of the facility, at a minimum of once every 7 years'' (49 U.S.C. 60109).

Industry commenters argued that this language can, and should, be read to require reassessments within seven years *after* the ten-year period in which baseline assessment of all covered segments had been completed. RSPA/OPS finds that the plain language of the statute precludes this interpretation. Industry suggests that the meaning of the word ''facility'' is key, and RSPA/OPS agrees. Elsewhere in the section requiring baseline assessments within 10 years of enactment, the statute states, ''At least 50 percent of such *facilities* shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such *facilities* for assessment based on all risk factors * * *'' (emphasis added). In contrast, the language requiring reassessment refers to periodic reassessment of the facility. Congress differentiated between individual pipeline segments and an operator's entire pipeline system. The statutory language is clear that an assessment of each covered segment is required at least every seven years.

RSPA/OPS acknowledges that the requirements of the final rule will require that some reassessments be conducted before all baseline assessments have been completed. The rule has been written, however, in a manner intended to minimize the impact of this overlap to the extent practicable.

The rule allows different methods for reassessment, and the maximum reassessment interval depends on the method used and the operating pressure of the pipeline. However, the reassessment required at seven-year interval, the interval required by law, can be by Confirmatory Direct Assessment. CDA provides for much less potential disruption of pipeline operations than other assessment methods. No shut-down or curtailment of operation is needed to perform the indirect surveys that are a part of this method. Operators will likely reduce pressure when conducting excavations to protect personnel involved in that work, but the number of excavations required for CDA is less than for DA.

Reassessment intervals for DA have been revised to be the same as those required for other assessment methods. This reduces the amount of pipeline that must be assessed each year when compared to the five-year reassessment requirement in the proposed rule.

For pipelines operating below 30% SMYS, the final rule provides that the seven-year reassessment requirement can be met by a low-stress reassessment that includes indirect examinations, leak surveys, and other measures. The requirements for low-stress pipelines are discussed in item 7 of *Comments to NPRM.* This provision recognizes the relatively low risk posed by these pipelines and the likelihood that failures will result in leakage rather than rupture. Operators who implement this low-stress reassessment option also have the option of performing CDA. Reassessment for these low-pressure pipelines by the other methods allowed by the rule (*i.e.*, pressure test, internal inspection, direct assessment) are required only every 20 years, the maximum interval allowed by ASME/ANSI B31.8S.

ERW Pipe. Several comments concerned ERW pipe. The Gas Piping Technology Committee (GPTC) commented that the only way to assess seam issues is to conduct both an internal inspection and a pressure test, but such a requirement would not be practical. GPTC further commented that there are economic and technical barriers related to both Transverse Flux Inspection (TFI) and Ultrasonic tools. GPTC suggested the rule require that if an operator selects one of the multiple possible methods for assessment, it must consider the other method for reassessment. Sempra maintained the language on ERW pipe is unclear and that assessment should only be performed when a pipeline is subject to internal corrosion or when operating conditions could result in propagation of seam imperfections by fatigue.

Response: If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW) or lap welded pipe with a history of seam failure, an operator is required to select an assessment technology or technologies with a proven application capable of assessing seam integrity and of detecting seam corrosion anomalies. The operator is required to prioritize the covered segment as a high risk segment in its data integration and risk evaluation model.

Training. Duke Energy argued that the appropriate place for the training requirements is under the existing operator qualification requirements of Subpart N and not within the integrity management requirements. Oleska and Associates contended that the proposed training requirements for supervisors are too broad and that understanding should be commensurate with job responsibilities and relationship to the program.

Response: It is critical that personnel involved in integrity management programs and in conducting assessments have the appropriate training and qualifications for their functions. These functions are not, generally, within the scope of those covered by the Operator Qualification rule, because they are not tasks performed ''on the pipeline.'' In the final rule, RSPA/OPS has clarified the requirements for training, but continues to believe they are a necessary part of the rule.

Other comments about program requirements. We received a number of miscellaneous comments on some of the

proposed integrity management program requirements. Cook Inlet Keeper requested that OPS review its database to ascertain whether there are additional threats to pipeline integrity, such as human error, maintenance problems, and valve and patch failures.

Peoples Energy opined that the proposal to consider cyclic loading is specious because it requires operators to assume ''deep dents'' are present and further to determine if the loading conditions will lead to failure of the assumed ''deep dents.''

Advanced Technology Corporation suggested redefining ''toughness'' as ''fracture toughness'' for older pipe materials to calculate the ''critical defect size'' and to ensure the proper use of relevant information.

Response: A systematic search of recorded incidents to identify threats to pipelines was conducted while developing the standard on integrity management, ASME/ANSI B31.8S. The rule is structured around evaluating susceptibility to these threats and protecting against them. RSPA/OPS believes that the best way to address threats associated with human errors is through training and qualification, since failures from this cause usually occur immediately.

With respect to cyclic loading, it is important that a realistic analysis of the condition be conducted to ascertain the susceptibility of pipelines to failure from this cause. Such analyses require the postulation of some flaw, because the effect of cyclic loading is to propagate existing flaws. Flawless pipe can generally withstand significant cyclic loading, but little pipe is completely without flaws. The final rule requires an operator to use the results from the evaluation together with the criteria used to evaluate the significance of this threat to the covered segment to prioritize the next integrity assessment.

In the final rule, we have substituted the term ''fracture toughness'' for ''toughness.''

5. Review, Notification and Enforcement Processes

There were several comments related to review, approval, and enforcement processes but the majority related to the use of and practicality of waivers. RSPA/OPS had proposed to allow a waiver of a reassessment interval greater than seven years in two limited instances: Lack of internal inspection tools and to maintain local product supply. The statute limits a waiver to these two instances.

The proposal included prior notification requirements to OPS in several instances: When using other technology as an assessment method (180 days), When making a significant change to the integrity management program (30 days), and when seeking a longer reassessment period (180 days before the end of the required period).

Sempra commented that the potential impact on customers is greater than perceived primarily because of the impact to numerous large customers served by a single source pipeline, and therefore the need for waivers may have been greatly underestimated. Panhandle Eastern asserted that waiting 180 days for a decision on a waiver is excessive. The Washington Utilities and Transportation Commission suggested that we include provisions that would require RSPA/OPS to approve or disapprove of an operator's request for waiver.

Enron was concerned about the proposed program change requirements and asserted that the terms ''significantly'' and ''substantially'' are vague and subject to varying interpretations. Enron further argued that requiring separate, subjectively determined notifications is not productive or useful when changes could be effectively reviewed during regular pipeline program reviews.

Several commenters, including Advanced Technology Corporation, suggested that RSPA/OPS better define the process by which new technologies are approved. Both PECO and El Paso objected to the 180-day notification prior to the use of new technology and El Paso suggested that the notification period be reduced to 90 days, which would be consistent with § 195.452. El Paso also suggested that provision be made for the ongoing use of other technology via a single notification.

Sempra encouraged RSPA/OPS to address the coordination of environmental review and the permit process for pipeline repairs and for retrofitting and inspection of pipelines per Section 16 of the Pipeline Safety Improvement Act of 2002.

Response: RSPA/OPS acknowledges that the number of waivers likely to be sought by operators is not known at this time. Nevertheless, 49 U.S.C. 60109 requires that an assessment be performed on a pipeline segment in a high consequence area at seven-year intervals and further provides that operators may seek waivers only under two circumstances. The waiver requirements in this rule follow the statute. Because of the statutory limitations, RSPA/OPS cannot make other changes in anticipation of a large number of waivers possibly being submitted many years hence. RSPA/OPS believes that careful planning can help avoid the need for waivers. Careful planning also will identify the need for waivers in sufficient time to allow operators and RSPA/OPS to conduct careful reviews. RSPA/OPS is working on expediting the waiver process to prevent potential supply shortfalls. RSPA/OPS expects that a requirement to apply for a waiver 180 days before the end of the required reassessment interval is reasonable, except when local product supply issues may make that period impractical. In such an instance, an operator would need to apply for the waiver as soon as the need for the waiver becomes known. The waiver process is governed by 49 U.S.C. 60118, the Federal pipeline safety law. Currently, a waiver must be published for public comment. Therefore, 180 days is a reasonable period to allow for publication in the **Federal Register** and to address public comments on the a proposed waiver.

To address the TPSSC's recommendation we have revised the language in the final rule to include the exact language of the statute pertaining to waivers. Therefore, a waiver may be sought to maintain local product supply or because of unavailability of internal inspection devices. In either case, RSPA/OPS must determine that a waiver would not be inconsistent with pipeline safety.

The Pipeline Safety Improvement Act of 2002 also requires that operators notify RSPA/OPS when they make changes to their integrity management programs. RSPA/OPS cannot eliminate this requirement from the rule. The requirement has been conditioned to require notification only of changes that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements. These qualifiers are intended to preclude notifications for minor, even editorial, changes.

We have revised this requirement, however, to require an operator to notify, in addition to OPS, a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State. These changes were made to address comments from advisory committee members and State pipeline safety authorities.

RSPA/OPS continues to believe that 180-day notice before an operator uses ''other technology'' is a reasonable notification period. There are reasons why the corresponding period in the rule for hazardous liquid pipelines is 90

days. The reassessment period for hazardous liquid pipelines is five years, a period about 70 percent of the shortest reassessment period in this rule. Therefore, planning decisions must be made for liquid reassessments on a shorter time frame. In addition, the ''other technology'' most likely to be used by hazardous liquid operators is direct assessment, an assessment method specifically allowed in the gas integrity management rule but not in the liquid rule. Because there is now an industry standard and more information about the process is known, the review of the notification is likely to be shorter. ''Other technologies'' that gas transmission pipeline operators may use are expected to involve methods and techniques that are more developmental and about which less information is known. This will require that RSPA/OPS take more time in reviewing these notifications before the ''other technology'' is implemented.

Section 16 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60133) requires the establishment of an interagency coordinating committee and that this committee take actions to help ensure that pipeline operators will be able to obtain permits when required to perform required repairs. The interagency committee has been established. RSPA/OPS is participating on the committee. Those actions are related to, but independent of this rule, and will not be described here in detail. It is important to note, however, that the rule provides a mechanism for operators to address situations in which repairs cannot be made due to inability to obtain permits. The rule provides that operators can reduce operating pressure or take other action to ensure the integrity of the pipeline. If neither can be done, the operator is required to notify RSPA/OPS. RSPA/OPS expects that operators will exercise due diligence in seeking permits for repairs.

6. Consensus Standard on Pipeline Integrity

The Standards-Developing Organizations Coordinating Council (SDOCC) urged RSPA/OPS to incorporate industry standards by reference in their entirety into the regulations. The Council asserted this will help avoid misinterpretations that can result from parts of standards being used out of context, or from text taken from standards being used in regulations without reference to the source. Similarly, both New Jersey Natural Gas and Advanced Technology Corporation suggested that inline inspection consensus standards must both be developed and then supported by OPS.

Many commenters wrote to request that OPS utilize performance-based options that are both measurable and achievable, and suggested using the ASME/ANSI B31.8S consensus standard to achieve those ends. Northeast Gas Association recommended that the rule refer to ASME/ANSI B31.8S for performance versus prescriptive requirements. El Paso went further and asserted that the proposed requirements for the performance-based option are not measurable or achievable and should be revised to allow the ASME/ANSI B31.8S standard to provide the structure and framework. Cook Inlet Keeper recommended that RSPA/OPS review the ASME/ANSI B31.8S standard to ensure that the standard is enforceable and where necessary provide clarification in the final rule.

Response: The final rule incorporates ASME/ANSI B31.8S—2001, *Managing System Integrity of Gas Pipelines*, and uses that standard for many of the rule's requirements, including those for the performance-based option. RSPA/OPS has reviewed ASME/ANSI B31.8S to ensure it is enforceable. The rule has been written to ensure that the requirements are enforceable.

7. Low-Stress Pipelines

The proposed rule did not differentiate requirements for low-stress pipelines. However, as discussed in previous sections of this document, RSPA/OPS sought comment on less stringent requirements for these pipelines, particularly with respect to—

- Whether to allow an operator using direct assessment on a pipeline operating at less than 30% SMYS a maximum ten-year reassessment interval regardless of whether the operator excavates and remediates all anomalies on that pipeline, or at least remediates the highest risk anomalies. (68 FR 4278, 4281)
- Whether to allow a maximum 20-year reassessment interval on pipelines operating at less than 30% SMYS, and reassessment by confirmatory direct assessment method every seven years (without the need for reassessment by some other method) for pipelines operating below 20% SMYS. (68 FR 4278, 4281)

Several commenters suggested that the assessment requirements proposed for low-stress pipelines (*i.e.*, pipelines operating at below 30 percent SMYS) were unnecessary and overly burdensome. Many industry commenters pointed out that low-stress pipelines tend to fail by leakage rather than by rupture and, therefore, pose considerably less risk than pipelines operating at higher stresses. The commenters proposed various alternatives, including use of the inspection intervals in ASME/ANSI B31.8S (which calls for inspections at 20-year intervals for low-stress pipelines), allowing use of confirmatory direct assessment for baseline assessments, implementation of preventive and mitigative measures in lieu of assessment requirements, and changing the definition of transmission pipeline to exclude pipelines operating at less than 20% SMYS. National Fuel contended that pipelines that operate at less than 20% SMYS cannot create high consequences and, therefore, the high consequence area definition should exclude such pipelines. National Fuel recommended that, if RSPA/OPS must include these pipelines by statute, enhanced preventive and mitigative measures should be allowed for the baseline assessment and reassessment.

AGA recommended that the intervals in ASME/ANSI B31.8S be used. AGA provided suggested preventive and mitigative measures for all pipeline in Class 3 and 4 areas and numerous commenters supported AGA's comments. AGA also proposed, at public meetings held during the comment period, that pipelines operating at less than 20% SMYS be subject to requirements for baseline assessments and for reassessment at the intervals specified in ASME/ANSI B31.8S. The AGA recommendations included electrical surveys, which would inspect for cathodic protection problems that would precede corrosion damage, and leak surveys, which would inspect for the failure mechanism most likely on low-stress pipelines, as a reassessment method suitable to meet the statutory seven-year requirement.

AGA further proposed a set of preventive and mitigative measures as alternate assessment methods for reassessment of pipelines inside HCAs. The additional measures targeted external and internal corrosion and third-party damage. Other commenters supported this alternative, including TXU Gas, National Fuel, and the New York State Department of Public Service.

The Iowa Utilities Board agreed that less stringent requirements should be applied to pipelines operating below 30% SMYS. New York Department of Public Service suggested that 20 years was too long an interval between assessments, and pointed out that although a low-stress pipeline is likely to fail by leakage, these pipelines are located in highly populated areas.

Response: Pipelines that operate at less than 20% SMYS are transmission pipelines if they meet the functional definition in § 192.3. The statute (49 U.S.C. 60109) does not except low-stress pipelines from the integrity management program requirements, including the requirement for reassessment at seven-year intervals. RSPA/OPS has revised the requirements, however, in recognition of the relatively low risk posed by pipelines operating at less than 30% SMYS. First, the rule allows two methods to define a high consequence area, so that an operator of a low-stress pipeline can rely on data it has already collected to identify the areas.

Second, the rule allows an alternative method of reassessment that focuses on the type of risk posed by these low-stress pipelines. RSPA/OPS agrees with AGA that these pipelines should be assessed initially and at the 20-year interval by the methods being used to assess higher stress pipelines, and has so required in the rule. During the 20-year interval, a low-stress line must be reassessed at seven year intervals by a low-stress reassessment, which is described below, or by confirmatory direct assessment. The rule incorporates confirmatory direct assessment (CDA) as a focused method of performing these interim assessments for pipelines operating at higher pressure. However, for low-stress pipelines, RSPA/OPS agrees that even CDA could be unduly burdensome. Therefore, the final rule adopts AGA's suggestion that electrical surveys are appropriate for conducting these interim low-stress reassessments between the assessments performed by methods being used to assess higher stress pipelines.

The rule allows operators of low-stress pipelines an option. They can perform CDA on seven-year intervals or they can conduct a low-stress reassessment that focuses on the types of threats these pipelines experience. A low-stress reassessment includes an electrical survey at least every seven years. For cathodically unprotected pipeline or areas where electrical surveys are impractical, increased leak surveys are required at a rate twice the current requirement. The additional measures also include provisions to protect against internal corrosion and third-party damage. RSPA/OPS has concluded that these measures provide appropriate interim protection for low-pressure pipelines, where the failure mode is predominantly leakage instead of rupture.

RSPA/OPS has also adopted AGA's suggestion that enhanced preventive and mitigative measures be required for low-stress pipelines located in Class 3 and 4 areas. These measures protect against third-party damage, the type of threat most likely to result in a significant failure on these pipelines.

8. Remedial Actions—§ 192.931 (Formerly § 192.763(i))

There were numerous comments about the proposed remediation requirements particularly with respect to the proposed time periods for discovery, pressure reduction and remediation, and the proposed repair criteria in general and for dents.

The proposed requirements for scheduling remediation of anomalous conditions found during an assessment provided for immediate repair conditions, 180-day conditions, and conditions where remediation would take longer than 180 days. The 180-day conditions included certain dents. The proposed rule also referenced B31.8S as the basis for making repairs.

Industry commenters generally supported INGAA's suggestion that the repair criteria should be based on the industry standards, ASME/ANSI B31.8 and B31.8S. INGAA further suggested that the proposed 180-day time frame for evaluation and remediation of certain conditions should be changed to one year. INGAA explained that the 180-day limit would require remediation during winter months when the demand for gas is high. One year would allow operators one complete operating cycle in which to complete the work. Industry commenters supported this suggestion. INGAA also submitted recommended rule language that allowed time frames of one-year, more than one-year and monitored conditions, *i.e.*, conditions that would not have to be scheduled for remediation.

INGAA, and other industry commenters such as El Paso and Panhandle Eastern, contended that the requirement to remediate dents should be reconsidered and should be revised to distinguish between bottom-side and top-side dents. These commenters explained that constrained dents are not a threat. Depressions or dents in the bottom of the pipe are constrained; dents on the top of the pipe that are relatively unconstrained. Commenters recommended that the distinction be made by specifying remediation for dents between the 8 and 4 positions and on monitoring dents that do not need to be remediated.

The proposed remediation requirements provided that a pressure reduction could not exceed 365 days unless the operator took further remedial action to ensure the safety of the pipeline. Many commenters, including the Gas Piping Technology Committee and Nicor Gas, argued that there is no basis for the proposed 365-day limit on pressure reduction and that operators should be allowed to use long-term pressure reduction if it provides equal or better safety. Public Service Electric and Gas Company asserted that the 365-day limit is not supported by any data analysis or risk assessment and should be removed. El Paso argued that pressure reductions should not be based on the pressure at the time of discovery but based possibly on either the MAOP or the highest pressure in the last 30 days. Sempra suggested we use technical information from a Pipeline Research Council International report that stated a pressure reduction in these circumstances may be determined using the highest pressure survived by the flaw since the time that it occurred.

The proposed discovery requirements were also a concern to many operators. The proposed rule provided that discovery occurs when an operator had adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline, and that discovery could occur no later than 180 days after conducting an integrity assessment unless the 180-day period is impracticable. Dominion contended the proposed language is confusing and suggested that discovery be tied to a time when the operator has adequate information concerning the conditions to determine that an indication requires a response as defined in ASME/ANSI B31.8S. INGAA and many other industry comments suggested that the proposed 180-day requirement associated with the discovery date be extended to one year to be consistent with ASME/ANSI B31.8S.

Response: We have revised the remediation requirements in the final rule. The rule provides that an operator be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. We thought this language more definite than being able to demonstrate a remediation will ensure the condition does not pose a threat to the long-term integrity of the pipeline. The final rule continues to provide that discovery occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. Adequate information to make this determination would include information that the condition is one included in ASME/

ANSI B31.8S as needing a response. The rule also continues to specify that this must occur within 180 days after conducting the assessment, unless the operator demonstrates the 180-day period is impracticable. This is the same period used for the corresponding requirement for hazardous liquid pipelines. RSPA/OPS considers that identified anomalies should be dealt with promptly, and that delaying the requirement for discovery to occur until one year after an assessment is not consistent with that need.

The basis on which RSPA has accepted the recommendation to change the time allowed for evaluation and remediation of certain defects from 180 days to one year is that gas pipelines typically do not operate with pressure fluctuations sufficient to cause cyclic fatigue. Therefore, the subject defects can be allowed to remain for up to one year. In addition, this position is consistent with provisions of ASME/ANSI B31.8S.

The remediation requirements associated with dents have been revised in response to the comments to distinguish between bottom-side and top-side dents. The rule now provides that dents greater than 6% of the pipe diameter in depth in the top two-thirds of the pipe (*i.e.*, 8 o'clock to 4 o'clock), or greater than 2% and affecting curvature at a weld, must be remediated in one year. The rule allows such dents to be treated as monitored conditions if an operator obtains information and performs engineering analyses to demonstrate that critical strain levels have not been exceeded. An operator must also monitor dents on the bottom-third of the pipeline. The rule now also differentiates between smooth and abrupt dents because abrupt dents need to be prioritized for evaluation before smooth dents.

We have revised the requirement for pressure reduction. If an operator is unable to respond within the required time limits for certain conditions, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. Thus, a pressure reduction is not automatic. If the operator reduces pressure, the reduction cannot exceed 365 days without an operator providing a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline. The requirement that a pressure reduction cannot last more than 365 days without further action is identical to a requirement in the integrity management rule for hazardous liquid pipelines. The reduction provides an increased margin of safety in the interim, while repair can be planned and implemented.

9. Additional Preventive and Mitigative Measures, Including, Leak Detection Devices and Automatic Shut-Off and Remote Control Valves—§ 192.933 (Formerly § 192.763(j))

We received a large number of comments on the proposed additional preventive and mitigative measures.

INGAA asserted that excavation damage is the primary cause of 28% of reportable incidents and that the proposed rule focuses primarily on previously damaged pipe which is associated with only 4% of reportable incidents. INGAA proposed additional requirements be incorporated for the prevention of third-party damage and that the assessment for previously damaged pipe be integrated into the assessment processes for other failure causes. Dominion suggested eliminating the proposed requirement to conduct an internal inspection looking for third-party damage because it is ineffective. Equitable opposed pressure testing for third-party damage detection asserting there is no technical justification. These and many other commenters opposed the proposal to utilize an assessment tool to identify third-party damage. Commenters agreed that direct assessment is the number one tool for assessing third-party damage. Numerous commenters, including Enron and the Northeast Gas Association, argued that prevention is the best approach and urged RSPA/OPS to champion efforts to eliminate exemptions to the various state one-call programs.

AGA proposed a set of additional preventive and mitigative measures as assessment methods for addressing external and internal corrosion and third-party damage for pipelines operating below 30% SMYS and not in HCAs but in Class 3 and 4 locations. Again, numerous commenters supported these additional preventive and mitigative measures including NiSource, Laclede Gas, and the Association of Texas Intrastate Natural Gas Pipelines.

Several comments related to the proposal to install automatic shut-off valves and remote control valves as potential risk mitigative measures. None of those commenters supported their use. PSE&G asserted there is no technical justification for their use and Enron asserted that it has been demonstrated that these valves provide no additional safety benefit. Panhandle Eastern referenced a Gas Research Institute Report which, according to Panhandle Eastern, concludes that the cost of installing the valves is not justified by the limited benefit.

One company commented that its leak detection system would be effective on gas pipeline systems and asked that RSPA review the system for potential use on natural gas pipelines to better monitor leaks.

Response: The final rule incorporates additional requirements to help prevent accidents caused by third-party damage, including requiring participation by pipeline operators in one-call systems. We have not included the proposed requirement to conduct assessments specifically to evaluate possible third-party damage.

The rule also incorporates additional prevention and mitigation requirements for low-stress pipelines that are located in Class 3 and 4 areas but not HCAs. This was not an issue in the proposed rule, because all Class 3 and 4 areas would have been defined as HCAs. The revised definition for HCAs included in the final rule will mean that some pipeline in populated areas (*i.e.*, Class 3 and 4) will not be determined to be in HCAs. RSPA/OPS agrees with AGA that it is appropriate that additional measures be implemented in these populated areas to protect the pipeline. The final rule incorporates the provisions recommended by AGA.

With respect to automatic and remotely-operated shut-off valves, RSPA/OPS acknowledges generic work, some sponsored by RSPA/OPS that concluded that installation of such valves is usually not cost-beneficial. The conclusions of those studies were based, however, on generic, average conditions. It is possible that conditions particular to individual pipeline segments in HCAs may change this conclusion, making it appropriate to install or modify valves. The rule requires operators to make this determination and to install a valve if it would be an efficient means of adding protection to a high consequence area in the event of a gas release. RSPA/OPS does not expect that operators will perform detailed technical analyses that duplicate the work done in the generic studies. Instead, operators will use the generic work as a starting point and then evaluate whether the generic conclusions are applicable to their high consequence area pipeline segments. The results of this evaluation must be documented for review during RSPA/OPS inspections.

As for the leak detection system the commenter described, RSPA/OPS does not require that operators install particular safety systems, nor does it endorse them. Vendors who believe their systems will allow companies to

meet requirements of this rule in a cost-effective manner should approach pipeline operators directly.

10. Methods To Measure Program Effectiveness—§ 192.941 (Formerly §§ 192.763(c)(5) and 192.763(l))

Reporting requirements associated with the proposed rule generated a number of comments, most in opposition to the proposed requirements. Proposed requirements included an operator making accessible in real time the four overall performance measures and the additional performance measures, if trying to qualify for exceptional performance under the performance-based option.

New Jersey Natural Gas Company and New York State Department of Public Service commented that a rule will need to clarify ''real time.'' Northeast Gas Association also requested a definition and clarification of what is meant by ''real time'' and suggested that we use the performance measures identified in Section 9.4 of ASME/ANSI B31.8S instead of those in the proposed rule.

Many commenters, including Nicor Gas, Kern River, and Consumers Energy, opposed the use of ''real time'' accessibility to performance data and suggested alternatives ranging from quarterly to annually. El Paso suggested a web-based reporting system and PECO was concerned about security of database systems housing this data.

Numerous commenters supported INGAA's proposal about how to make the collection of data on performance measures more efficient and reflective of the effectiveness of an integrity management program. INGAA proposed that real time mean on a quarterly basis for reporting the number of miles assessed and the number of repairs. In addition INGAA recommended that information fields be added to the Annual report form submitted by gas transmission operators to track and compare the number of leaks eliminated or repaired in HCAs with those not in HCAs.

Response: RSPA/OPS has eliminated the requirement for operators to post performance measures in a manner that would allow regulators to access them electronically in real time. Instead, the general performance measures (which are those specified in Section 9.4 of ASME/ANSI B31.8S) must be submitted to OPS semi-annually. This periodicity results from discussions at the public meetings held during the comment period and with the Technical Pipeline Safety Standards Committee, and is consistent with the recommendation adopted by the committee. RSPA/OPS will compile this information and make it available electronically to other pipeline safety officials and to the public.

Other suggestions by INGAA concerned forms that were not part of the rulemaking. We will consider these suggestions and if the forms should be revised to incorporate fields for the data.

11. Information for Local Officials and the Public

The proposed rule did not propose that operators provide information to the public. The proposed rule proposed that an operator have a means to provide a copy of its integrity management program to a State with which OPS has an interstate agent agreement and a communications plan that included a process for addressing safety concerns raised by OPS or an interstate agent. These requirements were mandated by statute. The notice further proposed that the performance measures be provided in real time to state pipeline safety officials.

At the advisory committee meeting, the Committee noted that State authorities need to be aware of these reports for intrastate pipelines, and for interstate pipelines in states in which the State acts as an interstate agent.

Carol Parker suggested that a requirement should be included to notify people who frequent areas where pipelines are not inspected.

Cook Inlet Keeper commented that the four overall performance measures that OPS proposed an operator maintain (*i.e.*, the measures in Section 9.4 of ASME/ANSI B31.8S standard), should be made available to the public in a web-based analyzable format. In addition, Cook Inlet suggested providing other information such as the primary threats to covered segments, the assessment tools and their schedules, along with other non security-related data.

Similarly, the Inline Inspection Association suggested that operators should be required to report to OPS certain information from their plans, including segments to be inspected, diameters, potential threats, and planned assessment methods. OPS should then make this information available to the public to allow the inline inspection industry to develop and procure the appropriate tools and train personnel to provide the needed services.

Accufacts asserted that a rule should include ''Right-to-Know'' provisions, to include reporting specific information to RSPA/OPS such as mileage in HCAs and total mileage by Class area. Accufacts further commented that high consequence area information should be reported to state and local governmental agencies when requested.

As previously discussed, both the Washington State Advisory Committee on Pipeline Safety and the Washington City and County Pipeline Safety Consortium suggested that operators work with local cities or municipalities to identify additional HCAs within their territories. They asserted that cities and municipalities have the best information on facilities and on growth trends for their areas which would be beneficial in identifying HCAs.

The Iowa Utilities Board commented that the proposed rule appears to reserve all reporting and oversight for RSPA/OPS, with no recognition of the role played by the states. Iowa opined that the proposed rule recognizes only interstate pipelines, when by including all gas transmission pipelines within the scope of the rule, large numbers of transmission pipelines belonging to intrastate operators will be affected. Iowa suggested that the rule recognize the traditional role of state pipeline safety programs and their oversight of intrastate pipeline operators.

Industry commenters had many concerns about the security of providing information to the public. Consolidated Edison requested that OPS clarify how security will be maintained if the detailed information submitted by operators is made available to the public. Duke Energy contended that implementation of the proposed integrity management regulations have implications for national security that have not been considered or addressed. Duke Energy noted that at the public meeting in Houston, RSPA/OPS had agreed to look into how to control access to this information.

Response: RSPA/OPS agrees that information concerning gas transmission pipeline integrity management should be made available to the public. At the same time, RSPA/OPS agrees that there are issues, including security concerns, regarding how much information is provided. RSPA/OPS recognizes that not every state has laws to protect the release of proprietary or sensitive information. In the final rule, RSPA/OPS has tried to balance the need to know against the need to keep certain critical information secure. RSPA/OPS believes that the four performance measures an operator is required to include in its program (as specified in Section 9.4 of ASME/ANSI B31.8S) provide the appropriate level of information for members of the public to see how pipeline operators are doing in their integrity management program. The rule provides that operators submit this information to OPS semi-annually.

OPS will assemble this information and will make it available, on the internet, to the public and to state safety agencies.

RSPA/OPS does not consider it appropriate to collect additional information relevant to integrity management for public dissemination. RSPA/OPS will implement an inspection program to evaluate operator implementation of this rule. Those inspections will ensure that operators have proper commitment to integrity management, that they are scheduling and conducting their assessments as required, that they are using appropriate assessment methods, and that they are adequately integrating data. Regulators will take enforcement action when appropriate, and records of such enforcement will be available to the public as they are now.

The pipeline safety statute (49 U.S.C. 60109) requires that an operator provide a copy of its risk assessment and integrity management program to an interstate agent. Although we recognize an operator's security concerns with providing this information, we must include the requirement with respect to interstate agents. We recognize the role of State pipeline safety authorities with respect to intrastate transmission pipeline. But because of the comments and concerns about security and protecting this information, we do not want to require that operators also provide the States this information on intrastate pipelines. Each State's laws vary and a State may not be able to protect this information from public release. We will look into a means of how RSPA/OPS can share this information with a state pipeline safety authority while ensuring the information is protected. However, the rule does provide that when a State regulates a covered pipeline segment within that State, an operator provide the State notice about changes made to the operator's integrity management program and when making a repair, the operator cannot meet the required schedule for repair and cannot temporarily reduce pressure or take other action to ensure the integrity of the pipeline.

As discussed above, RSPA/OPS agrees that local safety officials are key elements in the identification of HCAs, and has revised the final rule to so specify. OPS expects that the regular interaction between pipeline operators and those officials will also serve to increase local officials' level of knowledge regarding the operators' integrity management efforts.

It would be inappropriate to include requirements in a safety rule simply to elicit information that a vendor can use to develop its business.

12. Cost-Benefit Analysis

In the preamble of the proposed rule RSPA/OPS stated that it has never received comments from small gas transmission operators concerning the burdens of its regulations and that RSPA/OPS believed that the costs of its proposal would be proportionate to the amount of mileage the pipeline company operates. RSPA/OPS requested public input on any potential undue impact that this proposal would have on any small entities. (68 FR 4278, 4313.)

Very few commenters specifically addressed this question. Vectren stated there would be significant undue impacts associated with this new rule and provided estimated information relative to Vectren through 2013. Vectren's estimates showed in excess of 11% per year reductions in annual income through 2012. Similarly, the Iowa Utilities Board commented that burdens on small pipelines and operators should be minimized.

Carol Parker suggested that RSPA/OPS use the impact on the California economy in dollars to support the cost-benefit analysis of required inspection programs. Taking a somewhat opposing view, the Iowa Utilities Board asserted that the proposed requirements for pressure testing do not adequately recognize the tremendous social and economic consequences of interrupting service from the majority of intrastate pipelines. The Association of Intrastate Natural Gas Pipelines contended that the supply interruptions that may be caused by the rule have been understated, particularly during the period of any overlap. Questar asserted that RSPA/OPS has understated the true costs and this will be problematic if rate regulators adopt the RSPA/OPS analysis as a benchmark. New Jersey Natural Gas Company was concerned that the cost estimates for retrofitting are not accurate. INGAA provided a series of alternatives to the proposed regulations and provided their own estimates of savings associated with those changes.

The Energy Association of Pennsylvania estimated that over $2,341,000,000 will be saved if the baseline overlap is eliminated.

AGA estimated that over $1,100,000,000 will be saved if preventive and mitigative measures are used to perform reassessments along with the lengthened reassessment intervals provided in ASME/ANSI B31.8S.

Response: RSPA/OPS has made significant changes to the cost-benefit analysis. Included in these changes is full consideration of the impact of the Pipeline Safety Improvement Act of 2002. The Act significantly changed the regulatory environment in which the new rule will be implemented. The Act requires that gas transmission pipeline operators develop integrity management plans, perform risk analyses, and perform certain tests, including retests at specified intervals. These requirements forever change the regulatory landscape. The notice of proposed rulemaking was issued in January, only one month after the Act was signed into law. RSPA/OPS modified the notice to acknowledge that the law was passed and that it imposed some requirements, but RSPA/OPS had not taken time to analyze thoroughly the impacts the Act would have.

RSPA/OPS has since performed extensive analyses to consider the impacts of the Act and to evaluate ways to make the rule more cost-beneficial. RSPA/OPS has estimated the costs to implement the requirements in the Act, without modification, to be approximately $11 billion over 20 years. By comparison, we conclude the cost of implementing this rule will be $4.7 billion over the same period. The difference reflects changes made in this rule in the definition of HCAs (which will have the effect of reducing the amount of pipeline mileage that must be tested) and provisions for limited scope reassessments every seven years. The Act requires that pipelines be assessed every seven years. The Act further requires that these assessments be performed using one of three specified assessment methods or ''an alternative method that the Secretary [of Transportation] determines would provide an equal or greater level of safety.'' The alternative methods included in this rule will reduce costs significantly over the cost of performing periodic assessments using only the methods specified in the Act. There is therefore a benefit in adopting this rule of approximately $6.2 billion in cost reduction for assuring pipeline integrity.

Benefits will also accrue in improved ability to site pipelines in certain critical markets. It is difficult to quantify this benefit, but RSPA/OPS believes it is real. Inability to site future pipelines could affect the Nation's ability to use the increased quantities of natural gas that the Energy Information Administration estimates will be needed to fuel our economy over the next 20 years.

The rule will significantly reduce the likelihood of pipeline accidents that result in deaths and serious injuries. Based on the historical record, RSPA/OPS has estimated this benefit to be on

the order of $800 million over 20 years. It is quite likely, though, that future accidents could be worse than the historical experience. Population near pipelines is growing. This places more people at risk than in the past. While some historical accidents have resulted in several deaths and serious injuries, and significant property damage, accidents with even greater consequences could occur. RSPA/OPS has analyzed the likelihood that an accident could occur in an area along the pipeline that is more densely populated. Even though the amount of pipeline mileage along which such high population densities might be found is small (RSPA/OPS estimated 0.1% of total mileage for this analysis) the consequences of an accident are potentially large enough that the averted costs are still high. RSPA/OPS estimates that an additional $277 million is realized by avoiding the likelihood of this more significant accident.

The rule will also result in avoiding significant costs associated with unexpected interruptions in natural gas supply. The Carlsbad accident in 2000 resulted in curtailment of supply of natural gas to California. RSPA/OPS estimates that this resulted in an impact on the California economy of $17.25 million per day. The total benefit afforded by this rule in avoiding future economic impacts of this type is estimated to be $1 billion over the next 20 years.

Another benefit to be realized from implementing this rule is reduced cost to the pipeline industry for assuring safety in areas along pipelines with relatively more population. The improved knowledge of pipeline integrity that will result from implementing this rule will provide a technical basis for providing relief to operators from current requirements to reduce operating stresses in pipelines when population near them increases. Regulations currently require that pipelines with higher local population density operate at lower pressures. This is intended to provide an extra safety margin in those areas. Operators typically replace pipeline when population increases, because reducing pressure to reduce stresses reduces the ability of the pipeline to carry gas. Areas with population growth typically require more, not less, gas. Replacing pipeline, however, is very costly. Providing safety assurance in another manner, such as by implementing this rule, could allow RSPA/OPS to waive some pipe replacement. RSPA/OPS estimates that such waivers could result in a reduction in costs to industry of $1 billion over the next 20 years, with no reduction in public safety.

A more detailed discussion of how public comments were addressed in the revised cost-benefit analysis can be found in the final regulatory analysis.

The Final Rule

RSPA/OPS has created a new Subpart O in Part 192 for Pipeline Integrity Management and reformatted the rule into sections analogous to existing Part 192 rules. RSPA/OPS recognizes that a simple format and clarity are important features to assist pipeline operators in using and complying with each requirement.

Section 192.901 What Do the Regulations in This Subpart Cover?

The new Subpart O prescribes minimum requirements for an integrity management program on gas transmission pipelines that could affect an HCA. HCAs are defined in § 192.903, and § 192.905 describes how an operator identifies these areas. Section 192.905 is based on the recent guidance RSPA/OPS issued on how to identify these areas. The definitions of *gas* and *transmission pipeline* are found in § 192.3. This final rule does not apply to gas gathering pipelines or to gas distribution pipelines. Because most of the requirements are applicable to metal pipelines, not plastic, only certain requirements apply to plastic gas transmission pipelines. Requirements for a continuing threat analysis (§§ 192.917, 192.937), a baseline assessment if a threat other than third-party damage is identified (§ 192.921), and additional preventive and mitigative measures (§ 192.935) apply to plastic gas transmission pipelines.

Section 192.903 What Definitions Apply to This Subpart?

In the final rule RSPA/OPS has made changes to the definitions in the new § 192.903 based on the petition for reconsideration, written comments in the docket, comments received at post-NPRM public meetings and the recommendations given by the gas advisory committee. The proposed definitions *Potential Impact Zone, Threshold Radius,* and *Moderate Risk Areas* have been deleted. New definitions of *Assessment, Covered pipeline segment, Identified site,* and *Remediation* have been added.

The *High consequence area* definition was modified to allow an operator two methods to identify the areas.

In method (a) high consequence areas are—

1. Current Class 3 location;
2. Current Class 4 location;
3. Any areas areas outside a Class 3 or 4 location where the Potential Impact Radius is greater than 660 feet (200 meters), and the area within a Potential Impact Circle contains 20 or more buildings intended for human occupancy. However, if the radius of the Potential Impact Circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy within a distance 660 feet (200 meters) from the centerline of the pipeline until December 17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the Potential Impact Circle (*i.e.*, the prorated number of buildings intended for human occupancy is equal to [20 × (660 feet [or 200 meters]/Potential Impact Radius in feet [or meters])^2]).
4. The area within a Potential Impact Circle containing an identified site.

In method (b) high consequence areas are—

1. The area within a Potential Impact Circle containing 20 or more buildings intended for human occupancy, (unless the exception described above in method (a) applies);
2. The area within a Potential Impact Circle containing an identified site.

When a Potential Impact Circle is calculated under either of the methods to establish a high consequence area, the length of the high consequence area extends axially along the length of the pipeline from the outermost edge of the first Potential Impact Circle that contains an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous Potential Impact Circle that contains either an identified site or 20 or more buildings intended for human occupancy. Appendix E, Figure E.I.A gives a graphic representation.

The identified site component of the high consequence area definition was also modified to distinguish between rural buildings and outside open areas and to simplify the identification process. An identified site is an area meeting one of three criteria—

1. An outside area or open structure that is occupied by twenty (20) or more persons on at least 50 days in any twelve (12) month period (the days need not be consecutive). Examples included in the definition are beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, recreational areas near a body of water, or areas outside a rural building such as a religious facility, or

2. A building that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12) month period (the days and weeks need not be consecutive). Examples included in the definition are religious facilities, office buildings, community centers, general stores, 4–H facilities, and roller rinks.

3. A facility occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Examples included in the definition are hospitals, prisons, schools, day-care facilities, retirement facility and assisted-living facilities.

Section 192.905 How Does an Operator Identify a High Consequence Area?

An operator is required to select method (a) or method (b) from the definition in § 192.903 to identify a high consequence area. One method may be applied to an entire pipeline system, or the methods may be applied individually to portions of the pipeline system. An operator has to describe in its integrity management program which method is applicable for each portion of the operator's system, and show the Potential Impact Radius when utilized for each covered segment. The rule also includes guidance in Appendix E.I. on identifying HCAs.

This section also prescribes how an operator must identify HCAs that include ''identified sites.'' The rule is consistent with the advisory bulletin RSPA/OPS recently issued (68 FR 42458). An operator identifies an identified site from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.

The rule further provides that if a public official with safety or emergency response or planning responsibilities informs an operator that she/he does not have the information to identify an identified site, the operator is required to use one of several listed sources, as appropriate, to identify these sites. The listed sources include—

1. Visible marking (*e.g.*, a sign); or

2. The site is licensed or registered by a Federal, State, or local government agency; or

3. The site is on a list (including a list on an Internet Web site) or map maintained by or available from a Federal, State, or local government agency and available to the general public.

The rule provides requirements for identifying new HCAs. When an operator has information that the area around a pipeline segment not previously identified as a high consequence area could satisfy any of the definitions of a high consequence area (as defined in § 192.903), the operator must complete the evaluation using identification method (1) or (2). If the segment is determined to meet the definition as a high consequence area, then it must be incorporated into the operator's baseline assessment plan as a high consequence area within one year from the date the area is identified.

Section 192.907 What Must an Operator Do To Implement This Subpart?

The rule requires that no later than December 17, 2004, an operator must develop and follow a written integrity management program that contains all the elements described in § 192.911 and that addresses the risks on each covered transmission pipeline segment. The one-year time frame is based on the statutory requirement to issue regulations requiring an operator to conduct a risk analysis and adopt an integrity management program no later than December 17, 2004. Initially, the integrity management program can consist of a framework that describes the process for implementing each program element, how relevant decisions will be made and by whom, a time line for completing the work to implement the program element, and how information gained from experience will be continuously incorporated into the program. The framework will evolve into a more detailed and comprehensive program. An operator must make continual improvements to the program.

The rule requires an operator to follow ASME/ANSI B31.8S, and its appendices, where specified, as well as the requirements in Subpart O in implementing its integrity management program. ASME/ANSI B31.8S, the Supplement to ASME/ANSI B31.8, is an industry consensus standard that specifically addresses system integrity of gas pipelines. The rule allows an operator to follow an equivalent standard or practice only when the operator demonstrates the alternative standard or practice provides an equivalent level of safety to the public and property. The rule clarifies that in the event of a conflict between Subpart O and ASME/ANSI B31.8S, the requirements in Subpart O control.

Section 192.909 How Can an Operator Change Its Integrity Management Program?

The rule requires that prior to implementing any change to its program, an operator must document the change and the reasons for the change, and notify OPS within 30 days after the operator adopts the change into its program. The notification is required for any change to the program that—

- May substantially affect the program's implementation; or
- May significantly modify the program or schedule for carrying out the program elements.

An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

Section 192.911 What Are the Elements of an Integrity Management Program?

The rule requires an operator to include certain minimum elements in its integrity management program. Minimum elements are those listed in the rule and when referenced in the rule those in the ASME/ANSI B31.8S standard. The Supplement to ASME/ANSI B31.8 is an industry standard that specifically addresses system integrity of gas pipelines. The required program elements include:

- An identification of all high consequence areas.
- A baseline assessment plan. Requirements governing these plans are in § 192.919 and § 192.921.
- An identification of threats to each covered pipeline segment, which must include data integration and a risk assessment to evaluate the failure likelihood of each covered segment. An operator must use the threat identification and risk assessment to prioritize covered segments for assessment (§ 192.917) and to evaluate the merits of additional preventive and mitigative measures (§ 192.935) for each covered segment.
- A direct assessment plan, if the operator is going to use direct assessment. The plan must comply with § 192.923, and depending on the threat assessed, with § 192.925 (external corrosion), § 192.927 (internal corrosion), or § 192.929 (stress corrosion cracking).
- Provisions for remediating conditions found during an integrity assessment. (§ 192.933.)
- A process for continual evaluation and assessment. (§ 192.937.)

• A plan for confirmatory direct assessment (§ 192.931) if the operator plans to use this method for reassessment.

• Provisions for adding preventive and mitigative measures to protect the high consequence area. (§ 192.935.)

• A performance plan as outlined in Section 9 of ASME/ANSI B31.8S that includes the required performance measures in § 192.943.

• Record keeping provisions (§ 192.947).

• A management of change process as outlined in Section 11 of ASME/ANSI B31.8S.

• A quality assurance process as outlined in Section 12 of ASME/ANSI B31.8S.

• A communication plan that includes the elements of Section 10 of ASME/ANSI B31.8S, and that includes procedures for addressing safety concerns raised by (1) OPS; and (2) a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement. This process for addressing safety concerns raised by interstate agents is a requirement imposed by statute.

• Procedures for providing (when requested), by electronic or other means, a copy of the operator's risk analysis or integrity management program to OPS or to a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement. This requirement to provide the information to an interstate agent is imposed by statute.

• Procedures for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks.

• A process for identification and assessment of newly-identified high consequence areas.(§ 192.905 and § 192.921)

Section 192.913 When May an Operator Deviate Its Program From Certain Requirements of This Subpart and Use a Performance-Based Option?

ASME/ANSI B31.8S allows an operator to deviate from some specific provisions of the standard if the operator has a mature integrity management program that addresses the intent of those provisions in a different manner. This is called a performance-based program, as compared to a prescriptive program (*i.e.*, one meeting the literal provisions of the standard). The rule describes the essential features of a performance-based or a prescriptive integrity management program. The rule allows an operator to deviate from certain integrity management program requirements if it has a performance-based program that has demonstrated exceptional performance.

To qualify for exceptional performance an operator must—

• Have completed at least two integrity assessments of all covered pipeline segments.

• Be able to demonstrate that each assessment effectively addressed the identified threats on the covered segments.

• Remediate all anomalies identified in the more recent assessment according to the remediation requirements in the rule. The remediation requirements are set forth in § 192.933.

• Incorporate the results and lessons learned from the more recent assessment into the operator's data integration and risk assessment.

• Have a performance-based integrity management program that meets or exceeds the performance-based requirements of ASME/ANSI B31.8S, and includes certain minimum elements. The minimum elements are: (1) A comprehensive process for risk analysis; (2) all risk factor data used to support the program; (3) A comprehensive data integration process; (4) A procedure for applying lessons learned from assessment of covered pipeline segments to non covered pipeline segments. A covered segment is one within the scope of Subpart O; (5) A procedure for evaluating incidents within the operator's sector of the pipeline industry for implications both to the operator's pipeline system and to the operator's integrity management program; (6) A performance matrix that demonstrates the program has been effective in ensuring the integrity of the covered segments by controlling the identified threats to the covered segments; (7) Semi-annual performance measures beyond those required in § 192.943 that are part of the operator's performance plan (see § 192.911(i)); and (8) An analysis that supports the desired integrity reassessment interval and the remediation methods to be used for all covered segments.

Once an operator has demonstrated that it has satisfied the requirements for exceptional performance, the operator may deviate from the prescriptive requirements of ASME/ANSI B31.8S and of Subpart O in two instances:

• The time frame for reassessment as provided in § 192.939 except that reassessment by an allowable method (*e.g.*, confirmatory direct assessment) must be carried out at intervals no longer than seven years; and

• The time frame for remediation as provided in § 192.933, as long as the operator demonstrates that the revised time frame will not jeopardize the safety of the covered segment.

Section 192.915 What Knowledge and Training Must Personnel Have To Carry Out an Integrity Management Program?

The rule has requirements for supervisory personnel and for other personnel with integrity management program functions. These requirements apply to both personnel employed by the operator and contractor personnel used to perform integrity management program functions.

For supervisory personnel, the integrity management program must provide that each supervisor whose responsibilities relate to the integrity management program possesses and maintains a thorough knowledge of the integrity management program and of the elements for which he or she is responsible. The program must provide that any person who qualifies as a supervisor for the integrity management program has appropriate training or experience in the area for which the person is responsible.

The integrity management program must provide criteria for the qualification of any person

• Who conducts assessments;

• Who reviews and analyzes the results from an integrity assessment; or

• Who makes decisions on actions to be taken based on these assessments.

The program must also include criteria for the qualification of persons

• Who implement preventive and mitigative measures to carry out the requirements of the rule, including the marking and locating of buried structures; or

• Who directly supervise excavation work carried out in conjunction with an integrity assessment.

Section 192.917 How Does an Operator Identify Potential Threats to Pipeline Integrity and Use the Threat Identification in Its Integrity Program?

The rule requires that an operator's integrity management program begin with an identification of the potential threats to which the pipeline is subjected. The program then is constructed to deal with those threats.

Threat identification. The rule requires an operator to identify and evaluate all potential threats to each covered pipeline segment. These potential threats include, but are not limited to:

• The threats listed in Section 2 of ASME/ANSI B31.8S and

• Time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking;

• Static or resident threats, such as fabrication or construction defects;

• Time independent threats such as third-party damage and outside force damage; and

• Human error.

Data gathering and integration. The rule requires that to identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate data and information concerning the entire pipeline that could be relevant to the covered segment. Section 4 of ASME/ANSI B31.8S provides requirements for performing this data gathering and integration, and the operator must follow those requirements. At a minimum, an operator has to gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S, and consider both on the covered segment and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline.

Risk assessment. The rule requires an operator to conduct a risk assessment that follows Section 5 of ASME/ANSI B31.8S and considers the identified threats for each covered segment, and then use the risk assessment to prioritize the covered segments for the baseline and continual reassessments (§§ 192.919, 192.921, 192.937), and to determine what additional preventive and mitigative measures are needed (§ 192.935).

On a plastic transmission pipeline, an operator has to conduct a threat analysis to the covered segments by using data on threats unique to plastic pipe, and information in Sections 4 and 5 of ASME/ANSI B31.8S. A good source of data information may be found in plastic pipe database collection (PPDC) with AGA.

Particular threats. The rule requires that an operator take specific actions to address particular threats the operator has identified. Those threats, and the required actions, are for third-party damage, cyclic fatigue, manufacturing and construction defects, ERW or lap welded pipe, and corrosion. These threats have been identified for specific action because of their significance to pipeline integrity and because the unique operational characteristics of gas transmission pipelines dictate that they be treated uniquely. The primary difference in the operation of gas transmission pipeline related to these defects is the absence of significant pressure cycling and the associated absence of the cyclic fatigue driving force for crack growth. The absence of significant cyclic fatigue implies that the failure of pipelines from these threats has unique causes that need to be addressed in an integrity management program for gas transmission pipelines.

An operator must utilize the required data integration and Appendix A7 of ASME/ANSI B31.8S to determine the susceptibility of each covered segment to the threat of third-party damage. If an operator identifies the threat of third-party damage, the operator—

• Must implement comprehensive additional preventive measures in accordance with § 192.935 and monitor the effectiveness of the preventive measures.

• If, in conducting a baseline assessment under § 191.921 or a reassessment under § 192.937, an operator uses an internal inspection tool, such as a caliper, geometry or magnetic flux leakage tool to address other identified threats on the covered segment, the operator must integrate data from these tool runs with data related to any encroachment or foreign pipeline crossing on the covered segment, to define where potential indications of third-party damage may exist in the covered segment.

• Have a procedure in its integrity management program addressing actions it will take in response to findings from this data integration.

The rule requires an operator to evaluate whether cyclic fatigue or other loading conditions (including ground movement, suspension bridge condition) could lead to a failure of a deformation, including a dent or gouge, or other defect in the covered segment. The evaluation must include an assumption that there are threats in the covered segment that could be exacerbated by cyclic fatigue. An operator must use the results from the evaluation together with the criteria used to evaluate the significance of this threat to the covered segment and to prioritize the integrity assessment.

The rule requires that if an operator identifies the threat of manufacturing and construction defects (including seam defects) in the covered segment, the operator must analyze the covered segment to determine the risk of failure from these mechanisms. Manufacturing and construction related defects are considered to be stable defects if the operating conditions have not significantly changed since December 17, 1998, since successful operation demonstrates that the defects do not threaten pipeline integrity. Changes in operating conditions, such as a significant increase in pressure, could cause latent defects to grow. Therefore, if the pipeline operating conditions change such that operating pressure will be above the historic operating pressure, if MAOP increases, or if stresses that could lead to cyclic fatigue increase, the operator must treat the covered segment as a high-risk segment.

If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW) or lap welded pipe that satisfies the conditions specified in Appendix A4.3 and A4.4 of ASME/ANSI B31.8 S, the rule requires an operator to select an assessment technology or technologies capable of assessing seam integrity and of detecting seam corrosion anomalies. The operator must prioritize the covered segment as a high risk segment for the baseline assessment or reassessment. If an operator finds corrosion on a covered pipeline segment that could adversely affect the integrity of the pipeline; the operator has to evaluate and remediate, as necessary, all pipeline segments (both covered and non-covered) where similar corrosion might be found (*i.e.*, with similar material coating and environmental characteristics). The evaluation and remediation, if remediation is needed, must be completed in a time frame consistent with the operator's operation and maintenance procedures under part 192 for required testing and repair.

Section 192.919 What Must Be in the Baseline Assessment Plan?

Each operator's integrity management program must contain a baseline assessment plan that has certain elements. These elements are—

(a) Identification of the potential threats to each covered pipeline segment and the information supporting the threat identification. Requirements are in § 192.917.

(b) The methods selected to assess the integrity of the line pipe, including an explanation of why the assessment method was selected to address the identified threats affecting each covered segment. The methods allowed are listed in § 192.921 and include internal inspection, pressure test, direct assessment or alternative equivalent technology. More than one method may be required to address all the threats to the covered pipeline segment;

(c) A schedule for completing the integrity assessment of all covered segments, including the risk factors considered in establishing the assessment schedule;

(d) If an operator plans to use direct assessment, a direct assessment plan that complies with the requirements in § 192.923, and depending on the threat

for which direct assessment is used, § 192.925 (external corrosion), § 192.927 (internal corrosion), or § 192.929 (stress corrosion cracking).

(e) A procedure to ensure that the baseline assessment is conducted in a manner that minimizes environmental and safety risks.

Section 192.921 How Is the Baseline Assessment To Be Conducted?

The rule requires an operator assess the integrity of the line pipe in each covered segment by using one or more of the allowable assessment methods. An operator has to select the method or methods best suited to address the threats identified for each covered segment. Threat identification requirements are in § 192.917. The methods the rule allows are:

(1) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow Section 6.2 of ASME/ANSI B31.8S in selecting the appropriate internal inspection tools for the covered segment.

(2) Pressure test conducted in accordance with Subpart J of 49 CFR Part 192;

(3) Direct assessment for the threats of external corrosion, internal corrosion, and stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with, as applicable, the requirements specified in §§ 192.925, 192.927 or 192.929. Requirements depend on the threat the operator is using direct assessment to address.

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator intending to use other technology must notify the Office of Pipeline Safety (OPS) in accordance with the notification requirements in § 192.949, 180 days before conducting the assessment, so that OPS has an opportunity to review those intentions.

The rule requires an operator to prioritize the covered pipeline segments for the baseline assessment according to a risk analysis that considers the potential threats identified for each covered segment. The risk analysis must comply with the requirements in § 192.917. To choose an assessment method for the baseline assessment of each covered segment, an operator must take the actions required to address particular threats that it has identified. These actions are set forth in § 192.917.

The rule sets time periods for the baseline assessment. These time periods were set by statute. The statute requires that the baseline be completed not later than ten years after date of enactment (December 17, 2002) and at least 50% of the facilities assessed no later than five years after date of enactment. Thus, the rule requires an operator to assess at least 50% of the covered segments beginning with the highest risk segments, by December 17, 2007, and complete the baseline assessment of all covered segments by December 17, 2012.

The rule allows prior assessments conducted before the date the act mandating integrity management programs for gas operators was signed into law (December 17, 2002) to be used as baseline assessments. An operator may use a prior integrity assessment as a baseline assessment for the covered segment, if the integrity assessment meets the baseline requirements in Subpart O and the operator has taken subsequent remedial actions to address the conditions that are listed in § 192.933. However, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe in the covered segment according to the reassessment requirements of §§ 192.937and 192.939. The reassessment of the covered segment must be done no later than December 17, 2009.

The rule requires that when an operator identifies a new high consequence area, the baseline assessment of the line pipe in that area be completed within 10 years from the date the area is identified.

On newly-installed pipe, a baseline assessment has to be done within ten years from the date the pipe is installed. If a post-installation pressure test has been conducted on the new pipe in accordance with Subpart J, that pressure test satisfies the baseline assessment requirement.

For plastic transmission pipelines an operator has to conduct a baseline assessment of a covered segment if the operator has identified a threat, other than third-party damage to the segment. The operator will have to justify the assessment method the operator intends to use.

Section 192.923 How Is Direct Assessment Used and for What Threats?

The rule allows an operator to use direct assessment either as a primary assessment method or as a supplement to the other assessment methods allowed under this subpart. If used as the primary assessment method, it can only be used to address the identified threats of external corrosion (ECDA), internal corrosion (ICDA), or stress corrosion cracking (SCCDA).

The rule requires an operator to have a direct assessment plan. The requirements for the plan depend on the threat being addressed. If addressing external corrosion, the plan must comply with the requirements in Section 6.4 of ASME/ANSI B31.8S; NACE RP0502–2002; and § 192.925. If addressing internal corrosion, the plan must comply with Section 6.4 and Appendix B2 of ASME/ANSI B31.8S, and § 192.927. And if direct assessment is used to address stress corrosion cracking, the plan must comply with Appendix A3 of ASME/ANSI B31.8S, and § 192.929.

If direct assessment is used as a supplemental assessment method the plan must follow the requirements for confirmatory direct assessment in § 192.931.

Section 192.925 What Are the Requirements for Using External Corrosion Direct Assessment (ECDA)?

This section specifies requirements an operator must follow in using External Corrosion Direct Assessment (ECDA). The rule defines ECDA as a four-step process that combines preassessment, indirect inspections, direct examination, and post assessment to evaluate the impact of external corrosion on the integrity of a pipeline.

The rule requires the operator to follow Section 6.4 of ASME/ANSI B31.8S, and NACE RP 0502–2002. The Supplement to ASME/ANSI B31.8 is an industry standard that specifically addresses system integrity of gas pipelines. The NACE standard is an industry recommended practice that addresses methodology for a pipeline external corrosion direct assessment. The rule requires an operator's direct assessment plan to have procedures addressing preassessment, indirect inspections, direct examination, and post-assessment. For all four steps, the procedures must provide for applying more restrictive criteria when conducting ECDA for the first time on a covered segment.

The preassessment procedures must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 3 of NACE RP 0502–2002, and also include the basis on which the operator selects at least two different, but complementary indirect assessment tools to assess each ECDA Region. If an operator utilizes an indirect inspection method that is not discussed in Appendix A of NACE RP0502–2002, the operator must demonstrate the applicability, validation basis, equipment used, application procedure and utilization of data for the inspection method.

The plans procedures for indirect examination must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 4 of NACE RP0502–2002, and include criteria for:

• Identifying and documenting those indications that must be considered for excavation and direct examination;

• For defining the urgency of excavation and direct examination of each indication identified during the direct examination; and

• For scheduling excavation of indications for each urgency level.

The procedures for direct examination must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 5 of NACE RP0502–2002, and include criteria for:

• Deciding what action should be taken if either corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE RP0502–2002), or root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE RP0502–2002);

• For any changes in the ECDA Plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and

• That describe how and on what basis an operator will relax any of the criteria that NACE RP0502–2002 specifies can be relaxed.

The plan's procedures for post assessment of the effectiveness of the ECDA process must follow the requirements in Section 6.4 of ASME/ANSI B31.8S and Section 6 of NACE RP0502–2002, and also include measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in covered segments and criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the covered segment at an interval less than that specified in § 192.939. (Appendix D of NACE RP0502–2002 provides guidance for performing this evaluation).

Section 192.927 What Are Requirements for Using Internal Corrosion Direct Assessment (ICDA)?

This section specifies requirements an operator must follow in using Internal Corrosion Direct Assessment (ICDA). An operator must follow the requirements in Section 6.4 and Appendix B2 of ASME/ANSI B31.8S, as well as those listed in this section. The ICDA process described in this rule applies only for a segment of pipe transporting nominally dry natural gas and not for a segment with electrolyte nominally present in the gas stream. If an operator uses ICDA to assess a covered segment operating with electrolyte present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to effectively address internal corrosion.

The rule defines ICDA as a process an operator can use to identify areas along the pipeline where fluid or other electrolyte that might be introduced during normal operation or by an upset condition may reside. ICDA then focuses direct examination on the locations in each area where internal corrosion is most likely to exist. The process identifies the potential for internal corrosion caused by microorganisms, or fluid with CO_2, O_2, hydrogen sulfide or other contaminants present in the gas.

The rule requires that an operator's ICDA plan must provide for preassessment, identification of ICDA regions and excavation locations, detailed examination of pipe at excavation locations, and post-assessment evaluation and monitoring.

In the preassessment stage, an operator must gather and integrate data and information needed to evaluate the feasibility of ICDA for the covered segment, to identify the locations in the covered segment where electrolyte may accumulate, to identify ICDA regions within the covered segment, and to support the use of a model to identify areas within the covered segment where liquids may potentially be entrained. This data and information includes, but is not limited to—

• All data elements listed in Appendix A2 of ASME/ANSI B31.8S.

• Information needed to support use of a model that an operator must use to identify areas along the pipeline where internal corrosion is most likely to occur. This information, includes, but is not limited to, location of all gas input and withdrawal points on the pipeline; location of all low points on covered segments such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; the elevation profile of the pipeline in sufficient detail that angles of inclination can be calculated for all pipe segments; and the diameter of the pipeline, and the range of expected gas velocities in the pipeline.

• Operating experience data that would indicate historic upsets in gas conditions, locations where these upsets have occurred, and potential damage resulting from these upset conditions.

• Identification of covered segments where cleaning pigs may not have been used or where cleaning pigs may deposit electrolytes.

The plan must define all ICDA Regions within each covered pipeline segment. An ICDA region extends from the location where liquid may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur and where further evaluation is needed. In the identification process, an operator must use the model in GRI 02–0057 ''Internal Corrosion Direct Assessment of Gas Transmission Pipelines—Methodology'' or an equivalent model if the operator demonstrates it is equivalent to the GRI model. A model must consider changes in pipe diameter, locations where gas enters a pipeline (potential to introduce liquid) and locations downstream of gas draw-offs (where gas velocity is reduced) to define the critical pipe angle of inclination above which water film cannot be transported by the gas.

An operator's plan must identify the locations where internal corrosion is most likely in each ICDA region. In the location identification process, an operator must identify a minimum of two locations for excavation within each ICDA Region and must perform a direct examination for internal corrosion at each location, using ultrasonic thickness measurements, radiography, or other generally accepted measurement techniques. One location must be the low point (*e.g.*, sags, drips, valves, manifolds, dead-legs, traps) nearest to the beginning of the ICDA Region, and the second must be at the upstream end of the pipe containing a covered segment, having a slope not exceeding the critical angle of inclination nearest the end of the ICDA Region. If corrosion exists at either location, the operator must evaluate the severity of the defect (remaining strength) and remediate the defect in accordance with § 192.933; as part of the operator's current integrity assessment either perform additional excavations in covered segments within the ICDA region or use an alternative allowed assessment method to assess the line pipe in the covered segment for internal corrosion; and evaluate the potential for internal corrosion in all pipeline segments (both covered and non-covered) in the operator's pipeline system with similar characteristics to the covered segment in which the corrosion was found, and as appropriate, remediate the conditions the operator finds in accordance with § 192.933.

An operator's plan must provide for evaluating the effectiveness of the ICDA process and continued monitoring of covered segments where internal corrosion has been identified. The evaluation and monitoring process includes:

• Evaluating the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those specified in § 192.939. This evaluation must be carried out in the same year in which ICDA used.

• Continually monitoring each covered segment where internal corrosion has been identified using techniques such as coupons, UT sensors or electronic probes, periodically drawing off liquids at low points and chemically analyzing the liquids for the presence of corrosion products. An operator must base the frequency of the monitoring and liquid analysis on results from all integrity assessments that have been conducted in accordance with the integrity management program rule, and risk factors specific to the covered segment. If an operator finds any evidence of corrosion products in the covered segment, the operator must take one of two required actions and remediate the conditions the operator finds in accordance with § 192.933. These actions are to conduct excavations of covered segments at locations downstream from where the electrolyte might have entered the pipe, or to assess the covered segment using another integrity assessment method allowed by this subpart.

The ICDA plan must also include criteria an operator will apply in making key decisions (*e.g.*, ICDA feasibility, definition of ICDA Regions, conditions requiring excavation) in implementing each stage of the ICDA process, and provisions for applying more restrictive criteria when conducting ICDA for the first time on a covered segment and that become less stringent as the operator gains experience and for carrying out an analysis on the entire pipeline in which covered segments are present, but limiting excavation and remediation to the covered segments.

Section 192.929 What Are the Requirements for Using Direct Assessment for Stress Corrosion Cracking (SCCDA)?

This section specifies requirements an operator must follow in using direct assessment for stress corrosion cracking (SCCDA) which is defined as a process to assess a covered pipe segment for the presence of SCC primarily by systematically gathering and analyzing excavation data for pipe having similar operational characteristics and residing in a similar physical environment.

The rule provides that an operator's direct assessment plan to identify this threat must at least provide for a systematic process to collect and evaluate data for all covered segments to identify whether the conditions for SCC are present and to prioritize the covered segments for assessment. This process must include gathering and evaluating data related to SCC at all excavated sites during conduct of its operation where the criteria in Appendix A3.3 of ASME/ANSI B31.8S indicate the potential for SCC. This data includes at minimum, the data specified in Appendix A3 of ASME/ANSI B31.8S. The plan must further provide that if conditions for SCC are identified in a covered segment, the operator must assess the covered segment using an integrity assessment method specified in Appendix A3 of ASME/ANSI B31.8S, and remediate the threat in accordance with Appendix A3.4 of ASME/ANSI B31.8S.

Section 192.931 How May Confirmatory Direct Assessment (CDA) Be Used?

Confirmatory direct assessment (CDA) is used where external or internal corrosion is the threat of concern to the covered segment. An operator is allowed to use CDA as a method to reassess the line pipe in a covered segment at seven-year intervals. The rule provides that an operator's CDA plan for identifying external corrosion must comply with the requirements for external corrosion direct assessment in § 192.925 with the following exceptions.

• The procedures for indirect examination may allow for use of only one indirect examination tool suitable for the application.

• The procedures for direct examination and remediation must provide that all immediate action indications must be excavated for each ECDA region and that at least one high risk indication that meets the criteria of scheduled action must be excavated in each ECDA region.

An operator's CDA plan identifying internal corrosion must comply with the requirements for internal corrosion direct assessment in § 197.927 except that the plan's procedures for identifying locations for excavation may require excavation of only one high risk location in each ICDA region.

The premise behind CDA is that it is used to confirm the acceptable integrity of a pipeline, already ensured by assessments in accordance with ASME/ANSI B31.8S. If confirmation is not successful, *i.e.*, if problems are found, then an operator needs to take additional actions. If an assessment carried out using CDA reveals defects requiring remediation prior to the next scheduled assessment, the operator must schedule the next assessment at a time defined by the requirements in Section 6.2 and 6.3 of NACE RP 0502–2002. If the defect requires immediate remediation, then the operator must reduce pressure consistent with § 192.933 until it has completed reassessment using one of the assessment techniques allowed in § 192.937.

Section 192.933 What Actions Must Be Taken To Address Integrity Issues?

The rule requires an operator to take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and must remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. The rule gives an operator an option if it is unable to respond within the specified time limits for certain conditions. The operator can either temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. If pressure is reduced, an operator must determine the temporary reduction in operating pressure of the pipeline using ASME/ANSI B31G or RSTRENG or the operator must reduce the operating pressure to a level not exceeding 80% of the level at the time the condition was discovered. A reduction in operating pressure cannot exceed 365 days without an operator providing a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline.

Discovery of condition. It is important to know when a condition has been ''discovered'', because the time periods for remediation begin upon discovery. The rule provides that discovery of a condition occurs when an operator has adequate information about the condition to determine that it presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable.

Schedule for evaluation and remediation. The rule provides that an operator complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special

requirement for remediating certain conditions applies (these are listed in the rule as immediate repair, one-year and monitored conditions), an operator must follow the schedule in Section 7, Figure 4 of ASME/ANSI B31.8S. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify OPS if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure or other action. An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

Special requirements for scheduling remediation. The rule lists immediate repair conditions, one-year conditions and monitored conditions. If a condition is an immediate repair condition, the operator must either temporarily reduce operating pressure or shut down the pipeline until the repair is completed. The one-year period begins from when the condition is discovered. Certain dents on the top of the pipe are listed as one-year conditions. Monitored conditions are those that an operator must record and monitor during subsequent risk assessments and integrity assessments for any change that may require remediation.

Section 192.935 What Additional Preventive and Mitigative Measures Must An Operator Take To Protect the High Consequence Area?

The requirements in this section apply to all gas transmission pipelines, including plastic gas transmission pipelines. The rule requires an operator to take additional measures beyond those already required in Part 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. An operator must base the additional measures on the threats the operator has identified to each pipeline segment. (Threat identification is in § 192.917.) The rule requires an operator to conduct, in accordance with one of the risk assessment approaches in Section 5 of ASME/ANSI B31.8S, a risk analysis of its pipeline to identify additional measures to protect the high consequence area and enhance public safety. Examples of additional measures listed in the rule are: installing Automatic Shut-off Valves or Remote Control Valves, installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional inspection and maintenance programs. These are not the only measures an operator should consider or use.

The rule requires an operator to enhance its current damage prevention program required under § 192.614 with respect to a covered segment to prevent and minimize the consequences of a release due to third-party or outside force damage. The rule lists examples of enhanced damage prevention program measures. These are the minimum actions an operator can take to enhance its current program.

- Using qualified personnel for work an operator is conducting that could adversely affect the integrity of a covered segment, such as marking, locating, and direct supervision of known excavation work.
- Collecting in a central database information that is location specific on excavation damage that occurs in covered and non-covered segments in the transmission system and the root cause analysis to support identification of targeted additional preventative and mitigative measures in the high consequence areas. This information must include recognized damage that is not required to be reported as an incident under Part 191.
- Participating in one-call systems in locations where covered segments are present.
- Monitoring of excavations conducted on covered pipeline segments by pipeline personnel. When there is physical evidence of encroachment involving excavation near a covered segment, an operator must either excavate the area near the encroachment or conduct an above ground survey using methods defined in NACE RP–0502–2002. An operator must excavate, and remediate, in accordance with ASME/ANSI B31.8S and § 192.933 any indication of coating holidays or discontinuity warranting direct examination.

If an operator determines that outside force, such as earth movement, floods, or an unstable suspension bridge, is a threat to the integrity of a covered segment, the rule requires the operator to take measures to minimize the consequences to covered segments from outside force damage. The minimum measures an operator can take are: increasing the frequency of aerial, foot or other methods of patrols, adding external protection, reducing external stress, and relocating the pipeline.

The requirements for third-party damage and outside force damage also apply to plastic transmission pipelines.

The rule allows that there may be limited instances in which an operator will determine that installing an automatic shut off or remote control valve is necessary. The rule provides that if an operator determines, based on a risk analysis, that such a valve would be an efficient means of adding protection to a high consequence area in the event of a gas release, an operator must install the valve. In making that determination, an operator must, at least, consider the swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel.

Because under the revised definition of a high consequence area, some low-stress pipelines may not be in a high consequence area, although the pipeline is in a populated area, the rule adds additional requirements for these pipelines. Thus, if a transmission pipeline operates below 30% SMYS and is located in a Class 3 or 4 area but not in a high consequence area, an operator must apply the enhanced third-party damage prevention requirements for using qualified personnel and participating on one-call centers to the pipeline and either monitor excavations near the pipeline, or conduct patrols of the pipeline at bi-monthly intervals. If an operator finds any indication of unreported construction activity, the operator must conduct a follow up investigation to determine if mechanical damage has occurred.

Section 192.937 What Is a Continual Process of Evaluation and Assessment To Maintain a Pipeline's Integrity?

After completing the baseline integrity assessment of a covered segment, the rule provides that an operator must continue to assess the line pipe of that segment at specified intervals (in § 192.939) and to periodically evaluate the integrity of each covered pipeline segment. If an operator had used a prior assessment as the baseline assessment, the reassessment must be done by no later than December 17, 2009. If a prior assessment is not used as the baseline, a reassessment of a covered segment must be done by no later than seven years after the baseline assessment of that covered segment unless the periodic evaluation indicates earlier reassessment.

The rule requires a periodic evaluation as frequently as needed to

ensure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline. The data integration and risk assessment requirements are in § 192.917. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in § 192.917(d) considering the data on unique threats to a plastic pipeline. For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information, and decisions about remediation (§ 192.933) and additional preventive and mitigative actions (§ 192.935). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats.

The rule allows several assessment methods for a reassessment. In conducting the integrity reassessment, an operator must assess the integrity of the line pipe in the covered segment by any of the following methods as appropriate for the threats to which the covered segment is susceptible (*see* § 192.917), or by confirmatory direct assessment under the conditions specified in § 192.931. The methods allowed for reassessment are—

- Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow Section 6.2 of ASME/ANSI B31.8S in selecting the appropriate internal inspection tools for the covered segment.
- Pressure test conducted in accordance with Subpart J;
- Direct assessment to address threats of external corrosion and internal corrosion or stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with as applicable, the requirements specified in §§ 192.925 (external corrosion), 192.927 (internal corrosion) or 192.929 (stress corrosion cracking);
- Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment.
- Confirmatory direct assessment when used on a covered segment that is scheduled for reassessment at a period longer than seven years. An operator using this reassessment method must comply with § 192.931.

Section 192.939 What Are the Required Reassessment Intervals?

The required reassessment interval depends on the assessment method and the operating pressure of the pipeline. Some form of reassessment must be done at least every seven years.

For pipelines operating at or above 30% SMYS, the rule allows reassessment by—

1. Pressure test or internal inspection, or other equivalent technology. An operator that uses pressure testing or internal inspection as an assessment method must establish the reassessment interval for a covered pipeline segment by—

- Basing the intervals on the identified threats for the segment as listed in § 192.915 of this section and in Section 8, Tables 6 and 7 of ASME/ANSI B31.8S, and on the analysis of the results from the last integrity assessment and from the data integration and risk assessment required by § 192.911; or
- Using the intervals for different stress levels of pipeline specified in Table 3, Section 5 of ASME/ANSI B31.8S.

2. External Corrosion Direct assessment. An operator that uses external corrosion direct assessment must determine the reassessment interval according to the requirements in paragraphs 6.2 and 6.3 of NACE RP0502–2002.

3. Internal Corrosion or SCC Direct Assessment. An operator that uses ICDA or SCCDA must determine the reassessment interval by determining the largest defect most likely to remain in the covered segment and the corrosion rate appropriate for the pipe, soil and protection conditions, taking the largest remaining defect as the size of the largest defect discovered in the SCC or ICDA segment and estimating the reassessment interval as half the time required for the largest defect to grow to a critical size. However, the reassessment interval cannot exceed those specified for direct assessment in Table 3, Section 5 of ASME/ANSI B31.8S.

If using one of these allowable methods, an operator establishes a reassessment interval that is greater than seven years, the operator must within the seven-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment at the interval the operator has established. A reassessment done by confirmatory direct assessment must follow the requirements in § 192.931.

For pipelines operating below 30% SMYS the rule allows reassessment by—

1. Pressure test, internal inspection or other equivalent technology following the requirements for pipelines operating above 30% SMYS, except that the stress level would be adjusted to reflect the low operating stress level. If an established interval is more than seven years, the operator must conduct by the seventh year of the interval either a confirmatory direct assessment in accordance with § 192.931, or a low-stress reassessment in accordance with § 192.941.

2. External Corrosion Direct assessment following the requirements described for pipelines operating above 30% SMYS.

3. Internal Corrosion or SCC Direct Assessment following the requirements described for higher stress pipelines.

4. Confirmatory direct assessment at seven-year intervals in accordance with § 192.931, with reassessment by one of the other allowed methods (pressure test, internal inspection or direct assessment) by year 20 of the interval.

5. Low-stress assessment method at seven-year intervals in accordance with § 192.941 with reassessment by one of the other allowed methods (pressure test, internal inspection or direct assessment) by year 20 of the interval.

Section 192.941 What Is a Low-Stress Reassessment?

The rule provides for a low-stress reassessment for transmission pipelines that operate below 30% SMYS. This reassessment addresses the threats that are more common to these low-stress pipelines. The low-stress method only applies to a reassessment.

To address the threat of external corrosion on cathodically protected pipe in a covered segment, an operator must—

- Perform an electrical survey (*i.e.,* indirect examination tool/method) at least every seven years on the covered segment.
- Use the results of each survey as part of an overall evaluation of the cathodic protection and corrosion threat for the covered segment. This evaluation must consider, at minimum, the leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

If an electrical survey is impractical on the covered segment an operator must instead

- Conduct leakage surveys at 4-month intervals; and
- Every 1½ years, identify and remediate areas of active corrosion by evaluating leak repair and inspection records, corrosion monitoring records,

exposed pipe inspection records, and the pipeline environment.

To address the threat of internal corrosion on a covered segment, an operator must—

- Conduct a gas analysis for corrosive agents at least once each calendar year;
- Conduct periodic testing of fluids removed from the segment. At least once each calendar year test the fluids removed from each storage field that may affect a covered segment; and
- At least every seven years, integrate data from this analysis and testing with applicable internal corrosion leak records, incident reports, safety-related condition reports, repair records, patrol records, exposed pipe reports, and test records, and define and implement appropriate remediation actions.

Section 192.943 When Can an Operator Deviate From These Reassessment Intervals?

The rule provides for a waiver from the reassessment intervals in two limited instances. In either instance the waiver has to be done in accordance with 49 U.S.C. 60118(c), which requires public notice and comment, and OPS has to find that the waiver would not be inconsistent with pipeline safety. The rule requires an operator to apply for a waiver at least 180 days before the end of the required reassessment interval, unless local product supply issues make that period impractical. The two instances when an operator may apply for a waiver are—

1. Lack of internal inspection tools.

In this instance an operator who uses internal inspection as an assessment method may be able to justify a longer assessment period for a covered segment if internal inspection tools are not available to assess the line pipe. To justify this, the operator must demonstrate that it cannot obtain the internal inspection tools within the required assessment period and that the actions the operator is taking in the interim ensure the integrity of the covered segment.

2. To maintain product supply.

An operator may be able to justify a longer reassessment period for a covered segment if the operator demonstrates that it cannot maintain local product supply if it conducts the reassessment within the required interval.

Section 192.945 What Methods Must an Operator Use To Measure Program Effectiveness?

The rule requires an operator have performance measures to measure, on a semi-annual basis, whether the program is effective in assessing and evaluating the integrity of each pipeline segment and in protecting the HCAs. These measures must include the four overall performance measures specified in Section 9.4 of ASME/ANSI B31.8S and the specific measures for each identified threat specified in Appendix A of ASME/ANSI B31.8S. An operator must submit the four overall performance measures electronically on a semi-annual frequency to OPS.

In addition to the general requirements for performance measures the rule requires that if an operator uses direct assessment to assess the external corrosion threat, the operator must also must define and monitor measures to determine the effectiveness of the ECDA process. These measures must meet the external corrosion direct assessment requirements in § 192.925.

Section 192.947 What Records Must an Operator Keep?

The rule provides that an operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of the integrity management program rule. This section lists the minimum records an operator has to maintain for review during an inspection.

Section 192.949 How Does an Operator Notify OPS?

For any of the required notification, the rule allows an operator to submit the notification by one of three methods.

- Sending the notification by mail to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590;
- Sending the notification by facsimile to (202) 366–7128; or
- Entering the information directly on the Integrity Management Database (IMDB) Web site at *http://primis.rspa.dot.gov/gasimp/.*

Section 192.951 Where Does an Operator File a Report?

The rule has certain reporting requirements. An operator must send these reports to OPS by one of three methods.

- By mail to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590;
- Via facsimile to (202) 366–7128; or
- Through the online reporting system provided by OPS for electronic reporting available at the OPS Home Page at *http://ops.dot.gov.*

This rule also adds a new Appendix E to Part 192, Guidance on Determining High Consequence Areas, and on carrying out requirements in the Integrity Management Rule. The guidance in the appendix describes the process an operator must use to determine whether a pipeline segment is in a high consequence area.

The new Appendix also provides guidance on alternative assessment methods for transmission pipeline operating at below 30% SMYS. That guidance is provided in the form of three tables:

—Table E.II.1 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS *not* in HCAs (*i.e.,* outside of Potential Impact Circles) but located within Class 3 and 4 locations.

—Table E.II.2 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS in HCAs.

—Table E.II.3 gives guidance on preventative & mitigative measures addressing time dependent and independent threats for transmission pipelines that operate below 30% SMYS, in HCAs.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) considers this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, it was forwarded to the Office of Management and Budget. This final rule is significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979) because of its significant public and government interest.

A regulatory evaluation of this final rule on Integrity Management for gas transmission pipelines has been prepared and placed in the docket.

Cost-Benefit Analysis

A copy of the final regulatory evaluation has been placed in the docket for this final rule. The following section summarizes the regulatory evaluation's findings.

Natural and other gas pipeline ruptures can adversely affect human health and property. However, the magnitude of this impact differs from area to area. There are some areas in

which the impact of an accident will be more significant than it would be in others due to greater concentrations of people who could be affected. Because of the potential for dire consequences of pipeline failures in certain areas, these areas merit a higher level of protection. RSPA/OPS is requiring this regulation to afford the necessary additional protection to these HCAs.

Numerous investigations by RSPA/OPS and NTSB have highlighted the importance of protecting the public from pipeline failures. NTSB has made several recommendations to ensure the integrity of pipelines near populated areas. These recommendations included requiring periodic testing and inspection to identify corrosion and other damage, establishing criteria to determine appropriate intervals for inspections and tests, determining hazards to public safety from electric resistance welded pipe and requiring installation of automatic or remotely-operated mainline valves on high-pressure pipelines to provide for rapid shutdown of failed pipelines.

Congress also directed RSPA/OPS to undertake additional safety measures in areas that are densely populated. These statutory requirements included having RSPA/OPS prescribe standards for identifying pipelines in high density population areas and issue standards requiring periodic inspections. The Pipeline Safety Improvement Act of 2002 requires that RSPA/OPS adopt regulations requiring operators of gas transmission pipelines in HCAs to adopt integrity management plans.

This final rulemaking addresses the target problem described above, and is a comprehensive approach to certain NTSB recommendations and Congressional mandates, as well as pipeline safety and environmental issues raised over the years.

This final rule focuses on a systematic approach to integrity management to reduce the potential for natural and other gas transmission pipeline failures that could affect populated areas. This final rulemaking requires pipeline operators to develop and follow an integrity management program that continually assesses, through internal inspection, pressure testing, direct assessment or equivalent alternative technology, the integrity of those pipeline segments that could affect areas we have defined as HCAs, *i.e.,* areas with specified population densities, buildings containing populations of limited mobility, and areas where people gather, that occur along the route of the pipeline. The program must also evaluate the segments through comprehensive information analysis, remediate integrity problems and provide additional protection through preventive and mitigative measures.

This final rule (the fourth in a series of integrity management program regulations) covers operators of transmission pipelines for natural and other gases. RSPA/OPS chose to start the series with hazardous liquid pipeline operators because the pipelines they operate have the greatest potential to adversely affect the environment. This final rule completes the application of integrity management to all interstate (and many intrastate) pipelines.

Benefits

RSPA/OPS has made significant changes to the cost-benefit analysis since the analysis prepared to support the proposed rule. Included in these changes is full consideration of the impact of the Pipeline Safety Improvement Act of 2002. The Act significantly changed the regulatory environment in which the new rule will be implemented. The Act requires that gas transmission pipeline operators develop integrity management plans, perform risk analyses, and perform certain tests, including tests at specified intervals. These requirements forever change the regulatory landscape. The notice of proposed rulemaking was issued in January, only one month after the Act was signed into law. RSPA/OPS modified the notice to acknowledge that the law was passed and that it imposed some requirements, but RSPA/OPS had not taken time to analyze thoroughly the impacts the Act would have.

RSPA/OPS has since performed extensive analyses to consider the impacts of the Act and to evaluate ways to make the rule more cost-beneficial. RSPA/OPS has estimated the costs to implement the requirements in the Act, without modification, to be approximately $11 billion over 20 years. By comparison, we conclude the cost of implementing this rule will be $4.7 billion over the same period. The difference reflects changes made in this rule in the definition of HCAs (which will have the effect of reducing the amount of pipeline mileage that must be tested) and provisions for limited scope reassessments every seven years. The Act requires that pipelines be assessed every seven years. The Act further requires that these assessments be performed using one of three specified assessment methods or ''an alternative method that the Secretary [of Transportation] determines would provide an equal or greater level of safety.'' The alternative methods included in this rule will reduce costs significantly over the cost of performing periodic assessments using only the methods specified in the Act. There is therefore a benefit in adopting this rule of approximately $6.2 billion in cost reduction for assuring pipeline integrity.

Benefits will also accrue in improved ability to site pipelines in certain critical markets. It is difficult to quantify this benefit, but RSPA/OPS believes it is real. Inability to site future pipelines could affect the Nation's ability to use the increased quantities of natural gas that the Energy Information Administration estimates will be needed to fuel our economy over the next 20 years.

The Energy Information Administration (EIA), in its Annual Energy Outlook 2003, estimates that total consumption of natural gas in the United States was 22.64 trillion cubic feet in 2001. EIA's Outlook projects, in its reference case, that this figure will grow to 32.14 trillion cubic feet by 2020. The EIA projection is for consumption of 34.59 trillion cubic feet by 2020 for its high economic growth scenario. These figures represent an increase of 42 and 53 percent from total 2001 consumption. Additional transmission pipeline capacity is likely to be needed to support these estimates, and to deliver the gas that the American economy will need in 2020. The increased public confidence in pipeline safety that will result from this rule will make it easier to site and construct this additional pipeline capacity. The ability to build to support the need of the U.S. economy is a principal benefit of this rule.

The rule will significantly reduce the likelihood of pipeline accidents that result in deaths and serious injuries. Based on the historical record, RSPA/OPS has estimated this benefit to be on the order of $800 million over 20 years. It is quite likely, though, that future accidents could be worse than the historical experience. Population near pipelines is growing. This places more people at risk than in the past. While some historical accidents have resulted in several deaths and serious injuries, and significant property damage, accidents with even greater consequences could occur. RSPA/OPS has analyzed the likelihood that an accident could occur in an area along the pipeline that is more densely populated. Even though the amount of pipeline mileage along which such high population densities might be found is small (RSPA/OPS estimated 0.1% of total mileage for this analysis) the consequences of an accident are potentially large enough that the averted costs are still high. RSPA/OPS estimates

that an additional $277 million is realized by avoiding the likelihood of this more significant accident.

The rule will also result in avoiding significant costs associated with unexpected interruptions in natural gas supply. The 2000 Carlsbad accident resulted in curtailment of supply of natural gas to California. RSPA/OPS estimates that this resulted in an impact on the California economy of $17.25 million per day. The total benefit afforded by this rule in avoiding future economic impacts of this type is estimated to be $1 billion over the next 20 years.

Another benefit to be realized from implementing this rule is reduced cost to the pipeline industry for assuring safety in areas along pipelines with relatively more population. The improved knowledge of pipeline integrity that will result from implementing this rule will provide a technical basis for providing relief to operators from current requirements to reduce operating stresses in pipelines when population near them increases. Regulations currently require that pipelines with higher local population density operate at lower pressures. This is intended to provide an extra safety margin in those areas. Operators typically replace pipeline when population increases, because reducing pressure to reduce stresses reduces the ability of the pipeline to carry gas. Areas with population growth typically require more, not less, gas. Replacing pipeline, however, is very costly. Providing safety assurance in another manner, such as by implementing this rule, could allow RSPA/OPS to waive some pipe replacement. RSPA/OPS estimates that such waivers could result in a reduction in costs to industry of $1 billion over the next 20 years, with no reduction in public safety.

Costs

Comments submitted in response to the draft regulatory analysis pointed out that the costs to do much work associated with pipeline integrity assessments, *e.g.,* excavating pipe for direct examination, are much higher in urban areas than they are in rural locations. The comments suggested that use of a single set of unit costs (*i.e.,* costs per-mile) to represent all pipeline was unreasonable. RSPA/OPS accepts that work in urban areas is more costly. In the final regulatory analysis, RSPA/OPS has used different unit costs for work on long-distance pipelines, traversing largely rural areas, and for shorter transmission pipelines owned by gas distribution companies, which are generally in urban areas. RSPA/OPS has relied on comments submitted by INGAA, whose members consist of operators of long-distance pipelines, and the American Gas Association (AGA) and American Public Gas Association (APGA), whose members are gas distribution companies, for the unit costs used in the final regulatory analysis.

RSPA/OPS analyzed two scenarios in the draft regulatory analysis, varying the amount of pipeline that operators are expected to modify to accommodate in-line inspection. This approach was taken, because of industry comments that significant amounts of pipeline would likely be modified and the costs for that work. Some pipe already can accommodate in-line inspection tools. Some can be modified to accommodate the in-line inspection tools with relatively simple modifications. Others require much more extensive retrofits. RSPA/OPS was uncertain whether operators would incur the significant costs to modify this ''hard-to-pig'' pipeline or, instead, rely on direct assessment for those pipeline segments. One of the analyzed scenarios assumed that only the piping that can easily be modified would be changed. The other scenario was based on the assumption that a portion of the pipe requiring more extensive changes would also be modified.

Comments submitted in response to the draft regulatory analysis strongly supported the premise that operators will modify much hard-to-pig pipeline. Discussions at public meetings and at the Technical Pipeline Safety Standards Committee indicated a strong preference for pigging, and a full intent, on the part of the industry, to pursue that approach in most cases. This is, in part, because pigging provides an operator with much more information about the pipeline. Faced with these comments, RSPA/OPS believes it would be unreasonable to continue to analyze a scenario in which no hard-to-pig pipe is changed. As demonstrated by the two scenarios considered in the draft regulatory analysis, costs are much higher during the baseline assessment period when hard-to-pig pipe is assumed to be modified.

Initial experience with direct assessment, however, indicates higher costs for using this method than originally estimated, making reassessment costs lower if a larger proportion of affected pipeline is pigged. This adds an economic incentive to modify pipeline for pigging and further supports eliminating the ''Limited Modification'' scenario.

We have estimated the cost for operators to identify pipeline segments that can affect HCAs at approximately $15.05 million, the cost to develop the necessary programs at approximately $104.13 million and an annual cost for program upkeep and reporting of $12.91 million. An operator's program begins with a baseline assessment plan and a framework that addresses each required program element. The framework indicates how decisions will be made to implement each element. As decisions are made and operators evaluate the effectiveness of the program in protecting HCAs, the program will be updated and improved, as needed.

The final rule requires a baseline assessment of covered pipeline segments through internal inspection, pressure test, direct assessment or use of other technology capable of equivalent performance. The baseline assessment must be completed within ten years after December 17, 2002 (the date the Pipeline Safety Improvement Act of 2002 was signed into law), with at least 50% of covered segments being assessed within five years.

After this baseline assessment, the rule further requires that an operator periodically reassess and evaluate the pipeline segment to ensure its integrity. The interval in which reassessments must be performed varies with the operating stress levels in the pipe. Pipelines operating at greater than 50 percent of specified minimum yield strength (SMYS) must be reassessed at least every 10 years. Pipelines operating between 30 and 50 percent SMYS must be reassessed every fifteen-years. Pipelines operating below 30 percent SMYS require reassessment on a twenty-year interval.

RSPA/OPS believes that the higher the operating pressure of a pipeline, the greater the potential risk the pipeline poses to the general public. That is because a failure of a pipeline operating at a higher pressure will result in a larger impact area and potentially more significant consequences. It is under this assumption that RSPA/OPS has established the shortest assessments intervals for pipelines that operate at or above pressures of 50 percent of SMYS. By basing the assessment interval according to pipeline pressure, operators will have to focus their safety resources on pipelines that pose the greatest danger. RSPA/OPS believes that varying the assessment interval according to the risk provides the greatest safety reward per dollar operators will expend.

The Pipeline Safety Improvement Act of 2002 requires reassessment of all pipelines in HCAs every seven years. To meet this requirement an operator must conduct some assessment at that

frequency. The final rule provides a means to fulfill this requirement at reduced burden, and lower financial impact. If an operator takes advantage of the longer reassessment intervals provided in this final rule, the rule requires that the operator conduct an interim reassessment at least every seven years using a more focused direct assessment (Confirmatory Direct Assessment) method.

Confirmatory direct assessment is a more focused application of the principles and techniques of direct assessment, that is concentrated on identifying critical segments of suspected corrosion and third-party damage. RSPA/OPS has structured the requirements for confirmatory direct assessment in a manner intended to allow maximum flexibility for operators. Indirect examinations may be performed using only one, rather than two, tools. Corrosion regions may be larger than for regular direct assessments. The number of excavations required per region is less. These changes will allow operators to plan and conduct confirmatory direct assessments in a manner that is most cost-effective, *i.e.*, identifies areas of concern at lowest cost.

RSPA/OPS estimates that the cost of periodic reassessment will generally not occur until the eighth year, unless the baseline assessment indicates significant defects that would require earlier reassessment. Operators must begin CDA interim assessments in the eighth year. Additionally, some operators of higher-pressure pipelines, who must perform regular reassessments in ten years, may elect to perform those assessments at seven-year intervals instead of using CDA. The cost-benefit analysis assumes that half of the affected pipeline operating above 50 percent SMYS will be assessed using the higher-cost methods every seven years.

The analysis of costs RSPA/OPS expects operators to incur in implementing the rule results in an estimated annual cost of $262.1 million to conduct baseline testing. This includes the cost to modify pipelines. All necessary modifications will be completed during the baseline period, making annual costs for reassessments considerably lower. Our analysis estimates that annual reassessment costs will be approximately $50 million, varying slightly in different years depending on which pipeline is due for reassessment.

Integrating information related to the pipeline's integrity is a key element of the integrity management program. Costs will be incurred to recover historical data about the pipeline and incorporate it in modern data management systems that will allow it to be used more readily. RSPA/OPS estimates that most of these costs will be incurred in the first year after the effective date of the rule. Operators will incur annual costs thereafter to incorporate new data, including the results from assessments, and for integration and analysis by knowledgeable pipeline safety professionals. RSPA/OPS estimated in the draft regulatory analysis that the total costs for the information integration requirements would be $31.5 million in the first year and $15.75 million annually thereafter. Comments indicated that these estimates, particularly for the first year, were very low. The Interstate Natural Gas Association of America (INGAA) pointed out that costs to gather old data, much of which is in paper records and not easily retrieved, would be much higher. INGAA estimated that operators would incur costs of $1,359 per mile for the initial data gathering and setup and $113 per mile for annual updates and analysis. RSPA/OPS accepts that costs to retrieve old data will be high, and that estimating these costs on a per-mile basis is reasonable. RSPA/OPS has adopted the INGAA-provided unit costs. Applying them results in an estimated total cost for data integration of $387.3 million in the first year and $32.21 million annually thereafter.

The final rule also requires operators to evaluate the risk of pipeline segments that can affect HCAs to determine if additional preventive or mitigative measures that would enhance public safety should be implemented. One of the additional preventive or mitigative actions that an operator can take is to install automatic shutoff valves or remotely controlled valves. RSPA/OPS could not estimate the total cost of installing such valves in response to this rule, because there are too many factors that would have to be analyzed in order to produce a valid estimate of how many operators will install them. RSPA/OPS completed a generic study in 1999, however, in which we concluded that conversion of existing sectional block valves to remote operation was not economically feasible in most cases. Operator- and location-specific factors could change this conclusion for individual valves but RSPA/OPS could not analyze these specific factors for individual block valves and therefore, did not estimate the total cost for installing remote valves. RSPA/OPS presumes that operators will analyze valve-specific factors and will not replace valves unless that action is cost-beneficial. RSPA/OPS estimates that the cost to operators to perform the required risk analyses will be approximately $11.5 million.

Consideration by Advisory Committee

RSPA/OPS discussed the final regulatory analysis with the Technical Pipeline Safety Standards Committee (TPSSC) in a public teleconference on July 31, 2003. The TPSSC, composed equally of representatives of industry, government, and groups representative of public involvement in pipeline safety issues, agreed that the analysis provides a basis to justify proceeding with this rulemaking. The committee unanimously concluded that the expected benefit in terms of improved public confidence in pipeline safety is substantial and justifies the expected costs.

Conclusions

RSPA/OPS concludes that the benefits are about the same as the costs. Quantified benefits total $4.7 billion over the 20 years analyzed. Costs over this same period are estimated to be $4.7 billion. There are additional benefits for which it was difficult to estimate monetary values. These include an improved basis for public confidence in pipeline safety, with attendant improvements in the ability to site new pipelines; reduced consequential damages from an unexpected interruption of gas service, providing a technical basis that will allow increases in pressure, and thus in delivery of gas, during future energy emergencies; and providing incentives to foster additional improvements in pipeline testing technology.

The estimated costs for implementing this rule are significant. They need to be considered in the context of the size of the overall U.S. market for natural gas. Energy Information Administration figures show that total U.S. consumption of natural gas in 2001 amounted to 20,477,009 million cubic feet. Residential consumption was 4,716,186 million cubic feet. When the total estimated first-year costs for implementing this rule are divided over these quantities, they result in an increase in cost of 3.6 cents per thousand cubic feet. An average residential consumer would see an increase of $3.07 per year if these costs were passed on. This would mean an increase of 26 cents on an average monthly bill, or a 0.39 percent rise.

RSPA/OPS considers these costs reasonable to realize the benefits associated with this rule. Additionally, promulgating this rule will result in savings of approximately $6.2 billion

over the expected costs to industry of complying with legislative requirements absent this rule. Publishing this final rule, and requiring that gas transmission pipeline operators comply, is clearly the appropriate course of action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, RSPA/OPS must consider whether this rulemaking would have a significant impact on a substantial number of small entities. RSPA/OPS in its draft regulatory analysis used an estimate of 668 gas transmission operators that could potentially be impacted by the gas integrity management proposed rule. For the final regulatory evaluation RSPA/OPS performed an extensive computer search of gas transmission operators and found that many operators were in fact subsidiaries of large gas transmission companies and that there are 275 gas transmission operators that could potentially be impacted by this final rulemaking. A pipeline company would be impacted if its pipeline could affect a high consequence area (HCA). HCA's are located primarily urban areas but include rural areas where more than 20 people congregate.

Of these 275 companies, approximately 35 could be considered small companies. About 25 of these are municipally operated gas distribution companies who also operate a transmission pipeline. The Small Business Administration (SBA) had concerns with the regulatory flexibility certification performed for the proposed gas integrity management regulation. In discussions with SBA OPS suggested that it would contact the American Public Gas Association (APGA) which is the trade organization which represents municipal gas distribution companies which make up the majority of the small entities among gas pipeline operators. OPS has asked that APGA help to disseminate information on rulemakings that could impact small pipeline operators. APGA has agreed to perform this function. While OPS has in the past solicited comments from small pipeline operators concerning potential impacts of pipeline safety regulations few if any small pipeline operators have ever submitted comments.

The Interstate Natural Gas Association of America (INGAA) estimates that its members account for 80% of the gas pipeline transmission mileage in the United States. INGAA has only 24 members however, 3 of these members are not U.S. gas transmission operators. Therefore, approximately 21 companies account for 80% of the U.S. gas transmission pipeline mileage. The remainder of the pipeline companies in this industry share only 20% of the total pipeline mileage.

The majority of the remaining 20% of transmission pipelines belong to large gas distribution companies and large industrial companies. The approximately 35 small entities own and operate very little mileage. Because they operate such little mileage (in most cases less than 30 miles of pipeline), the compliance costs to these small entities if they are impacted by this rule will be significantly lower than those operators thousands of miles of pipeline as the costs of inspection and planning should be considerably lower. Specifically, OPS has estimated that the program planning and paperwork costs to operators with 30 miles or less of pipeline will be considerably less than for long distance pipeline operators. If a small pipeline operator has for example only 30 miles of pipeline it is likely that they will have only a few miles of pipeline that will fall under this rule. If they choose to perform direct assessment which the APGA has said is the likely choice of their members the cost to inspect this will likely fall under $100,000. On the other hand a large transmission operator performing internal inspection on more than a thousand miles of pipeline is likely to cost that operator several million dollars. RSPA/OPS believes that this rule does not unduly burden small entities. Nevertheless, RSPA/OPS stands ready to provide special help to any small operators to assist them in complying with this final rule. Conversations with some small transmission companies indicates that state pipeline offices have been particularly effective in assisting small entities. Based on the above discussion I certify that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted a copy of the Paperwork Reduction Act analysis to the Office of Management and Budget for its review. The name of the information collection is ''Pipeline Integrity Management in HCAs Gas Transmission Pipeline Operators. OMB Control Number 2137–0610'' The purpose of this information collection is designed to require operators of gas transmission pipelines to develop a program to provide direct integrity testing and evaluation of gas transmission pipelines in HCAs.

The following is a summary of the highlights of the paperwork reduction act analysis. The complete analysis can be found in the public docket. The costs and hour burden is based on 275 companies with a loaded labor cost of $60 per hour.

In the first year of promulgating this rule operators will have to identify which segments are in HCAs. This will take 167 hours per company plus 5 hours per impact circle. Impact circle is a measure of how wide the HCAs will be. The total hours for the entire industry will be 25,083 hours in the first year only.

The development of the integrity management plan will take 8333 hours for an operator with more than 30 miles of pipelines and 2,083 for operators with less than 30 miles of pipeline in the first year. The time to update the plans annually will be 833 hours for operators with more than 30 miles and 417 for operators with less than 30 miles.

The one time requirement to examine the need for remotely controlled valves is estimated to take operators with more than 30 miles of pipeline 833 hours and 417 hours for operators with less than 30 miles of pipeline.

Additionally, all the operators will be required to integrate the new data they collect into their current management systems. The time to integrate the data the first year will be 22⅓ hours per mile and 1.9 hours per mile annually thereafter.

Additional paperwork and recordkeeping beyond those already discussed, will add 833 hours in the first year for companies with more than 30 miles of pipeline and 417 hours for operators with less than 30 miles of pipeline. In subsequent years this should add 83 hours of paperwork burden for all operators.

The total initial time to perform all paperwork is 8,818,500 million hours at a cost of $529.1 million. The subsequent annual time to update the paperwork is 752,000 hours costing $45.1 million dollars. Comments concerning this information collection should include the docket number of this rule. They should be sent within 30 days of the publication of this notice directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation (DOT).

Comments are specifically requested concerning:

- Whether the collection is necessary for the proper performance of the functions of the Department, including

whether the information would have a practical use;

• The accuracy of the Department's estimate of the burden of collection of information including the validity of assumptions used;

• The quality, usefulness and clarity of the information to be collected; and minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology e.g., permitting electronic submission of responses.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless a valid OMB control number is displayed. The valid OMB control number for this information collection will be published in the **Federal Register** after it is approved by the OMB. For details see, the complete Paperwork Reduction analysis available for copying and review in the public docket.

Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not have any requirement that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. Nevertheless, in November 18–19, 1999, and in February 12–14, 2001 public meetings, RSPA/OPS invited National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, to participate in a general discussion on pipeline integrity. Since then, RSPA/OPS has held conference calls with NAPSR, to receive their input before proposing an HCA definition and integrity management rule. RSPA/OPS has invited NAPSR representatives to all the public meetings held subsequent to the publication of the pipeline integrity management NPRM.

Executive Order 13211

This rulemaking is not a ''significant energy action'' within the meaning of Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''). It is a significant regulatory action under Executive Order 12866 because of its significant public and government interest. As concluded from our Energy Impact Statement discussed in the following section, the rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Summary of the Energy Impact Statement

(For the detailed Energy Impact Statement, refer to Docket RSPA–00–7666)

The Research and Special Program Administration's Office of Pipeline Safety (RSPA/OPS) is currently promulgating regulations to assess, evaluate, remediate, and validate the integrity of natural gas transmission pipelines through comprehensive analysis and inspection of pipeline systems. The current rule applies to all gas transmission pipelines, including pipelines transporting petroleum gas, hydrogen, and other gas products covered under 49 CFR Part 192.

In compliance with the Executive Order 13211 (66 FR 28355), the RSPA/OPS has evaluated the effects of the natural gas IMP rule on energy supply, distribution, or use. The RSPA/OPS has determined that this regulatory action would not have significant adverse effects on energy supply, distribution, or use nationally, however there may be some regional effect on natural gas distribution.

The current rule will not have any significant impact on the wellhead production capacity or prices. The rule affects natural gas transmission pipelines in HCAs and has no effect on the wellhead production capacity or prices. The rule does not impact gas gathering pipelines and offshore gas transmission pipelines, and has limited effect on the onshore gas transmission lines that are not located in the HCAs. Therefore, the rule will have no significant impact on natural gas production or wellhead prices. The RSPA/OPS estimates that about 22,000 miles of gas transmission pipelines are located in the HCAs in a network of 300,000 miles of gas transmission pipelines, as well as 900,000 miles of gas distribution pipelines. Therefore, a relatively small proportion of pipelines, less than 1 percent of the total gas transmission pipelines, are located in the HCAs.

This rule may affect the movement of natural gas in certain areas during integrity inspection. Inspection requirements may temporarily affect transportation capacity in some pipelines, but not in all pipelines. Built-in redundancies, such as loop lines, multiple lines, storage facilities, are part of natural gas transportation infrastructures. The intricate interconnections between pipelines, the availability of storage at the market centers, and a well-developed capacity release market all contribute towards meeting natural gas demand with efficient movement of supply. Therefore, inspections can be conducted without any significant disruption of throughput especially during off-peak seasons.

This rule may not have any significant price effects on end-use consumers. In general, inter-fuel competition and gas-storage availability play significant roles in short-term price determination in U.S. because of extensive fuel switching capability in industry and power generation and the existence of a sizable storage capacity. Weather is the other significant player determining the spot market prices. Transportation cost only accounts for a small proportion of the cost paid by the end-users. The pipeline capacity reduction due to the integrity rule would be pre-planned and the market would have time to adjust for the reduction, minimizing shortages and avoiding short-term price increases. The RSPA/OPS recognizes that there may be some temporary and regional natural gas price impact due to the increased assessment and inspection requirements of the rule. While RSPA/OPS did not estimate the size of such temporary impacts, it could lead to small changes in natural gas prices for certain areas on the spot market if the inspection coincides with peak season and there is no other pipeline (no parallel, lateral, or loop lines) serving that particular area. Recognizing the possibility of temporary spot price fluctuations at the regional level, RSPA/OPS believes this regulation will not significantly impact

the overall energy supply, distribution, and use.

Unfunded Mandates

This final rule does impose unfunded mandates under the Unfunded Mandates Reform Act of 1995, because it may result in the expenditure by the private sector of 100 million or more in any one year. The cost-benefit analysis estimating yearly cost for operators to meet the final rule requirements has been placed in the docket. State pipeline safety programs will share inspection and enforcement responsibilities for the integrity management regulation. State regulators have participated in our meetings with the industry and research institutions on various integrity management issue discussions and have provided recommendations during our meetings and conference calls. State pipeline safety officials have expressed concern that the rule is to be sufficiently clear to enable them to enforce it and that there needs to be training for state inspectors. The final rule has been significantly modified to improve its clarity and enforceability and specific state comments on these areas have been addressed in sections discussing the changes. RSPA/OPS has planned an approach to enforcement that includes the extensive use of protocols for inspectors (both Federal and State) to use for compliance inspections and for training in the use of these protocols. RSPA/OPS has included funding for training inspectors within the budget for implementation of integrity management program. RSPA/OPS does not charge states tuition for pipeline safety training. In addition, 50 percent of a state's incidental costs of attending training is reimbursable through the grants program. Similar training is already underway regarding the integrity rule for hazardous liquid pipelines. Local public safety officials will be asked, but not required, to assist in identifying HCAs for the additional protections. In addition, industry associations are planning workshops in the development process to assist in identification of HCAs. We believe there are no disproportionate budgetary effects upon any particular region of the nation. We believe it is the least burdensome alternative that achieves the objective of the rule, because it gives options to industry on how to implement the rule.

National Environmental Policy Act

We have evaluated the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have concluded that this action would not significantly affect the quality of the environment. The Environmental Assessment determined that the combined impacts of the baseline assessment (pressure testing, internal inspection, or direct assessment), the periodic reassessments, and the additional preventive and mitigative measures that may be implemented for gas pipeline segments that could affect HCAs will result in positive environmental impacts. The number of incidents and the environmental damage from failures near HCAs is likely to be reduced. However, from a national perspective, the impact is not expected to be significant.

Although the effects of the final rule will likely lead to fewer incidents, gas pipeline leaks that lead to adverse environmental impacts are rare under current conditions. Although the damage from failures could be reduced, the environmental damage resulting from gas pipeline failures is usually minor under current conditions. The effects are typically negligible, but can consist of localized, temporary damage to the environment in the immediate vicinity of the failure location on the pipeline.

Some operators covered by the final rule already have integrity assessment programs. These operators typically consider the pipeline's proximity to populated areas when making decisions about where and when to inspect and test pipelines. As a result, some pipeline segments that could impact high consequence areas have already been recently assessed, and others would be assessed in the next several years without the provisions of the final rule. The primary effect of the final rule—accelerating integrity assessment in some high consequence areas—shifts increased integrity assurance forward for a few years for some segments that could affect high consequence areas. Because pipeline failure rates are low, shifting the time at which these segments are assessed forward by a few years has only a small effect on the likelihood of pipeline failure in these locations.

The final rule does require operators to conduct an integrated assessment of the potential threats to pipeline integrity, and to consider additional preventive and mitigative risk control measures to provide enhanced protection. If there is a vulnerability to a particular failure cause, these assessments should result in additional risk controls to address these threats. However, without knowing the specific high consequence area locations, the specific risks present at these locations, and the existing operator risk controls (including those that surpass the current minimum regulatory requirements), it is difficult to determine the impact of this requirement.

Some gas pipeline operators already perform integrity evaluations or risk assessments that consider the environmental impacts. These evaluations have already led to additional risk controls beyond existing requirements to improve protection for these locations. For many segments, it is probable that operators will determine that the existing preventive and mitigative activities provide adequate protection to high consequence areas, and that the small additional risk reduction benefits of additional risk controls are not justified.

The primary benefit of the final rule will be to establish requirements for conducting integrity assessments and periodic evaluations of integrity of segments that could impact high consequence areas. This will codify the integrity management programs and assessments operators are currently implementing. It will also require other operators, who have little, or no, integrity assessment and evaluation programs to raise their level of performance. Thus, the final rule is expected to ensure a more consistent, and overall higher level of protection for high consequence areas across the industry.

The Environmental Assessment of this final rule is available for review in the docket.

List of Subjects in 49 CFR Part 192

High consequence areas, Incorporation by reference, Integrity management, Pipeline safety, Potential impact areas, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, RSPA/OPS is amending part 192 of title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

§ 192.761 [Removed]

■ 2. Section 192.761 is removed.

■ 3. In part 192, under the heading of Pipeline Integrity Management, a new subpart O is added to read as follows:

Subpart O—Pipeline Integrity Management

Sec.

192.901 What do the regulations in this subpart cover?

192.903 What definitions apply to this subpart?
192.905 How does an operator identify a high consequence area?
192.907 What must an operator do to implement this subpart?
192.909 How can an operator change its integrity management program?
192.911 What are the elements of an integrity management program?
192.913 When may an operator deviate its program from certain requirements of this subpart?
192.915 What knowledge and training must personnel have to carry out an integrity management program?
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Subpart O—Pipeline Integrity Management

§ 192.901 What do the regulations in this subpart cover?

This subpart prescribes minimum requirements for an integrity management program on any gas transmission pipeline covered under this part. For gas transmission pipelines constructed of plastic, only the requirements in §§ 192.917, 192.921, 192.935 and 192.937 apply.

§ 192.903 What definitions apply to this subpart?

The following definitions apply to this subpart:

Assessment is the use of nondestructive testing techniques as allowed in this subpart to ascertain the condition of a covered pipeline segment.

Confirmatory direct assessment is an assessment method using more focused application of the principles and techniques of direct assessment to identify internal and external corrosion in a covered transmission pipeline segment.

Covered segment or covered pipeline segment means a segment of gas transmission pipeline located in a high consequence area. The terms gas and transmission line are defined in § 192.3.

Direct assessment is an integrity assessment method that utilizes a process to evaluate certain threats (*i.e.*, external corrosion, internal corrosion and stress corrosion cracking) to a covered pipeline segment's integrity. The process includes the gathering and integration of risk factor data, indirect examination or analysis to identify areas of suspected corrosion, direct examination of the pipeline in these areas, and post assessment evaluation.

High consequence area means an area established by one of the methods described in paragraphs (1) or (2) as follows:

(1) An area defined as—

(i) A Class 3 location under § 192.5; or

(ii) A Class 4 location under § 192.5; or

(iii) Any area outside a Class 3 or Class 4 location where the potential impact radius is greater than 660 feet (200 meters), and the area within a potential impact circle contains 20 or more buildings intended for human occupancy; or

(iv) The area within a potential impact circle containing an identified site.

(2) The area within a potential impact circle containing

(i) 20 or more buildings intended for human occupancy, unless the exception in paragraph (d) applies; or

(ii) An identified site.

(3) Where a potential impact circle is calculated under either method (1) or (2) to establish a high consequence area, the length of the high consequence area extends axially along the length of the pipeline from the outermost edge of the first potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy. (*See* Figure E.I.A. in appendix E.)

(4) If in identifying a high consequence area under paragraph (1)(iii) of this definition or paragraph (2)(i) of this definition, the radius of the potential impact circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy within a distance 660 feet (200 meters) from the centerline of the pipeline until December17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the potential impact circle (*i.e.*, the prorated number of buildings intended for human occupancy is equal to [20 × (660 feet [or 200 meters]/ potential impact radius in feet [or meters]) ^{2}]).

Identified site means each of the following areas:

(a) An outside area or open structure that is occupied by twenty (20) or more persons on at least 50 days in any twelve (12)-month period. (The days need not be consecutive.) Examples include but are not limited to, beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, recreational areas near a body of water, or areas outside a rural building such as a religious facility); or

(b) A building that is occupied by twenty (20) or more persons on at least five (5) days a week for ten (10) weeks in any twelve (12)-month period. (The days and weeks need not be consecutive.) Examples include, but are not limited to, religious facilities, office buildings, community centers, general stores, 4-H facilities, or roller skating rinks); or

(c) A facility occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Examples include but are not limited to hospitals, prisons, schools, day-care facilities, retirement facilities or assisted-living facilities.

Potential impact circle is a circle of radius equal to the potential impact radius (PIR).

Potential impact radius (PIR) means the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property. PIR is determined by the formula $r = 0.69^*$ (square root of (p^*d^2)), where 'r' is the radius of a circular area in feet surrounding the

point of failure, 'p' is the maximum allowable operating pressure (MAOP) in the pipeline segment in pounds per square inch and 'd' is the nominal diameter of the pipeline in inches.

Note: 0.69 is the factor for natural gas. This number will vary for other gases depending upon their heat of combustion. An operator transporting gas other than natural gas must use section 3.2 of ASME/ANSI B31.8S–2001 (Supplement to ASME B31.8; ibr, see § 192.7) to calculate the impact radius formula.

Remediation is a repair or mitigation activity an operator takes on a covered segment to limit or reduce the probability of an undesired event occurring or the expected consequences from the event.

§ 192.905 How does an operator identify a high consequence area?

(a) *General.* To determine which segments of an operator's transmission pipeline system are covered by this subpart, an operator must identify the high consequence areas. An operator must use method (1) or (2) from the definition in § 192.903 to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system. An operator must describe in its integrity management program which method it is applying to each portion of the operator's pipeline system. The description must include the potential impact radius when utilized to establish a high consequence area. (*See* appendix E.I. for guidance on identifying high consequence areas.)

(b)(1) *Identified sites.* An operator must identify an identified site, for purposes of this subpart, from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.

(2) If a public official with safety or emergency response or planning responsibilities informs an operator that it does not have the information to identify an identified site, the operator must use one of the following sources, as appropriate, to identify these sites.

(i) Visible marking (*e.g.*, a sign); or

(ii) The site is licensed or registered by a Federal, State, or local government agency; or

(iii) The site is on a list (including a list on an internet web site) or map maintained by or available from a Federal, State, or local government agency and available to the general public.

(c) *Newly identified areas.* When an operator has information that the area around a pipeline segment not previously identified as a high consequence area could satisfy any of the definitions in § 192.903, the operator must complete the evaluation using method (1) or (2). If the segment is determined to meet the definition as a high consequence area, it must be incorporated into the operator's baseline assessment plan as a high consequence area within one year from the date the area is identified.

§ 192.907 What must an operator do to implement this subpart?

(a) *General.* No later than December 17, 2004, an operator of a covered pipeline segment must develop and follow a written integrity management program that contains all the elements described in § 192.911 and that addresses the risks on each covered transmission pipeline segment. The initial integrity management program must consist, at a minimum, of a framework that describes the process for implementing each program element, how relevant decisions will be made and by whom, a time line for completing the work to implement the program element, and how information gained from experience will be continuously incorporated into the program. The framework will evolve into a more detailed and comprehensive program. An operator must make continual improvements to the program.

(b) *Implementation Standards.* In carrying out this subpart, an operator must follow the requirements of this subpart and of ASME/ANSI B31.8S (ibr, *see* § 192.7) and its appendices, where specified. An operator may follow an equivalent standard or practice only when the operator demonstrates the alternative standard or practice provides an equivalent level of safety to the public and property. In the event of a conflict between this subpart and ASME/ANSI B31.8S, the requirements in this subpart control.

§ 192.909 How can an operator change its integrity management program?

(a) *General.* An operator must document any change to its program and the reasons for the change before implementing the change.

(b) *Notification.* An operator must notify OPS, in accordance with § 192.949, of any change to the program that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements. An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State. An operator must provide the notification within 30 days after adopting this type of change into its program.

§ 192.911 What are the elements of an integrity management program?

An operator's initial integrity management program begins with a framework (*see* § 192.907) and evolves into a more detailed and comprehensive integrity management program, as information is gained and incorporated into the program. An operator must make continual improvements to its program. The initial program framework and subsequent program must, at minimum, contain the following elements. (When indicated, refer to ASME/ANSI B31.8S (ibr, *see* § 192.7) for more detailed information on the listed element.)

(a) An identification of all high consequence areas, in accordance with § 192.905.

(b) A baseline assessment plan meeting the requirements of § 192.919 and § 192.921.

(c) An identification of threats to each covered pipeline segment, which must include data integration and a risk assessment. An operator must use the threat identification and risk assessment to prioritize covered segments for assessment (§ 192.917) and to evaluate the merits of additional preventive and mitigative measures (§ 192.935) for each covered segment.

(d) A direct assessment plan, if applicable, meeting the requirements of § 192.923, and depending on the threat assessed, of §§ 192.925, 192.927, or 192.929.

(e) Provisions meeting the requirements of § 192.933 for remediating conditions found during an integrity assessment.

(f) A process for continual evaluation and assessment meeting the requirements of § 192.937.

(g) If applicable, a plan for confirmatory direct assessment meeting the requirements of § 192.931.

(h) Provisions meeting the requirements of § 192.935 for adding preventive and mitigative measures to protect the high consequence area.

(i) A performance plan as outlined in ASME/ANSI B31.8S, section 9 that includes performance measures meeting the requirements of § 192.943.

(j) Record keeping provisions meeting the requirements of § 192.947.

(k) A management of change process as outlined in ASME/ANSI B31.8S, section 11.

(l) A quality assurance process as outlined in ASME/ANSI B31.8S, section 12.

(m) A communication plan that includes the elements of ASME/ANSI B31.8S, section 10, and that includes procedures for addressing safety concerns raised by—

(1) OPS; and

(2) A State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement.

(n) Procedures for providing (when requested), by electronic or other means, a copy of the operator's risk analysis or integrity management program to—

(1) OPS; and

(2) A State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement.

(o) Procedures for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks.

(p) A process for identification and assessment of newly-identified high consequence areas. (*See* § 192.905 and § 192.921.)

§ 192.913 When may an operator deviate its program from certain requirements of this subpart?

(a) *General.* ASME/ANSI B31.8S (ibr, *see* § 192.7) provides the essential features of a performance-based or a prescriptive integrity management program. An operator that uses a performance-based approach that satisfies the requirements for exceptional performance in paragraph (b) of this section may deviate from certain requirements in this subpart, as provided in paragraph (c) of this section.

(b) *Exceptional performance.* An operator must be able to demonstrate the exceptional performance of its integrity management program through the following actions.

(1) To deviate from any of the requirements set forth in paragraph (c) of this section, an operator must have a performance-based integrity management program that meets or exceed the performance-based requirements of ASME/ANSI B31.8S and includes, at a minimum, the following elements—

(i) A comprehensive process for risk analysis;

(ii) All risk factor data used to support the program;

(iii) A comprehensive data integration process;

(iv) A procedure for applying lessons learned from assessment of covered pipeline segments to pipeline segments not covered by this subpart;

(v) A procedure for evaluating every incident, including its cause, within the operator's sector of the pipeline industry for implications both to the operator's pipeline system and to the operator's integrity management program;

(vi) A performance matrix that demonstrates the program has been effective in ensuring the integrity of the covered segments by controlling the identified threats to the covered segments;

(vii) Semi-annual performance measures beyond those required in § 192.943 that are part of the operator's performance plan. (*See* § 192.911(i).) An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with § 192.951; and

(viii) An analysis that supports the desired integrity reassessment interval and the remediation methods to be used for all covered segments.

(2) In addition to the requirements for the performance-based plan, an operator must—

(i) Have completed at least two integrity assessments of all covered pipeline segments, and be able to demonstrate that each assessment effectively addressed the identified threats on the covered segments.

(ii) Remediate all anomalies identified in the more recent assessment according to the requirements in § 192.933, and incorporate the results and lessons learned from the more recent assessment into the operator's data integration and risk assessment.

(c) *Deviation.* Once an operator has demonstrated that it has satisfied the requirements of paragraph (b) of this section, the operator may deviate from the prescriptive requirements of ASME/ANSI B31.8S and of this subpart only in the following instances.

(1) The time frame for reassessment as provided in § 192.939 except that reassessment by some method allowed under this subpart (*e.g.*, confirmatory direct assessment) must be carried out at intervals no longer than seven years;

(2) The time frame for remediation as provided in § 192.933 if the operator demonstrates the time frame will not jeopardize the safety of the covered segment.

§ 192.915 What knowledge and training must personnel have to carry out an integrity management program?

(a) *Supervisory personnel.* The integrity management program must provide that each supervisor whose responsibilities relate to the integrity management program possesses and maintains a thorough knowledge of the integrity management program and of the elements for which the supervisor is responsible. The program must provide that any person who qualifies as a supervisor for the integrity management program has appropriate training or experience in the area for which the person is responsible.

(b) *Persons who carry out assessments and evaluate assessment results.* The integrity management program must provide criteria for the qualification of any person—

(1) Who conducts an integrity assessment allowed under this subpart; or

(2) Who reviews and analyzes the results from an integrity assessment and evaluation; or

(3) Who makes decisions on actions to be taken based on these assessments.

(c) *Persons responsible for preventive and mitigative measures.* The integrity management program must provide criteria for the qualification of any person—

(1) Who implements preventive and mitigative measures to carry out this subpart, including the marking and locating of buried structures; or

(2) Who directly supervises excavation work carried out in conjunction with an integrity assessment.

§ 192.917 How does an operator identify potential threats to pipeline integrity and use the threat identification in its integrity program?

(a) *Threat identification.* An operator must identify and evaluate all potential threats to each covered pipeline segment. Potential threats that an operator must consider include, but are not limited to, the threats listed in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 2 and the following:

(1) Time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking;

(2) Static or resident threats, such as fabrication or construction defects;

(3) Time independent threats such as third party damage and outside force damage; and

(4) Human error.

(b) *Data gathering and integration.* To identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate

data and information on the entire pipeline that could be relevant to the covered segment. In performing this data gathering and integration, an operator must follow the requirements in ASME/ANSI B31.8S, section 4. At a minimum, an operator must gather and evaluate the set of data specified in appendix A to ASME/ANSI B31.8S, and consider both on the covered segment and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline.

(c) *Risk assessment.* An operator must conduct a risk assessment that follows ASME/ANSI B31.8S, section 5, and considers the identified threats for each covered segment. An operator must use the risk assessment to prioritize the covered segments for the baseline and continual reassessments (§§ 192.919, 192.921, 192.937), and to determine what additional preventive and mitigative measures are needed (§ 192.935) for the covered segment.

(d) *Plastic transmission pipeline.* An operator of a plastic transmission pipeline must assess the threats to each covered segment using the information in sections 4 and 5 of ASME B31.8S, and consider any threats unique to the integrity of plastic pipe.

(e) *Actions to address particular threats.* If an operator identifies any of the following threats, the operator must take the following actions to address the threat.

(1) *Third party damage.* An operator must utilize the data integration required in paragraph (b) of this section and ASME/ANSI B31.8S, appendix A7 to determine the susceptibility of each covered segment to the threat of third party damage. If an operator identifies the threat of third party damage, the operator must implement comprehensive additional preventive measures in accordance with § 192.935 and monitor the effectiveness of the preventive measures. If, in conducting a baseline assessment under § 192.921, or a reassessment under § 192.937, an operator uses an internal inspection tool, such as a caliper, geometry or magnetic flux leakage tool, to address other identified threats on the covered segment, the operator must integrate data from these tool runs with data related to any encroachment or foreign line crossing on the covered segment, to define where potential indications of third party damage may exist in the covered segment. An operator must also have procedures in its integrity management program addressing actions it will take to respond to findings from this data integration.

(2) *Cyclic fatigue.* An operator must evaluate whether cyclic fatigue or other loading condition (including ground movement, suspension bridge condition) could lead to a failure of a deformation, including a dent or gouge, or other defect in the covered segment. An evaluation must assume the presence of threats in the covered segment that could be exacerbated by cyclic fatigue. An operator must use the results from the evaluation together with the criteria used to evaluate the significance of this threat to the covered segment to prioritize the integrity baseline assessment or reassessment.

(3) *Manufacturing and construction defects.* If an operator identifies the threat of manufacturing and construction defects (including seam defects) in the covered segment, an operator must analyze the covered segment to determine the risk of failure from these defects. An operator may consider manufacturing and construction related defects to be stable defects if the operating conditions on the covered segment have not significantly changed since December 17, 1998. If any of the following changes occur in the covered segment, an operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment.

(i) Operating pressure increases above the historic operating pressure (*i.e.* the highest pressure recorded since December 17, 1998);

(ii) MAOP increases; or

(iii) The stresses leading to cyclic fatigue increase.

(4) *ERW pipe.* If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW) or lap welded pipe that satisfies the conditions specified in ASME/ANSI B31.8 S, appendix A4.3 and A4.4, an operator must select an assessment technology or technologies with a proven application capable of assessing seam integrity and of detecting seam corrosion anomalies. The operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment.

(5) *Corrosion.* If an operator identifies corrosion on a covered pipeline segment that could adversely affect the integrity of the line (conditions specified in § 192.931), the operator must evaluate and remediate, as necessary, all pipeline segments (both covered and non-covered) with similar material coating and environmental characteristics. An operator must establish a schedule for evaluating and remediating, as necessary, the similar segments that is consistent with the operator's established operating and maintenance procedures under part 192 for testing and repair.

§ 192.919 What must be in the baseline assessment plan?

An operator must include each of the following elements in its written baseline assessment plan:

(a) Identification of the potential threats to each covered pipeline segment and the information supporting the threat identification. (*See* § 192.917.);

(b) The methods selected to assess the integrity of the line pipe, including an explanation of why the assessment method was selected to address the identified threats to each covered segment. The integrity assessment method an operator uses must be based on the threats identified to the covered segment. (*See* § 192.917.) More than one method may be required to address all the threats to the covered pipeline segment;

(c) A schedule for completing the integrity assessment of all covered segments, including risk factors considered in establishing the assessment schedule;

(d) If applicable, a direct assessment plan that meets the requirements of §§ 192.923, and depending on the threat to be addressed, of § 192.925, § 192.927, or § 192.929; and

(e) A procedure to ensure that the baseline assessment is being conducted in a manner that minimizes environmental and safety risks.

§ 192.921 How is the baseline assessment to be conducted?

(a) *Assessment methods.* An operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods depending on the threats to which the covered segment is susceptible. An operator must select the method or methods best suited to address the threats identified to the covered segment (*See* § 192.917).

(1) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow ASME/ANSI B31.8S (ibr, see § 192.7), section 6.2 in selecting the appropriate internal inspection tools for the covered segment.

(2) Pressure test conducted in accordance with subpart J of this part;

(3) Direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking. An operator must conduct the direct

assessment in accordance with the requirements listed in § 192.923 and with, as applicable, the requirements specified in §§ 192.925, 192.927 or 192.929;

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with § 192.949.

(b) *Prioritizing segments.* An operator must prioritize the covered pipeline segments for the baseline assessment according to a risk analysis that considers the potential threats to each covered segment. The risk analysis must comply with the requirements in § 192.917.

(c) *Assessment for particular threats.* In choosing an assessment method for the baseline assessment of each covered segment, an operator must take the actions required in § 192.917(d) to address particular threats that it has identified.

(d) *Time period.* An operator must prioritize all the covered segments for assessment in accordance with § 192.917 (c) and paragraph (b) of this section. An operator must assess at least 50% of the covered segments beginning with the highest risk segments, by December 17, 2007. An operator must complete the baseline assessment of all covered segments by December 17, 2012.

(e) *Prior assessment.* An operator may use a prior integrity assessment conducted before December 17, 2002 as a baseline assessment for the covered segment, if the integrity assessment meets the baseline requirements in this subpart and subsequent remedial actions to address the conditions listed in § 192.933 have been carried out. In addition, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe in the covered segment according to the requirements of § 192.937 and § 192.939.

(f) *Newly identified areas.* When an operator identifies a new high consequence area (*see* § 192.205), an operator must complete the baseline assessment of the line pipe in the newly identified high consequence area within ten (10) years from the date the area is identified.

(g) *Newly installed pipe.* An operator must complete the baseline assessment of a newly installed segment of pipe covered by this subpart within ten (10) years from the date the pipe is installed. An operator may conduct a post-installation pressure test, in accordance with subpart J of part 192, to satisfy the requirement for a baseline assessment.

(h) *Plastic transmission pipeline.* If the threat analysis required in § 192.917(d) on a plastic transmission pipeline indicates that a covered segment is susceptible to failure from causes other than third-party damage, an operator must conduct a baseline assessment of the segment in accordance with the requirements of this section and of § 192.917. The operator must justify the use of an alternative assessment method that will address the identified threats to the covered segment.

§ 192.923 How is direct assessment used and for what threats?

(a) *General.* An operator may use direct assessment either as a primary assessment method or as a supplement to the other assessment methods allowed under this subpart. An operator may only use direct assessment as the primary assessment method to address the identified threats of external corrosion (ECDA), internal corrosion (ICDA), and stress corrosion cracking (SCCDA).

(b) *Primary method.* An operator using direct assessment as a primary assessment method must have a plan that complies with the requirements in—

(1) ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.4; NACE RP0502–2002 (ibr, *see* § 192.7); and § 192.925 if addressing external corrosion (ECDA).

(2) ASME/ANSI B31.8S, section 6.4 and appendix B2, and § 192.927 if addressing internal corrosion (ICDA).

(3) ASME/ANSI B31.8S, appendix A3, and § 192.929 if addressing stress corrosion cracking (SCCDA).

(c) *Supplemental method.* An operator using direct assessment as a supplemental assessment method for any applicable threat must have a plan that follows the requirements for confirmatory direct assessment in § 192.931.

§ 192.925 What are the requirements for using External Corrosion Direct Assessment (ECDA)?

(a) *Definition.* ECDA is a four-step process that combines preassessment, indirect inspection, direct examination, and post assessment to evaluate the threat of external corrosion to the integrity of a pipeline.

(b) *General requirements.* An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this section, in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.4, and NACE RP 0502–2002 (ibr, *see* § 192.7). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect inspections, direct examination, and post-assessment.

(1) *Preassessment.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 3, the plan's procedures for preassessment must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; and

(ii) The basis on which an operator selects at least two different, but complementary indirect assessment tools to assess each ECDA Region. If an operator utilizes an indirect inspection method that is not discussed in appendix A of NACE RP0502–2002, the operator must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method.

(2) *Indirect Examination.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 4, the plan's procedures for indirect examination of the ECDA regions must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment;

(ii) Criteria for identifying and documenting those indications that must be considered for excavation and direct examination. Minimum identification criteria include the known sensitivities of assessment tools, the procedures for using each tool, and the approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected;

(iii) Criteria for defining the urgency of excavation and direct examination of each indication identified during the indirect examination. These criteria must specify how an operator will define the urgency of excavating the indication as immediate, scheduled or monitored; and

(iv) Criteria for scheduling excavation of indications for each urgency level.

(3) *Direct examination.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 5, the plan's procedures for direct examination of indications from the indirect examination must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment;

(ii) Criteria for deciding what action should be taken if either (a) corrosion

defects are discovered that exceed allowable limits (section 5.5.2.2 of NACE RP0502–2002), or

(b) root cause analysis reveals conditions for which ECDA is not suitable (section 5.6.2 of NACE RP0502–2002);

(iii) Criteria and notification procedures for any changes in the ECDA Plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and

(iv) Criteria that describe how and on what basis an operator will reclassify and reprioritize any of the provisions that are specified in section 5.9 of NACE RP0502–2002.

(4) *Post assessment and continuing evaluation.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE RP 0502–2002, section 6, the plan's procedures for post assessment of the effectiveness of the ECDA process must include—

(i) Measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in covered segments; and

(ii) Criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the covered segment at an interval less than that specified in § 192.939. (*See* appendix D of NACE RP0502–2002.)

§ 192.927 What are the requirements for using Internal Corrosion Direct Assessment (ICDA)?

(a) *Definition.* Internal Corrosion Direct Assessment (ICDA) is a process an operator uses to identify areas along the pipeline where fluid or other electrolyte introduced during normal operation or by an upset condition may reside, and then focuses direct examination on the locations in covered segments where internal corrosion is most likely to exist. The process identifies the potential for internal corrosion caused by microorganisms, or fluid with CO_2, O_2, hydrogen sulfide or other contaminants present in the gas.

(b) *General requirements.* An operator using direct assessment as an assessment method to address internal corrosion in a covered pipeline segment must follow the requirements in this section and in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.4 and appendix B2. The ICDA process described in this section applies only for a segment of pipe transporting nominally dry natural gas, and not for a segment with electrolyte nominally present in the gas stream. If an operator uses ICDA to assess a covered segment operating with electrolyte present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to effectively address internal corrosion.

(c) *The ICDA plan.* An operator must develop and follow an ICDA plan that provides for preassessment, identification of ICDA regions and excavation locations, detailed examination of pipe at excavation locations, and post-assessment evaluation and monitoring.

(1) *Preassessment.* In the preassessment stage, an operator must gather and integrate data and information needed to evaluate the feasibility of ICDA for the covered segment, and to support use of a model to identify the locations along the pipe segment where electrolyte may accumulate, to identify ICDA regions, and to identify areas within the covered segment where liquids may potentially be entrained. This data and information includes, but is not limited to—

(i) All data elements listed in appendix A2 of ASME/ANSI B31.8S;

(ii) Information needed to support use of a model that an operator must use to identify areas along the pipeline where internal corrosion is most likely to occur. (*See* paragraph (a) of this section.) This information, includes, but is not limited to, location of all gas input and withdrawal points on the line; location of all low points on covered segments such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; the elevation profile of the pipeline in sufficient detail that angles of inclination can be calculated for all pipe segments; and the diameter of the pipeline, and the range of expected gas velocities in the pipeline;

(iii) Operating experience data that would indicate historic upsets in gas conditions, locations where these upsets have occurred, and potential damage resulting from these upset conditions; and

(iv) Information on covered segments where cleaning pigs may not have been used or where cleaning pigs may deposit electrolytes.

(2) *ICDA region identification.* An operator's plan must identify where all ICDA Regions are located in the transmission system, in which covered segments are located. An ICDA Region extends from the location where liquid may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur and where further evaluation is needed. An ICDA Region may encompass one or more covered segments. In the identification process, an operator must use the model in GRI 02–0057, ''Internal Corrosion Direct Assessment of Gas Transmission Pipelines—Methodology,'' (ibr, *see* § 192.7). An operator may use another model if the operator demonstrates it is equivalent to the one shown in GRI 02–0057. A model must consider changes in pipe diameter, locations where gas enters a line (potential to introduce liquid) and locations down stream of gas draw-offs (where gas velocity is reduced) to define the critical pipe angle of inclination above which water film cannot be transported by the gas.

(3) *Identification of locations for excavation and direct examination.* An operator's plan must identify the locations where internal corrosion is most likely in each ICDA region. In the location identification process, an operator must identify a minimum of two locations for excavation within each ICDA Region within a covered segment and must perform a direct examination for internal corrosion at each location, using ultrasonic thickness measurements, radiography, or other generally accepted measurement technique. One location must be the low point (*e.g.*, sags, drips, valves, manifolds, dead-legs, traps) within the covered segment nearest to the beginning of the ICDA Region. The second location must be at the upstream end of the pipe containing a covered segment, having a slope not exceeding the critical angle of inclination nearest the end of the ICDA Region. If corrosion exists at either location, the operator must—

(i) Evaluate the severity of the defect (remaining strength) and remediate the defect in accordance with § 192.933;

(ii) As part of the operator's current integrity assessment either perform additional excavations in each covered segment within the ICDA region, or use an alternative assessment method allowed by this subpart to assess the line pipe in each covered segment within the ICDA region for internal corrosion; and

(iii) Evaluate the potential for internal corrosion in all pipeline segments (both covered and non-covered) in the operator's pipeline system with similar characteristics to the ICDA region containing the covered segment in which the corrosion was found, and as appropriate, remediate the conditions the operator finds in accordance with § 192.933.

(4) *Post-assessment evaluation and monitoring.* An operator's plan must provide for evaluating the effectiveness of the ICDA process and continued monitoring of covered segments where internal corrosion has been identified.

The evaluation and monitoring process includes—

(i) Evaluating the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those specified in § 192.939. This evaluation must be carried out in the same year in which ICDA is used; and

(ii) Continually monitoring each covered segment where internal corrosion has been identified using techniques such as coupons, UT sensors or electronic probes, periodically drawing off liquids at low points and chemically analyzing the liquids for the presence of corrosion products. An operator must base the frequency of the monitoring and liquid analysis on results from all integrity assessments that have been conducted in accordance with the requirements of this subpart, and risk factors specific to the covered segment. If an operator finds any evidence of corrosion products in the covered segment, the operator must take prompt action in accordance with one of the two following required actions and remediate the conditions the operator finds in accordance with § 192.933.

(A) Conduct excavations of covered segments at locations downstream from where the electrolyte might have entered the pipe; or

(B) Assess the covered segment using another integrity assessment method allowed by this subpart.

(5) *Other requirements.* The ICDA plan must also include—

(i) Criteria an operator will apply in making key decisions (*e.g.*, ICDA feasibility, definition of ICDA Regions, conditions requiring excavation) in implementing each stage of the ICDA process;

(ii) Provisions for applying more restrictive criteria when conducting ICDA for the first time on a covered segment and that become less stringent as the operator gains experience; and

(iii) Provisions that analysis be carried out on the entire pipeline in which covered segments are present, except that application of the remediation criteria of § 192.933 may be limited to covered segments.

§ 192.929 What are the requirements for using Direct Assessment for Stress Corrosion Cracking (SCCDA)?

(a) *Definition.* Stress Corrosion Direct Assessment (SCCDA) is a process to assess a covered pipe segment for the presence of SCC primarily by systematically gathering and analyzing excavation data for pipe having similar operational characteristics and residing in a similar physical environment.

(b) *General requirements.* An operator using direct assessment as an integrity assessment method to address stress corrosion cracking in a covered pipeline segment must have a plan that provides, at minimum, for—

(1) *Data gathering and integration.* An operator's plan must provide for a systematic process to collect and evaluate data for all covered segments to identify whether the conditions for SCC are present and to prioritize the covered segments for assessment. This process must include gathering and evaluating data related to SCC at all sites an operator excavates during the conduct of its pipeline operations where the criteria in ASME/ANSI B31.8S (ibr, *see* § 192.7), appendix A3.3 indicate the potential for SCC. This data includes at minimum, the data specified in ASME/ANSI B31.8S, appendix A3.

(2) *Assessment method.* The plan must provide that if conditions for SCC are identified in a covered segment, an operator must assess the covered segment using an integrity assessment method specified in ASME/ANSI B31.8S, appendix A3, and remediate the threat in accordance with ASME/ANSI B31.8S, appendix A3, section A3.4.

§ 192.931 How may Confirmatory Direct Assessment (CDA) be used?

An operator using the confirmatory direct assessment (CDA) method as allowed in § 192.937 must have a plan that meets the requirements of this section and of §§ 192.925 (ECDA) and § 192.927 (ICDA).

(a) *Threats.* An operator may only use CDA on a covered segment to identify damage resulting from external corrosion or internal corrosion.

(b) *External corrosion plan.* An operator's CDA plan for identifying external corrosion must comply with § 192.925 with the following exceptions.

(1) The procedures for indirect examination may allow use of only one indirect examination tool suitable for the application.

(2) The procedures for direct examination and remediation must provide that—

(i) All immediate action indications must be excavated for each ECDA region; and

(ii) At least one high risk indication that meets the criteria of scheduled action must be excavated in each ECDA region.

(c) *Internal corrosion plan.* An operator's CDA plan for identifying internal corrosion must comply with § 192.927 except that the plan's procedures for identifying locations for excavation may require excavation of only one high risk location in each ICDA region.

(d) *Defects requiring near-term remediation.* If an assessment carried out under paragraph (b) or (c) of this section reveals any defect requiring remediation prior to the next scheduled assessment, the operator must schedule the next assessment in accordance with NACE RP 0502–2002 (ibr, *see* § 192.7), section 6.2 and 6.3. If the defect requires immediate remediation, then the operator must reduce pressure consistent with § 192.933 until the operator has completed reassessment using one of the assessment techniques allowed in § 192.937.

§ 192.933 What actions must be taken to address integrity issues?

(a) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. If an operator is unable to respond within the time limits for certain conditions specified in this section, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. If pressure is reduced, an operator must determine the temporary reduction in operating pressure using ASME/ANSI B31G (ibr, *see* § 192.7) or AGA Pipeline Research Committee Project PR–3–805 (''RSTRENG''; ibr, *see* § 192.7) or reduce the operating pressure to a level not exceeding 80% of the level at the time the condition was discovered. (*See* appendix A to this part 192 for information on availability of incorporation by reference information). A reduction in operating pressure cannot exceed 365 days without an operator providing a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline.

(b) *Discovery of condition.* Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient

information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable.

(c) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special requirement for remediating certain conditions applies, as provided in paragraph (d) of this section, an operator must follow the schedule in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 7, Figure 4. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify OPS in accordance with § 192.949 if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure or other action. An operator must also notify a State or local pipeline safety authority when a covered segment is located in a State where OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

(d) *Special requirements for scheduling remediation.*—(1) *Immediate repair conditions.* An operator's evaluation and remediation schedule must follow ASME/ANSI B31.8S, section 7 in providing for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure in accordance with paragraph (a) of this section or shut down the pipeline until the operator completes the repair of these conditions. An operator must treat the following conditions as immediate repair conditions:

(i) A calculation of the remaining strength of the pipe shows a predicted failure pressure less than or equal to 1.1 times the maximum allowable operating pressure at the location of the anomaly. Suitable remaining strength calculation methods include, ASME/ANSI B31G; RSTRENG; or an alternative equivalent method of remaining strength calculation. These documents are incorporated by reference and available at the addresses listed in appendix A to part 192.

(ii) A dent that has any indication of metal loss, cracking or a stress riser.

(iii) An anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action.

(2) *One-year conditions.* Except for conditions listed in paragraph (d)(1) and (d)(3) of this section, an operator must remediate any of the following within one year of discovery of the condition:

(i) A smooth dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

(ii) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or at a longitudinal seam weld.

(3) *Monitored conditions.* An operator does not have to schedule the following conditions for remediation, but must record and monitor the conditions during subsequent risk assessments and integrity assessments for any change that may require remediation:

(i) A dent with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12) located between the 4 o'clock position and the 8 o'clock position (bottom ⅓ of the pipe).

(ii) A dent located between the 8 o'clock and 4 o'clock positions (upper ⅔ of the pipe) with a depth greater than 6% of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12), and engineering analyses of the dent demonstrate critical strain levels are not exceeded.

(iii) A dent with a depth greater than 2% of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld, and engineering analyses of the dent and girth or seam weld demonstrate critical strain levels are not exceeded. These analyses must consider weld properties.

§ 192.935 What additional preventive and mitigative measures must an operator take to protect the high consequence area?

(a) *General requirements.* An operator must take additional measures beyond those already required by Part 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. An operator must base the additional measures on the threats the operator has identified to each pipeline segment. (*See* § 192.917) An operator must conduct, in accordance with one of the risk assessment approaches in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 5, a risk analysis of its pipeline to identify additional measures to protect the high consequence area and enhance public safety. Such additional measures include, but are not limited to, installing Automatic Shut-off Valves or Remote Control Valves, installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional inspection and maintenance programs.

(b) *Third party damage and outside force damage*—(1) *Third party damage.* An operator must enhance its damage prevention program, as required under § 192.614 of this part, with respect to a covered segment to prevent and minimize the consequences of a release due to third party or outside force damage. Enhanced measures to an existing damage prevention program include, at a minimum—

(i) Using qualified personnel (*see* § 192.915) for work an operator is conducting that could adversely affect the integrity of a covered segment, such as marking, locating, and direct supervision of known excavation work.

(ii) Collecting in a central database information that is location specific on excavation damage that occurs in on covered and noncovered segments in the transmission system and the root cause analysis to support identification of targeted additional preventative and mitigative measures in the high consequence areas. This information must include recognized damage that is not required to be reported as an incident under part 191.

(iii) Participating in one-call systems in locations where covered segments are present.

(iv) Monitoring of excavations conducted on covered pipeline segments by pipeline personnel. When there is physical evidence of encroachment involving excavation near a covered segment, an operator must either excavate the area near the encroachment or conduct an above ground survey using methods defined in NACE RP–0502–2002 (ibr, *see* § 192.7). An operator must excavate, and remediate, in accordance with ANSI/ASME B31.8S and § 192.933 any indication of coating holidays or discontinuity warranting direct examination.

(2) *Outside force damage.* If an operator determines that outside force (*e.g.*, earth movement, floods, unstable suspension bridge) is a threat to the integrity of a covered segment, the operator must take measures to minimize the consequences to the covered segment from outside force damage. These measures include, but are not limited to, increasing the

frequency of aerial, foot or other methods of patrols, adding external protection, reducing external stress, and relocating the line.

(c) *Automatic shut-off valves (ASV) or Remote control valves (RCV).* If an operator determines, based on a risk analysis, that an ASV or RCV would be an efficient means of adding protection to a high consequence area in the event of a gas release, an operator must install the ASV or RCV. In making that determination, an operator must, at least, consider the following factors—swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel.

(d) *Pipelines operating below 30% SMYS.* With respect to a transmission pipeline operating below 30% SMYS located in a class 3 or 4 area but not in a high consequence area, an operator must—

(1) Apply the requirements in paragraphs (b)(1)(i) and (b)(1)(iii) of this section to the pipeline; and

(2) Either monitor excavations near the pipeline, or conduct patrols as required by § 192.705 of the pipeline at bi-monthly intervals. If an operator finds any indication of unreported construction activity, the operator must conduct a follow up investigation to determine if mechanical damage has occurred.

(e) *Plastic transmission pipeline.* An operator of a plastic transmission pipeline must apply the requirements in paragraphs (b)(1)(i), (b)(1)(iii) and (b)(1)(iv) of this section to the covered segments of the pipeline.

§ 192.937 What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

(a) *General.* After completing the baseline integrity assessment of a covered segment, an operator must continue to assess the line pipe of that segment at the intervals specified in § 192.939 and periodically evaluate the integrity of each covered pipeline segment as provided in paragraph (b) of this section. An operator must reassess a covered segment on which a prior assessment is credited as a baseline under § 192.921(e) by no later than December 17, 2009. An operator must reassess a covered segment on which a baseline assessment is conducted during the baseline period specified in § 192.921(d) by no later than seven years after the baseline assessment of that covered segment unless the evaluation under paragraph (b) of this section indicates earlier reassessment.

(b) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline as specified in § 192.917. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in 192.917(d). For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information (§ 192.917), and decisions about remediation (§ 192.933) and additional preventive and mitigative actions (§ 192.935). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats.

(c) *Assessment methods.* In conducting the integrity reassessment, an operator must assess the integrity of the line pipe in the covered segment by any of the following methods as appropriate for the threats to which the covered segment is susceptible (*see* § 192.917), or by confirmatory direct assessment under the conditions specified in § 192.931.

(1) Internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow ASME/ANSI B31.8S (ibr, *see* § 192.7), section 6.2 in selecting the appropriate internal inspection tools for the covered segment.

(2) Pressure test conducted in accordance with subpart J of this part;

(3) Direct assessment to address threats of external corrosion, internal corrosion, or stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in § 192.923 and with as applicable, the requirements specified in §§ 192.925, 192.927 or 192.929;

(4) Other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with § 192.949.

(5) Confirmatory direct assessment when used on a covered segment that is scheduled for reassessment at a period longer than seven years. An operator using this reassessment method must comply with § 192.931.

§ 192.939 What are the required reassessment intervals?

An operator must comply with the following requirements in establishing the reassessment interval for the operator's covered pipeline segments.

(a) *Pipelines operating at or above 30% SMYS.* An operator must establish a reassessment interval for each covered segment operating at or above 30% SMYS in accordance with the requirements of this section. The minimum reassessment interval by an allowable reassessment method is seven years. If an operator establishes a reassessment interval that is greater than seven years, the operator must, within the seven-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment at the interval the operator has established. A reassessment carried out using confirmatory direct assessment must be done in accordance with § 192.931. (For ease of reference, the table that follows this section sets forth the required reassessment intervals.)

(1) *Pressure test or internal inspection or other equivalent technology.* An operator that uses pressure testing or internal inspection as an assessment method must establish the reassessment interval for a covered pipeline segment by—

(i) Basing the interval on the identified threats for the segment as listed in § 192.917 of this section and in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 9, Tables 6 and 7, and on the analysis of the results from the last integrity assessment and from the data integration and risk assessment required by § 192.911; or

(ii) Using the intervals specified for different stress levels of pipeline (operating at or above 30% SMYS) listed in ASME/ANSI B31.8S, section 5, Table 3.

(2) *External Corrosion Direct Assessment.* An operator that uses ECDA that meets the requirements of this subpart must determine the reassessment interval according to the requirements in paragraphs 6.2 and 6.3 of NACE RP0502–2002 (ibr, *see* § 192.7).

(3) *Internal Corrosion or SCC Direct Assessment.* An operator that uses ICDA or SCCDA in accordance with the requirements of this subpart must determine the reassessment interval according to the following calculation. However, the reassessment interval cannot exceed those specified for direct assessment in ASME/ANSI B31.8S, section 5, Table 3.

(i) Determine the largest defect most likely to remain in the covered segment

and the corrosion rate appropriate for the pipe, soil and protection conditions;

(ii) Use the largest remaining defect as the size of the largest defect discovered in the SCC or ICDA segment; and

(iii) Estimate the reassessment interval as half the time required for the largest defect to grow to a critical size.

(b) *Pipelines Operating Below 30% SMYS.* An operator must establish a reassessment interval for each covered segment operating below 30% SMYS in accordance with the requirements of this section. The minimum reassessment interval by an allowable reassessment method is seven years. An operator must establish reassessment by at least one of the following—

(1) Reassessment by pressure test, internal inspection or other equivalent technology following the requirements in paragraph (a)(1) of this section except that the stress level referenced in paragraph (a)(1)(ii) of this section would be adjusted to reflect the lower operating stress level. If an established interval is more than seven years, the operator must conduct by the seventh year of the interval either a confirmatory direct assessment in accordance with § 192.931, or a low stress reassessment in accordance with § 192.941.

(2) Reassessment by ECDA following the requirements in paragraph (a)(2) of this section.

(3) Reassessment by ICDA or SCCDA following the requirements in paragraph (a)(3) of this section.

(4) Reassessment by confirmatory direct assessment at 7-year intervals in accordance with § 192.931, with reassessment by one of the methods listed in paragraphs (b)(1) through (b)(3) of this section by year 20 of the interval.

(5) Reassessment by the low stress assessment method at 7-year intervals in accordance with § 192.941 with reassessment by one of the methods listed in paragraphs (b)(1) through (b)(3) of this section by year 20 of the interval.

For ease of reference, the following table sets forth the required reassessment intervals. Also refer to appendix E.II for guidance on Assessment Methods and Assessment schedule for Transmission Pipelines Operating Below 30% SMYS. In case of conflict between the rule and the guidance in the appendix, the requirements of the rule control.

An operator must comply with the following requirements in establishing a reassessment interval for a covered segment:

MAXIMUM REASSESSMENT INTERVAL

Assessment method	Pipeline operating at or above 50% SMYS	Pipeline operating at or above 30% SMYS, up to 50% SMYS	Pipeline operating below 30% SMYS
Internal Inspection Tool, Pressure Test or Direct Assessment.	10 years (*)	15 years (*)	20 years.(**)
Confirmatory Direct Assessment	7 years	7 years	7 years.
Low Stress Reassessment	Not applicable	Not applicable	7 years + ongoing actions specified in § 192.941.

(*) A Confirmatory direct assessment as described in § 192.931 must be conducted by year 7 in a 10-year interval and years 7 and 14 of a 15-year interval.

(**) A low stress reassessment or Confirmatory direct assessment must be conducted by years 7 and 14 of the interval.

§ 192.941 What is a low stress reassessment?

(a) *General.* An operator of a transmission line that operates below 30% SMYS may use the following method to reassess a covered segment in accordance with § 192.939. This method of reassessment addresses the threats of external and internal corrosion. The operator must have conducted a baseline assessment of the covered segment in accordance with the requirements of §§ 192.919 and 192.921.

(b) *External corrosion.* An operator must take one of the following actions to address external corrosion on the low stress covered segment.

(1) *Cathodically protected pipe.* To address the threat of external corrosion on cathodically protected pipe in a covered segment, an operator must perform an electrical survey (*i.e.* indirect examination tool/method) at least every 7 years on the covered segment. An operator must use the results of each survey as part of an overall evaluation of the cathodic protection and corrosion threat for the covered segment. This evaluation must consider, at minimum, the leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

(2) *Unprotected pipe or cathodically protected pipe where electrical surveys are impractical.* If an electrical survey is impractical on the covered segment an operator must—

(i) Conduct leakage surveys as required by § 192.706 at 4-month intervals; and

(ii) Every 1½ years, identify and remediate areas of active corrosion by evaluating leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

(c) *Internal corrosion.* To address the threat of internal corrosion on a covered segment, an operator must—

(1) Conduct a gas analysis for corrosive agents at least once each calendar year;

(2) Conduct periodic testing of fluids removed from the segment. At least once each calendar year test the fluids removed from each storage field that may affect a covered segment; and

(3) At least every seven (7) years, integrate data from the analysis and testing required by paragraphs (c)(1)–(c)(2) with applicable internal corrosion leak records, incident reports, safety-related condition reports, repair records, patrol records, exposed pipe reports, and test records, and define and implement appropriate remediation actions.

§ 192.943 When can an operator deviate from these reassessment intervals?

(a) *Waiver from reassessment interval in limited situations.* In the following limited instances, OPS may allow a waiver from a reassessment interval required by § 192.939 if OPS finds a waiver would not be inconsistent with pipeline safety.

(1) *Lack of internal inspection tools.* An operator who uses internal inspection as an assessment method may be able to justify a longer assessment period for a covered segment if internal inspection tools are not available to assess the line pipe. To justify this, the operator must demonstrate that it cannot obtain the internal inspection tools within the required assessment period and that the actions the operator is taking in the interim ensure the integrity of the covered segment.

(2) *Maintain product supply.* An operator may be able to justify a longer reassessment period for a covered

segment if the operator demonstrates that it cannot maintain local product supply if it conducts the reassessment within the required interval.

(b) *How to apply.* If one of the conditions specified in paragraph (a) (1) or (a) (2) of this section applies, an operator may seek a waiver of the required reassessment interval. An operator must apply for a waiver in accordance with 49 U.S.C. 60118(c), at least 180 days before the end of the required reassessment interval, unless local product supply issues make the period impractical. If local product supply issues make the period impractical, an operator must apply for the waiver as soon as the need for the waiver becomes known.

§ 192.945 What methods must an operator use to measure program effectiveness?

(a) *General.* An operator must include in its integrity management program methods to measure, on a semi-annual basis, whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S (ibr, *see* § 192.7), section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, appendix A. An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with § 192.951.

(b) *External Corrosion Direct assessment.* In addition to the general requirements for performance measures in paragraph (a) of this section, an operator using direct assessment to assess the external corrosion threat must define and monitor measures to determine the effectiveness of the ECDA process. These measures must meet the requirements of § 192.925. An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with § 192.951.

§ 192.947 What records must an operator keep?

An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At minium, an operator must maintain the following records for review during an inspection.

(a) A written integrity management program in accordance with § 192.907;

(b) Documents supporting the threat identification and risk assessment in accordance with § 192.917;

(c) A written baseline assessment plan in accordance with § 192.919;

(d) Documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements;

(e) Documents that demonstrate personnel have the required training, including a description of the training program, in accordance with § 192.915;

(f) Schedule required by § 192.933 that prioritizes the conditions found during an assessment for evaluation and remediation, including technical justifications for the schedule.

(g) Documents to carry out the requirements in §§ 192.923 through 192.929 for a direct assessment plan;

(h) Documents to carry out the requirements in § 192.931 for confirmatory direct assessment;

(i) Verification that an operator has provided any documentation or notification required by this subpart to be provided to OPS, and when applicable, a State authority with which OPS has an interstate agent agreement, and a State or local pipeline safety authority that regulates a covered pipeline segment within that State.

§ 192.949 How does an operator notify OPS?

An operator must provide any notification required by this subpart by—

(1) Sending the notification to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW., Washington, DC 20590;

(2) Sending the notification to the Information Resources Manager by facsimile to (202) 366–7128; or

(3) Entering the information directly on the Integrity Management Database (IMDB) Web site at *http://primis.rspa.dot.gov/gasimp/.*

§ 192.951 Where does an operator file a report?

An operator must send any performance report required by this subpart to the Information Resources Manager—

(1) By mail to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW., Washington, DC 20590;

(2) Via facsimile to (202) 366–7128; or

(3) Through the online reporting system provided by OPS for electronic reporting available at the OPS Home Page at *http://ops.dot.gov.*

■ 3. Appendix A to part 192 is amended by adding paragraph (9) to section II.D, and by adding new sections II.F and II.G to read as follows:

Appendix A to Part 192—Incorporated by Reference

* * * * *

II. * * *

D. * * *

(9) ASME/ANSI B31.8S–2001 (Supplement to B31.8), ''Managing System Integrity of Gas Pipelines,'' July 19, 2002.

E. * * *

F. NACE International

(1) NACE RP–0502–2002 ''Pipeline External Corrosion Direct Assessment Methodology,'' 2002.

G. Gas Research Institute

(1) GRI 02–0057, ''Internal Corrosion Direct Assessment of Gas Transmission Pipelines—Methodology,'' April 1, 2002.

■ 4. A new Appendix E to Part 192 is added to part 192 to read as follows:

Appendix E to Part 192—Guidance on Determining High Consequence Areas and on Carrying Out Requirements in the Integrity Management Rule

I. Guidance on Determining a High Consequence Area

To determine which segments of an operator's transmission pipeline system are covered for purposes of the integrity management program requirements, an operator must identify the high consequence areas. An operator must use method (1) or (2) from the definition in § 192.903 to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system. (Refer to figure E.I.A for a diagram of a high consequence area)

(a) If an operator selects method (1), then:

(1) All pipeline in class 3 and class 4 locations is considered to be in a high consequence area.

(2) The operator is to calculate potential impact circles, as defined in § 192.903, centered on the centerline of the pipeline for:

(i) Any areas of its pipeline system that are not in class 3 or class 4 locations which could include an identified site as defined in § 192.903, and

(ii) Any pipeline in class 3 and class 4 locations for which the potential impact radius would be greater than 660 feet (200 meters) and for which an identified site may exist in the area more than 660 feet (200 meters) but less than the potential impact radius from the pipeline.

(3) The operator is to evaluate the potential impact circles to determine if they contain

identified sites, as defined in § 192.903, in accordance with paragraph (c) of the same section.

(4) The operator is to complete identification of high consequence areas by December 17, 2004.

(b) If an operator selects method (2) then:

(1) The operator is to calculate potential impact circles, as defined in § 192.903, centered on the centerline of the pipeline for all areas of its pipeline where the circles could contain 20 buildings intended for human occupancy or an identified site.

(2) The operator is to evaluate the potential impact circles to determine if they contain 20 buildings intended for human occupancy. Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(i) If the radius of the potential impact circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy until December 17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the potential impact circle (i.e., the prorated number of buildings intended for human occupancy is equal to [20 × (660 feet [or 200 meters]/ potential impact radius in feet [or meters])^2]).

(3) The operator is to evaluate the potential impact circles to determine if they contain identified sites, as defined in § 192.903, in accordance with paragraph (c) of this section.

(4) The operator is to complete identification of high consequence areas by December 17, 2004.

(c) Operators are to identify sites meeting the criteria of identified sites, as defined in § 192.903. The process for identification is in § 192.905. Further guidance was provided in (68 FR 42456; July 17, 2003) titled *issuance of advisory bulletin.* Operators must document, and retain for review during inspections, their rationale for selecting the source(s) used, including why it/they are appropriate for use.

(d) Requirements for incorporating newly identified high consequence areas into an integrity management program are in § 192.905.

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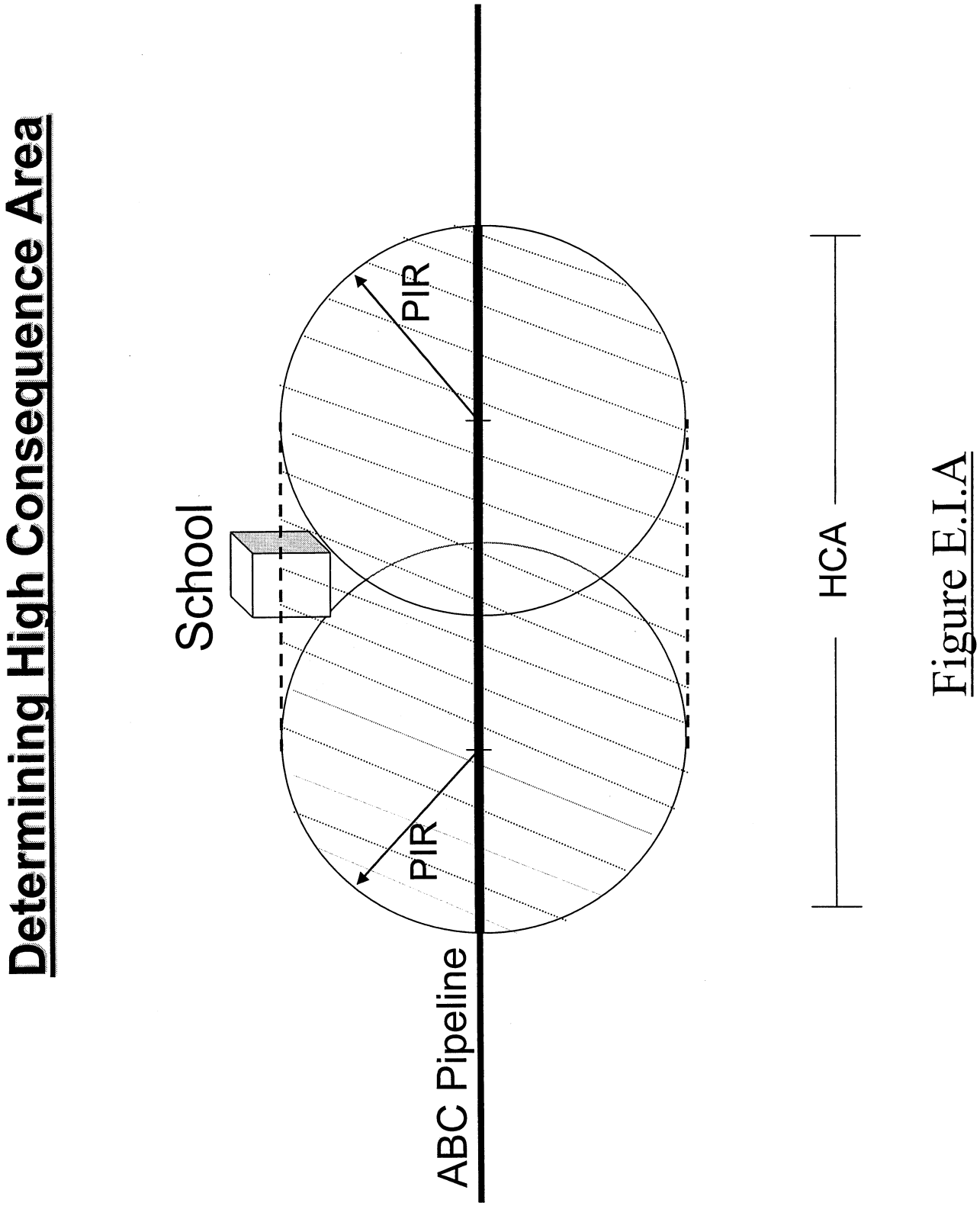

Figure E.I.A

II. Guidance on Assessment Methods for Transmission Pipelines Operating Below 30% SMYS

(a) Table E.II.1 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS *not* in HCAs (*i.e.* outside of potential impact circle) but located within Class 3 and 4 Locations.

(b) Table E.II.2 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30% SMYS in HCAs.

(c) Table E.II.3 gives guidance on preventative & mitigative measures addressing time dependent and independent

threats for transmission pipelines that operate below 30% SMYS, in HCAs.

Table E.II.1: Assessment Methods for Transmission Pipelines Operating Below 30% SMYS not in HCAs but in Class 3 and 4 Locations

(Column 1) Threat	Existing 192 Requirements		(Column 4) Additional(to 192 requirements)Assessments
	(Column 2) Primary	(Column 3) Secondary	
External Corrosion	455-(Gen. Post 1971), 457-(Gen. Pre-1971) 459-(Examination), 461-(Ext. coating) 463-(CP), 465-(Monitoring) 467-(Elect isolation), 469-Test stations) 471-(Test leads), 473-(Interference) 479-(Atmospheric), 481-(Atmospheric) 485-(Remedial), 705-(Patrol) 706-(Leak survey), 711 (Repair – gen.) 717-(Repair – perm.)	603-(Gen Oper'n) 613-(Surveillance)	For Cathodically Protected Transmission Pipeline: • Perform semi-annual leak surveys. For Unprotected Transmission Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impractical: • Perform quarterly leak surveys

Table E.II.1: Assessment Methods for Transmission Pipelines Operating Below 30% SMYS not in HCAs but in Class 3 and 4 Locations

Internal Corrosion	475-(Gen IC), 477-(IC monitoring) 485-(Remedial), 705-(Patrol) 706-(Leak survey), 711 (Repair – gen.) 717-(Repair – perm.)	53(a)-(Materials) 603-(Gen Oper'n) 613-(Surveillance)	• Perform semi-annual leak surveys.
3rd Party Damage	103-(Gen. Design), 111-(Design factor) 317-(Hazard prot), 327-(Cover) 614-(Dam. Prevent), 616-(Public education) 705-(Patrol), 707-(Line markers) 711 (Repair – gen.), 717-(Repair – perm.)	615–(Emerg. Plan)	• Participation in state one-call system, • Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND • Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

Table E.II.2 Assessment Requirements for Transmission Pipelines in HCAs (Re-assessment intervals are maximum allowed)

	Re-Assessment Requirements (see Note 3)					
	At or above 50% SMYS		At or above 30% SMYS up to 50% SMYS		Below 30% SMYS	
Baseline Assessment Method (see Note 3)	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method
Pressure Testing	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	Pressure Test or ILI or DA				
		Repeat inspection cycle every 10 years	15(see Note 1)	Pressure Test or ILI or DA (see Note 1)		
				Repeat inspection cycle every 15 years	20	Pressure Test or ILI or DA
						Repeat inspection cycle every 20 years
In-Line Inspection	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	ILI or DA or Pressure Test				
		Repeat inspection cycle every 10 years	15(see Note 1)	ILI or DA or Pressure Test (see Note 1)		
				Repeat inspection cycle every 15 years	20	ILI or DA or Pressure Test

						Repeat inspection cycle every 20 years
Direct Assessment	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)
	10	DA or ILI or Pressure Test				
		Repeat inspection cycle every 10 years	15(see Note 1)	DA or ILI or Pressure Test (see Note 1)		
				Repeat inspection cycle every 15 years	20	DA or ILI or Pressure Test
						Repeat inspection cycle every 20 years

Note 1: Operator may choose to utilize CDA at year 14, then utilize ILI, Pressure Test, or DA at year 15 as allowed under ASME B31.8S

Note 2: Operator may choose to utilize CDA at year 7 and 14 in lieu of P&M

Note 3: Operator may utilize "other technology that an operator demonstrates can provide an equivalent understanding of the condition of line pipe"

Table E.II.3

Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30% SMYS , in HCAs

Threat	Existing 192 Requirements		Additional (to 192 requirements) Preventive & Mitigative Measures
	Primary	Secondary	
External Corrosion	455-(Gen. Post 1971) 457-(Gen. Pre-1971) 459-(Examination) 461-(Ext. coating) 463-(CP) 465-(Monitoring) 467-(Elect isolation)	603-(Gen Oper) 613-(Surveil)	For Cathodically Protected Trmn. Pipelines • Perform an electrical survey (i.e. indirect examination tool/method) at least every 7 years. Results are to be utilized as part of an overall evaluation of the CP system and corrosion threat for the covered segment. Evaluation shall include consideration of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.

Table E.II.3

Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30% SMYS , in HCAs

External Corrosion	469-Test stations) 471-(Test leads) 473-(Interference) 479-(Atmospheric) 481-(Atmospheric) 485-(Remedial) 705-(Patrol) 706-(Leak survey) 711 (Repair – gen.) 717-(Repair – perm.)		<u>For Unprotected Trmn. Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impracticable</u> • Conduct quarterly leak surveys AND • Every 1-1/2 years, determine areas of active corrosion by evaluation of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.
Internal Corrosion	475-(Gen IC) 477-(IC monitoring) 485-(Remedial) 705-(Patrol) 706-(Leak survey) 711 (Repair – gen.) 717-(Repair – perm.)	53(a)-(Materials) 603-(Gen Oper) 613-(Surveil)	• Obtain and review gas analysis data each calendar year for corrosive agents from transmission pipelines in HCAs, • Periodic testing of fluid removed from pipelines. Specifically, once each calendar year from each storage field that may affect transmission pipelines in HCAs, AND • At least every 7 years, integrate data obtained with applicable internal corrosion leak records, incident reports, safety related condition reports, repair records, patrol records, exposed pipe reports, and test records.

Table E.II.3

Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30% SMYS , in HCAs

3rd Party Damage	103-(Gen. Design) 111-(Design factor) 317-(Hazard prot) 327-(Cover) 614-(Dam. Prevent) 616-(Public educat) 705-(Patrol) 707-(Line markers) 711 (Repair – gen.) 717-(Repair – perm.)	615 –(Emerg Plan)	• Participation in state one-call system, • Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND • Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in HCAs or class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

Issued in Washington, DC, on December 2, 2003.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 03–30280 Filed 12–12–03; 8:45 am]

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Federal Register

Monday,
December 15, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 403 and 408

Medicare Program; Medicare Prescription Drug Discount Card; Interim Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403 and 408

[CMS–4063–IFC]

RIN 0938–AM71

Medicare Program; Medicare Prescription Drug Discount Card

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: Section 101, subpart 4 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, codified in section 1860D–31 of the Social Security Act, provides for a voluntary prescription drug discount card program for Medicare beneficiaries entitled to benefits, or enrolled, under Part A or enrolled under Part B, excluding beneficiaries entitled to medical assistance for outpatient prescription drugs under Medicaid, including section 1115 waiver demonstrations. Eligible beneficiaries may access negotiated prices on prescription drugs by enrolling in drug discount card programs offered by Medicare-endorsed sponsors.

Eligible beneficiaries may enroll in the Medicare drug discount card program beginning no later than 6 months after the date of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and ending December 31, 2005. After December 31, 2005, beneficiaries enrolled in the program may continue to use their drug discount card during a short transition period beginning January 1, 2006 and ending upon the effective date of a beneficiary's outpatient drug coverage under Medicare Part D, but no later than the last day of the initial open enrollment period under Part D.

Beneficiaries with incomes no more than 135 percent of the poverty line applicable to their family size who do not have outpatient prescription drug coverage under certain programs—Medicaid, certain health insurance coverage or group health insurance (such as retiree coverage), TRICARE, and Federal Employees Health Benefits Program (FEHBP)—also are eligible for transitional assistance, or payment of $600 in 2004 and up to $600 in 2005 of the cost of covered discount card drugs obtained under the program. In most cases, any transitional assistance remaining available to a beneficiary on December 31, 2004 may be rolled over to 2005 and applied toward the cost of covered discount card drugs obtained under the program during 2005. Similarly, in most cases, any transitional assistance remaining available to a beneficiary on December 31, 2005 may be applied toward the cost of covered discount card drugs obtained under the program during the transition period.

The Centers for Medicare & Medicaid Services will solicit applications from entities seeking to offer beneficiaries negotiated prices on covered discount card drugs. Those meeting the requirements described in the authorizing statute and this rule, including administration of transitional assistance, will be permitted to offer a Medicare-endorsed drug discount card program to eligible beneficiaries. Endorsed sponsors may charge beneficiaries enrolling in their endorsed programs an annual enrollment fee for 2004 and 2005 of no more than $30; CMS will pay this fee on behalf of enrollees entitled to transitional assistance.

To ensure that eligible Medicare beneficiaries take full advantage of the Medicare drug discount card program and make informed choices, CMS will educate beneficiaries about the existence and features of the program and the availability of transitional assistance for certain low-income beneficiaries; and publicize information that will allow Medicare beneficiaries to compare the various Medicare-endorsed drug discount card programs.

DATES: *Effective Date:* The provisions of this interim final rule with comment period are effective December 15, 2003.

Comment date: Comments will be considered if we receive them no later than 5 p.m. on January 14, 2004, at the appropriate address, as provided below.

ADDRESSES: In commenting, please refer to file code CMS–4063–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (1 original and 3 copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4063–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 3 copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Teresa DeCaro, (410) 786–6604.

SUPPLEMENTARY INFORMATION: 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.*

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please call: (410) 786–7197.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents of the preamble.

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I. Background

A. Statutory Basis for the Program

The purpose of this interim final rule is to establish requirements for the Medicare Prescription Drug Discount Card and Transitional Assistance Program (hereafter referred to as the ''Medicare drug discount card program''). This program was established by section 101, subpart 4, of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and is codified in section 1860D–31 of the Social Security Act (the ''Act'').

Section 1860D–31(a)(2)(A) of the Act requires us to ensure that eligible Medicare beneficiaries have access to negotiated prices for prescription drugs and transitional assistance under the Medicare discount card program within 6 months of the date of enactment of the program's authorizing statute. To enable us to meet this implementation deadline, the statute authorizes us to issue this interim final rule, which is effective immediately on an interim basis, as of the date of publication. Although the rule will be effective prior to receipt of public comments, we will accept comments on this interim final rule during a 30-day comment period and may, at a future date, revise this regulation based on the comments we receive. In addition, we will continue to monitor the implementation of this program during its operation. If we become aware of operational difficulties in the program, or of activities resulting in fraud, waste, or abuse we may revise the policies announced in this rule using appropriate procedures.

Section 105(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 provides for expedited implementation by—

- Exempting the Medicare drug discount card program from the requirements of the Paperwork Reduction Act, including the public comment and Federal clearance processes associated with it;
- Exempting the drug discount card program from the requirement in the Congressional Review Act for a 60-day delayed effective date for major rules (5 U.S.C. 801(a)(3)(A)), and from the requirement under the Administrative Procedure Act (5 U.S.C. 553(d)) that regulations not become effective until 30 days after their publication.
- Allowing the Secretary of the Department of Health and Human Services (hereinafter the ''Secretary'') to enter into contracts without regard to provisions of law or regulation governing the performance, amendment, or modification of contracts that may be inconsistent with furthering the Medicare drug discount card program.
- As provided under sections 105(c)(4)(A) and (B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, prohibiting judicial review of a CMS determination not to endorse a sponsor applicant and providing that, in the event any provision of section 1860D–31 of the Act is enjoined, the order will not affect the remaining provisions of section 1860D–31.

To meet the six-month implementation deadline, we will pursue a compressed timeframe for soliciting and reviewing endorsed sponsor applications.

B. Purpose of the Program

Congress intended for the Medicare drug discount card program to serve as a transitional program providing Medicare beneficiaries with immediate assistance with prescription drug costs during calendar year (CY) 2004 and CY 2005 while preparations are made for implementation of the Medicare drug benefit under Medicare part D in 2006. Medicare currently does not cover the

cost of outpatient drugs, with a few exceptions. In directing us to establish the Medicare drug discount card program, Congress sought to provide Medicare beneficiaries—particularly those lacking outpatient drug coverage—with access to negotiated prices on prescription drugs through enrollment in Medicare-endorsed drug discount card programs operated by endorsed sponsors. In addition, to help low-income beneficiaries meet their drug costs, Congress authorized up to $600 of annual transitional assistance that eligible beneficiaries may apply toward the cost of covered discount card drugs purchased under the program.

The Medicare drug discount card program is designed to increase beneficiaries' access to low-cost prescription drugs by building upon best practices in the private drug benefit market today.

C. Relationship to Medicare-Endorsed Prescription Drug Card Assistance Initiative

On September 4, 2002, we published a final rule (67 FR 56618) establishing the Medicare-Endorsed Prescription Drug Card Assistance Initiative based primarily on the educational and assistance authority in section 4359 of the Omnibus Budget Reconciliation Act of 1990 (OBRA) (Pub. L. 101–508). Similar to the Medicare drug discount card program, this initiative called for us to endorse private sector prescription drug card programs that met certain criteria, including offering Medicare beneficiaries discounted drug prices through retail pharmacy networks that met our access standards. On January 8, 2003, we posted a solicitation of application.

On January 23, 2003, the Federal Court for the District of Columbia enjoined us from proceeding with the initiative. In accordance with the court order, we withdrew the solicitation, ceased all work on the initiative, and neither received any applications nor made any endorsements on the basis of the September 4, 2002 rule.

The Medicare drug discount card program described in this rule is based on entirely different statutory authority—the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—than the 2002 initiative and has significantly different features than the earlier initiative, most notably the provision of transitional assistance to eligible beneficiaries. Therefore, parties interested in the implementation and operation of the Medicare drug discount card program should not refer to the September 4, 2002 final rule or the January 8, 2003 solicitation for guidance on the program that we will implement under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Also, by publishing this interim final rule with comment under the authority of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, we hereby withdraw the regulation and solicitation published September 4, 2002 and January 8, 2003, respectively.

II. Provisions of the Interim Final Rule With Comment Period

A. Eligibility and Enrollment

Sections 1860D–31(b)(1) and (2) of the Act establish the eligibility criteria for the Medicare drug discount card program and for transitional assistance, which we have incorporated into § 403.810(a) and § 403.810(b) of our regulations. Section 1860D–31(f)(1)(A) of the Act directs the Secretary to specify the procedures for determining a beneficiary's eligibility for the Medicare drug discount card program or transitional assistance and section 1860D–31(c)(1) directs the Secretary to establish a process for eligible beneficiaries enrolling in, and disenrolling from, an endorsed program. Sections 403.810 and 403.811 of our regulations set forth these procedures. The obligations of endorsed sponsors related to eligibility determinations and enrollment are discussed in section II.C.6 of this document.

1. Eligibility for the Medicare Prescription Drug Discount Card and Transitional Assistance Program

In accordance with section 1860D–31(b)(1) of the Act, a Medicare beneficiary is eligible for the Medicare drug discount card if the beneficiary is entitled to benefits, or enrolled, under Medicare Part A or enrolled under Medicare Part B, and does not already receive drug coverage through a State medical assistance plan under either a Title XIX program or under a demonstration program that is approved by us under sections 1115(a)(1) and (2) of the Act, hereinafter referred to as a ''section 1115 waiver demonstration.''

The benefit package available to beneficiaries enrolled in section 1115 waiver demonstrations varies, with some demonstrations offering comprehensive outpatient prescription drug coverage and others offering more limited or no outpatient drug coverage. Section 1860D–31(b)(1)(B) of the Act provides that beneficiaries entitled to ''any'' medical assistance for outpatient prescribed drugs under a section 1115 waiver demonstration are ineligible for the Medicare drug discount card program. We interpret this section as rendering ineligible for the program all beneficiaries enrolled in a section 1115 waiver demonstration program with some outpatient drug coverage, even if limited coverage. Beneficiaries enrolled in a section 1115 waiver demonstration that does not provide outpatient drug coverage are eligible for the program provided they meet all other eligibility criteria. Similarly, beneficiaries enrolled in Medicaid under title XIX of the Act who do not receive outpatient drug coverage may be eligible for the program.

We have the authority to establish procedures for eligibility determinations under section 1860D–31(f)(1)(A) of the Act. Under this authority and in the interest of promoting efficient administration of the program, we specify in § 403.810(d) of our regulations that beneficiaries determined eligible for the program will remain eligible for the entire period of their enrollment. We therefore provide in section 403.810(a) of the regulations that a beneficiary is eligible for the Medicare drug discount card program if he or she satisfies the above requirements at the time of applying to enroll in the program. Consequently, once a beneficiary has been determined eligible for the Medicare drug discount card program, he or she will remain eligible for the duration of the program unless he or she disenrolls from an endorsed program and is ineligible for a special election period that would allow the individual to enroll in another program in accordance with § 403.811(b)(2) of the regulations, as discussed below in section II.A.6, or if involuntarily disenrolled as provided in § 403.811(b)(6). If, after such a disenrollment from the Medicare drug discount card program in 2004, a beneficiary wishes to later re-enroll in the program, he or she must re-apply and re-qualify for the program for 2005.

Section 1860D–31(b)(4) directs the Secretary to issue appropriate rules addressing the eligibility of medically needy beneficiaries, as described in section 1902(a)(10)(C) of the Act, for the Medicare drug discount card program. Medically needy beneficiaries will be treated the same as all other beneficiaries applying for the program and therefore will be eligible for the program if at the time of applying for the program they meet the eligibility criteria set forth in § 403.810(a) of the regulations.

Medicare beneficiaries residing in the U.S. territories, which include American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto

Rico, and Virgin Islands, are eligible to enroll in an endorsed program. Whereas Medicare beneficiaries residing in the 50 States and the District of Columbia are ineligible for the Medicare drug discount card program if they have outpatient prescription drug coverage under Medicaid or a section 1115 waiver demonstration, as provided in § 403.817(d) of our regulations and as discussed in section II.J. of this document, Medicare beneficiaries residing in the territories who also receive outpatient prescription drug coverage under Medicaid or a Medicaid section 1115 waiver are eligible for the Medicare drug discount card program.

2. Eligibility for Transitional Assistance

Under section 1860D–31(b)(2) of the Act, and as provided in § 403.810(b) of our regulations, a beneficiary is eligible to receive transitional assistance if the beneficiary is eligible for the Medicare drug discount card program and meets the following requirements:

(1) The beneficiary resides in one of the 50 States or the District of Columbia;

(2) The beneficiary's income is not more than 135 percent of the poverty line applicable to the beneficiary's family size; and

(3) The beneficiary does not have coverage for covered discount card drugs under one or more of the following sources: (a) TRICARE coverage under chapter 55 of title 10, (b) a Federal Employee's Health benefit plan under chapter 89 of title 5, or (c) a group health plan or health insurance coverage, as those terms are defined under section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), other than a plan under Medicare Part C or a group health plan or health insurance coverage consisting solely of excepted benefits, as that term is defined under section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91(c)).

The poverty line is defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2), and is revised annually by the Secretary. Excepted benefits include, but are not limited to, medical supplemental insurance (Medigap insurance), limited scope dental or vision benefits, liability insurance (for example, automobile insurance), coverage for a specific disease or illness, and workers' compensation insurance.

Under section 1860D–31(f)(2)(B) of the Act, beneficiaries who have been verified as eligible for transitional assistance will be considered so eligible for the entire period of their enrollment in any endorsed program. We therefore provide in § 403.810(b) of the regulations that a beneficiary is eligible for transitional assistance if he or she satisfies the above requirements at the time of applying for transitional assistance. Thus, we specify in 403.810(d) that once a beneficiary has been determined eligible for transitional assistance, he or she will remain eligible for transitional assistance for the duration of the beneficiary's enrollment in the Medicare drug discount card program. A beneficiary will no longer be eligible for transitional assistance if he or she disenrolls from the program; specifically, if he or she disenrolls from an endorsed program and is ineligible for a special election period that would allow the individual to enroll in another endorsed program in accordance with § 403.811(b)(2) of the regulations, as discussed below in section II.A.6.

Although beneficiaries with outpatient drug coverage under a group health plan or health insurance coverage generally are ineligible for transitional assistance, as noted above, the statutory definition of transitional assistance eligible beneficiaries carves out from this exclusion outpatient drug coverage under a Part C plan described in section 1851(a)(2) of the Act or a policy consisting solely of excepted benefits. Consequently, provided that they meet all other eligibility criteria, beneficiaries with outpatient drug coverage under a Part C plan or a policy consisting solely of excepted benefits, such as Medigap, are still eligible for transitional assistance even if their employer pays all or a portion of the premium for such plans or policies.

Section 1860D–31(f)(1)(B) of the Act gives the Secretary the authority to define ''income'' and ''family size'' as it pertains to determinations of a beneficiary's eligibility for transitional assistance. Income refers to the amount, type, and ownership of income that will be counted in determining whether an applicant's income is no more than 135 percent of the poverty line for the beneficiary's family size. For purposes of the Medicare drug discount card program, we have defined ''income'' as including the components of adjusted gross income, as defined under 26 U.S.C. 62, and, to the extent not included in the components of AGI retirement and disability benefits, or, if the beneficiary is married, the sum of such income for both the beneficiary and his or her spouse.

Family size means the number of beneficiaries by which 135 percent of the poverty line must be adjusted to determine the income threshold the beneficiary's income may not exceed in order to be eligible for transitional assistance. For purposes of this program, we have defined ''family size'' as one for unmarried individuals and two for individuals who are married. This definition is based on the rules of the Supplemental Security Income (SSI) program established under title XVI of the Act. While the SSI program does not actually define ''family'' or ''family size,'' it makes eligibility determinations based in part on whether a beneficiary is single or married. The income definition above is not based on the SSI definition because the systems-based process we intend to use to determine eligibility for transitional assistance is different from the interview determination process used to determine eligibility for SSI, and from the process we will use under Part D. For this short-term program, the statute directs us to determine eligibility based on self-certification, with CMS to perform eligibility verifications via computer matching of Federal databases, as discussed below. We will not use an individual determination process as SSI uses; hence we have chosen a simpler definition than the elaborate definition SSI uses.

In section 1860D–31(f) of the Act, the statute directs us to determine eligibility based on self-certification, with CMS to verify self-certified eligibility through data matching. We have developed an information system for verifying beneficiaries' eligibility for the Medicare drug discount card program. Among other functions, this system will verify, to the extent possible, that the income of beneficiaries applying for transitional assistance does not exceed 135 percent of the poverty line for their family size. As provided in section 1860D–31(f)(3) of the Act, this system relies on income and retirement benefit information provided by the Internal Revenue Service (IRS) and the Social Security Administration, and may include additional data sources as they become available.

As part of the standard enrollment form, a beneficiary must certify, under penalty of perjury that, to the best of the beneficiary's knowledge, the information about his or her current income status and outpatient prescription drug coverage, as provided on the form, is accurate. If we are unable to conclusively verify whether an individual's income is no more than 135 percent of the poverty line for his or her family size, we may request that the beneficiary provide us with additional financial information. In § 403.810(f)(2) of our regulations, we reserve the right to make the provision of this additional information a condition of receiving transitional assistance.

Section 1860D–31(f)(3)(C)(i) of the Act gives the Secretary the authority to find

that Medicare beneficiaries eligible under title XIX as Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), or as Qualifying Individuals (QIs) satisfy the income threshold requirement for eligibility for transitional assistance. Therefore, § 403.810(c) of our regulations specifies that these individuals by definition will be deemed to have met the income threshold requirement for transitional assistance. However, these individuals must meet the other eligibility criteria set forth in § 403.810(b) of our regulations to be determined eligible for transitional assistance.

Section 1860D–31(b)(4) directs the Secretary to issue appropriate rules addressing the eligibility of medically needy beneficiaries, as described in section 1902(a)(10)(C) of the Act, for transitional assistance. Medically needy beneficiaries will be treated the same as all other beneficiaries applying for transitional assistance and therefore will be eligible for transitional assistance if at the time of applying for transitional assistance they meet the eligibility criteria set forth in § 403.810(b) of the regulations. An individual who is already enrolled in an endorsed discount card program and subsequently qualifies for outpatient drug coverage under Medicaid as a medically needy beneficiary, will not be disenrolled or denied transitional assistance solely because he or she is now receiving outpatient drug coverage under Medicaid.

Under § 403.810(b)(2) of our regulations, residents of the territories are not eligible for transitional assistance under the Medicare drug discount card program. However, under section 1860D–31(j)(2) of the Act, and as provided in § 403.817(e) of our regulations, a territory may establish its own transitional assistance plan. As discussed in section II.J. of this document, a territory choosing to establish its own transitional assistance plan may offer transitional assistance to any individual entitled to benefits, or enrolled, under Medicare Part A or enrolled under Medicare Part B, whose income is no more than 135 percent of the poverty line for the individual's family size, regardless of whether that individual receives outpatient drug coverage under Medicaid or a section 1115 waiver demonstration.

As specified in section 1860D–31(g)(6) of the Act and provided in § 403.810(e) of our regulations, any benefits received under the Medicare drug discount card program will not be taken into account in determining a beneficiary's eligibility for, or the amount of benefits under, any other Federal program.

3. Enrollment in an Endorsed Program

Section 1860D–31(c)(1) of the Act requires the Secretary to establish a process through which beneficiaries enroll in endorsed programs. Section 403.811(a) of our regulations specifies the programmatic requirements of this process.

We anticipate that endorsed sponsors will begin enrolling eligible beneficiaries in their endorsed programs no later than six months after enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Throughout this document, when we refer to a beneficiary, enrollee, or individual in the context of taking action regarding the Medicare drug discount card program, such as applying for the discount card, transitional assistance, or reconsideration, we also mean the individual's authorized representative. This representative can complete an enrollment form on a individual's behalf, certify the accuracy of its content, authorize CMS to verify the individual's eligibility information, conduct other enrollment and disenrollment transactions, and otherwise represent the individual with regard to this program. Our regulations at § 403.806(l) specify the way endorsed sponsors must treat authorized representatives.

Under the authority in section 1860D–31(c)(1)(A) of the Act, we provide in § 403.811(a)(5) of our regulations, that an individual who is not currently enrolled in an endorsed card program can enroll in any endorsed program serving residents of their State at any time during the enrollment period. As provided in section 1860D–31(c)(1) of the Act and § 403.811(a)(6) of our regulations, an individual may only enroll in one endorsed program at a time. Relying on the authority in section 1860D–31(c)(1) of the Act, we provide in § 403.811(a)(7) of our regulations that an individual can enroll in one endorsed program per year during the enrollment period. Finally, § 403.811(a)(9) of our regulations specifies that no new enrollment or changing of endorsed card election can occur during the transition period.

Under section 1860D–31(c)(1)(A) of the Act, and as provided in § 403.811(a)(10) of our regulations, a discount card eligible individual not already enrolled in an endorsed program may enroll in any endorsed program serving residents of the State in which the beneficiary resides, with the exception of beneficiaries enrolled in certain Part C or reasonable cost reimbursement plans offering ''exclusive card programs.'' (A Part C organization as described in section 1851(a)(2)(A) of the Act that offers enrollment in a coordinated care plan or an organization that offers enrollment under a reasonable cost reimbursement plan described in section 1876(h) of the Act are hereinafter referred to as ''Medicare managed care organizations'' and the plans they offer, ''Medicare managed care plans,'' respectively.) An ''exclusive card sponsor'' is a Medicare managed care organization that offers an endorsed program with enrollment limited to members of one or more of its Medicare managed care plan(s). Under section 1860D–31(c)(1)(E) of the Act, members of Medicare managed care plans offered by exclusive card sponsors that include access to an exclusive card program as part of the plan's benefit package, may only enroll in such exclusive card programs. Medicare managed care organizations as card sponsors, including exclusive card sponsors, are discussed in section II.G. of this document.

As part of our verification system, we will verify whether each beneficiary seeking enrollment receives outpatient drug coverage under Medicaid or a section 1115 waiver demonstration, is enrolled in another endorsed program, or is a member of a Medicare managed care plan offering an exclusive card program. This system will include files provided to us by the State Medicaid programs and a database for tracking beneficiaries' enrollment and disenrollment from endorsed programs.

If a beneficiary wishes to apply for transitional assistance when he or she applies to enroll in an endorsed program, the endorsed sponsor may not enroll the beneficiary in its endorsed program until the beneficiary is determined eligible for transitional assistance. If the beneficiary is determined ineligible for transitional assistance and still wishes to enroll in the endorsed sponsor's endorsed program, the sponsor must provide the beneficiary with an opportunity to actively choose to enroll in the drug card only through enrollment processes as specified by the Secretary and permitted by the endorsed sponsor. This requirement is specified in § 403.811(a)(3) of our regulations. We create this requirement because we believe a beneficiary's eligibility or ineligibility for transitional assistance may influence his or her decision to enroll in the Medicare drug discount card program and which endorsed program he or she selects.

Section 1860D–31(c)(2) of the Act provides that endorsed sponsors may charge an annual enrollment fee up to, but no more than, $30 per year. Discount card enrollees, other than transitional assistance enrollees, must pay this fee to their endorsed sponsors. We discuss enrollment fees in greater detail in section II.C.6. of the document.

A discount card enrollee will remain enrolled in the same endorsed program for CYs 2004 and 2005 and the transition period unless the beneficiary changes endorsed programs following the annual coordinated election period, the beneficiary disenrolls, or the endorsed card program terminates, as provided in § 403.811(a)(8) of our regulations. This means that a beneficiary remaining enrolled in an endorsed program with an annual enrollment fee from CYs 2004 to 2005 is responsible for paying any new annual enrollment fee for 2005.

Section 1860D–31(c)(4) of the Act gives the Secretary the discretion to establish the date upon which access to an endorsed program's negotiated prices will take effect. We specify in § 403.811(a)(11) of our regulations that the date upon which the beneficiary can access negotiated prices is the date when a beneficiary's enrollment in an endorsed program becomes effective.

Under the Secretary's authority to develop an enrollment process under section 1860D–31(c)(1) of the Act, and as stated in § 403.814(b)(5) of the regulations, if a Medicare managed care organization limits enrollment in an exclusive card program to members of one or more of its Medicare managed care plans, we will permit the Medicare managed care organization to automatically enroll, or group enroll, into its exclusive card program eligible individuals enrolled in the Medicare managed care plan(s), unless such beneficiaries affirmatively notify the Medicare managed care organization of their desire not to enroll in its exclusive card program. Prior to group enrolling such beneficiaries in its exclusive card program, the Medicare managed care organization must notify its eligible members of its intent to do so and inform them of their right not to enroll. As provided in § 403.814(b)(6) of our regulations, a member affirmatively electing not to enroll in the exclusive card program offered as part of the benefit package available through his or her Medicare managed care plan is ineligible to enroll in any other endorsed program.

We believe our permitting group enrollment will not limit the voluntary nature of this program because section 1860D–31(c)(1)(E) of the Act restricts members of a Medicare managed care plan offering an exclusive card program to enrollment in the exclusive card program. In addition, group enrollment will not impose on these beneficiaries any unwanted cost without consent since they will have the opportunity to decline enrollment in the exclusive card program.

4. Applying for Transitional Assistance

As provided in § 403.811(a)(12) of our regulations, beneficiaries may apply for transitional assistance at the same time that they apply for enrollment in the Medicare drug discount card program, or after they have already enrolled in the program. We permit beneficiaries to apply for transitional assistance at any time because discount card enrollees may, following their enrollment in the program, have a change in their economic circumstances or outpatient drug coverage that would qualify them for transitional assistance.

Beneficiaries wishing to receive transitional assistance must complete the standard enrollment form for transitional assistance, which is described in greater detail in section II.C.6. of this document. The standard enrollment form will require the beneficiary to indicate all elements necessary to determine eligibility, including, but not limited to, the amount of the beneficiary's income (or, for married individuals, the beneficiary and spouse's combined income), the beneficiary's family size, and whether the beneficiary has outpatient prescription drug coverage under certain sources.

As required by section 1860D–31(f)(2)(A) of the Act, a beneficiary applying for transitional assistance must certify, on the standard enrollment form, under penalty of perjury or similar sanction for false statements, that to the best of the beneficiary's knowledge the information he or she provides is accurate. We therefore require in § 403.810(b)(5) of our regulations that beneficiaries wishing to receive transitional assistance sign the enrollment form. This signature represents the beneficiary's certification that the information provided on the form is accurate to the best of the beneficiary's knowledge, as well as his or her consent to our verifying the accuracy of the information provided, including verification of the beneficiary's income using Federal sources of income data. Consequently, beneficiaries wishing to apply for transitional assistance must submit to the endorsed sponsor a dated and signed enrollment form by mail or, at the endorsed sponsor's discretion, by facsimile.

a. Coinsurance

Under section 1860D–31(g)(1)(B) of the Act and as provided in § 403.808(e) of our regulations, a transitional assistance enrollee is entitled to have payment made of 90 or 95 percent, depending on the beneficiary's income, of the charges incurred for covered discount card drugs obtained through the Medicare drug discount card program, up to the total amount of transitional assistance available to that beneficiary. Transitional assistance enrollees with incomes greater than 100 percent but no more than 135 percent of the poverty line applicable to their family size are responsible for paying 10 percent of the charge for covered discount card drugs obtained under the program. Transitional assistance enrollees with income not greater than 100 percent of the poverty line applicable to their family size are responsible for paying 5 percent of the charge for a covered discount card drug.

b. Proration

Section 1860D–31(g)(2)(A) of the Act provides that transitional assistance beneficiaries may receive up to $600 each year in transitional assistance. However, section 1860D–31(g)(2)(B) of the Act permits us to prorate the amount of transitional assistance available to beneficiaries applying for transitional assistance. We do not intend to prorate transitional assistance amounts in 2004 in recognition that it may take time for our education campaign to reach all beneficiaries and that beneficiaries need sufficient opportunity to learn about the Medicare drug discount card program without penalty. As provided in § 403.808(b) of our regulations, we will prorate the transitional assistance available to eligible enrollees applying for transitional assistance in 2005 based on the beneficiary application date according to the schedule set forth in Table 1. The beneficiary application date is the date upon which the endorsed sponsor receives from the beneficiary the complete enrollment form for transitional assistance. Beneficiaries disenrolling from an endorsed program for reasons that warrant a special election period, however, are not considered to have left the transitional assistance program and are not subject to proration should they elect another endorsed program during CY 2005.

We elect to prorate transitional assistance in 2005 because we believe that, by 2005, beneficiaries will have had ample time to learn about the

Medicare drug discount card program. In addition, prorating transitional assistance encourages transitional assistance eligible beneficiaries to enroll in the Medicare drug discount card program as early as possible in order to maximize their transitional assistance amount, which in turn will increase the volume of covered discount card drugs obtained under an endorsed program and enhance an endorsed sponsor's ability to negotiate deeper discounts for discount card enrollees. We will calculate the amount of transitional assistance a transitional assistance enrollee may receive and notify endorsed sponsors of this amount.

TABLE 1.—2005 PRORATION SCHEDULE

Beneficiary application date	Amount payable
January 1–March 31, 2005	$600
April 1–June 30, 2005	450
July 1–September 30, 2005	300
October 1–December 31, 2005	150

In accordance with section 1860D–31(g)(2)(A)(ii)(II) of the Act, and as provided in § 403.808(f) of our regulations, any transitional assistance remaining available to a transitional assistance enrollee on December 31, 2004 may be rolled over to 2005 and applied toward the cost of covered discount card drugs obtained under the Medicare drug discount card program during 2005. As provided in § 403.811(b)(5) of our regulations, transitional assistance enrollees who disenroll from the Medicare drug discount card program in 2004 and who are not eligible for a special election period as provided in § 403.811(b)(2) of our regulations, however, may not rollover any unused transitional assistance if they re-enroll in the program in 2005. Any transitional assistance remaining available to a transitional assistance enrollee on December 31, 2005 may be applied toward the cost of covered discount card drugs obtained under the program during the transition period provided the transitional assistance enrollee remains enrolled in the program through the end of 2005 and during the transition period.

As required by section 1860D–31(c)(2)(E) of the Act and as provided for in § 403.808(c) of our regulations, CMS will pay to an endorsed sponsor the annual enrollment fee, if any, for its transitional assistance enrollees.

Section 1860D–31(c)(4) of the Act gives the Secretary the discretion to establish the date upon which access to transitional assistance through an endorsed program will take effect. As specified in § 403.811(a)(11) of our regulations, transitional assistance will be made available to beneficiaries determined eligible for transitional assistance beginning on the effective date of their enrollment in the transitional assistance program specified in their transitional assistance eligibility determination notice.

5. Reconsideration of Eligibility

As discussed above, section 1860D–31(f) of the Act also provides for an eligibility determination process consisting of self-certification and, at the discretion of the Secretary, verification through data matching. For beneficiaries applying for the Medicare drug discount card program, we will verify their eligibility for the program by reviewing State data, for example, on beneficiaries with outpatient drug coverage under Medicaid or a section 1115 waiver demonstration. For beneficiaries applying for transitional assistance, we will verify their income by reviewing our data on their income and other retirement and disability benefits.

Section 1860D–31(f)(4) of the Act requires the Secretary to establish a reconsideration process for beneficiaries initially determined ineligible for transitional assistance. Under our authority to establish procedures for determining beneficiaries' eligibility for the Medicare drug discount card program, as provided for in section 1860D–31(f)(1)(A) of the Act, we also will establish a reconsideration process for beneficiaries initially determined ineligible for the program. Accordingly, as provided in § 403.810(g)(1) of our regulations, every beneficiary determined ineligible for the program and/or transitional assistance can request that we reconsider this determination.

A beneficiary will be given specific instructions on how to request reconsideration when he or she is notified of our negative eligibility determination. We will provide standardized language for this notice in the information and outreach materials that will accompany the solicitation, as discussed in section II.C.7. of this document. As provided in § 403.810(g)(2) of our regulations, reconsideration requests must be filed within 60 days from date of notice of a negative eligibility determination, unless the individual can demonstrate good cause for why the 60-day time frame should be extended.

Section 1860D–31(f)(4)(B) of the Act authorizes the Secretary, and § 403.810(g)(4) of our regulations provides that the Secretary will enter into a contract for the performance of reconsiderations. We will contract with an independent entity to conduct reconsiderations on our behalf. Finally, § 403.810(g)(3) of our regulations provides that beneficiaries requesting reconsideration may provide, in writing, to our reconsideration contractor additional documentary evidence or an explanation about his or her eligibility. The reconsideration contractor will provide the beneficiary a written final eligibility determination.

6. Disenrollment and Enrollment in Another Endorsed Program

In accordance with section 1860D–31(c)(1)(D)(i) of the Act, § 403.811(b)(1) of our regulations provide that a discount card enrollee may voluntarily disenroll from an endorsed program at any time; however, such a beneficiary may only enroll in another endorsed program without having to re-apply and re-qualify under two conditions—during the annual coordinated election period or during a special election period, as described below.

Section 1860D–31(c)(1)(C)(ii) of the Act and § 403.811(a)(7) of our regulations provide that beneficiaries enrolled in an endorsed program in 2004 may elect to change endorsed programs during the annual coordinated election period from November 15 through December 31, 2004. The effective date of an enrollment election made during the annual coordinated election period will be January 1, 2005.

Under section 1860D–31(c)(1)(C)(i) of the Act, and as provided in § 403.811(a)(7) of the regulations, discount card eligible individuals generally may enroll in only one endorsed program during a calendar year. Beneficiaries voluntarily disenrolling from an endorsed program during the enrollment period, and not changing programs during the annual coordinated election period, may immediately enroll in another endorsed program during the enrollment period only under limited circumstances. Section 1860D–31(c)(1)(C)(iii) of the Act authorizes the Secretary to establish exceptions to the limitation of enrolling in only one endorsed card program per year. As specifically permitted by section 1860D–31(c)(1)(C)(iii) of the Act and as set forth in § 403.811(b)(2) of our regulations, a beneficiary disenrolling from an endorsed program for any of the following reasons is awarded a special election period and may enroll in another endorsed program at any time in the enrollment period.

(1) The beneficiary moved outside his or her endorsed program's service area;

(2) The beneficiary changed his or her residence to or from a long-term care facility;

(3) The beneficiary enrolled in or disenrolled from a Part C plan or a Medicare cost plan; or

(4) Other exceptional circumstances as determined by the Secretary.

In addition, we will permit beneficiaries to enroll in new endorsed programs if their prior endorsed program terminates or they enroll in or disenroll from a reasonable cost reimbursement plan.

We consider a discount card enrollee who disenrolls for reasons other than those provided above to have left the Medicare Drug Discount Card program entirely, as provided in § 403.810(d) of our regulations. As permitted under sections 1860D–31(c)(1)(D)(i) and (f)(2)(B) of the Act and as provided in our regulations at § 403.811(b)(4), beneficiaries voluntarily disenrolling from an endorsed program in 2004 other than for one of the above reasons, or who are involuntarily disenrolled, must re-apply as if they were new to the program for the Medicare Drug Discount Card Program for 2005 if they wish to enroll in another endorsed program. The earliest an individual may re-apply for the Medicare Prescription Drug Discount Card is during the annual coordinated election period. Because an individual may only enroll in one endorsed card program in each calendar year, as provided in § 403.811(a)(7) of our regulations, beneficiaries voluntarily disenrolling from an endorsed program in 2005, other than for one of the above reasons, or who are involuntarily disenrolled, cannot reenroll in an endorsed card program. Individuals disenrolling for any reason during the transition period cannot re-enroll.

With respect to beneficiaries enrolling in or disenrolling from a Part C plan or reasonable cost reimbursement plan, section 1860D–31(c)(1)(C)(iii) of the Act permits but does not mandate that we allow these beneficiaries to disenroll from their current endorsed program and enroll in another endorsed program during a special election period. Beneficiaries enrolling in or disenrolling from a Medicare managed care plan offering an exclusive card program will be automatically disenrolled from their endorsed programs, as they will no longer be eligible for such endorsed programs under § 403.814(b)(6)(i) of our regulations. We believe that Medicare beneficiaries entering and leaving a Part C plan or a Medicare cost plan without an exclusive card program will wish to choose an endorsed program based on the benefit package under their current health coverage, including other Part C plans and Medicare cost plans, and that this benefit package may change when beneficiaries enroll in or disenroll from a Part C plan or Medicare cost plan. To promote beneficiaries' coordination of their health benefits, we will allow beneficiaries enrolling in or disenrolling from any Part C plan or a Medicare cost plan to disenroll from their current endorsed program and enroll in another endorsed program during a special election period.

We will automatically disenroll beneficiaries from an endorsed program if their endorsed program terminates, the beneficiary enrolls in or disenrolls from a Medicare managed care plan offering an exclusive card program, or the beneficiary elects another endorsed program during the Annual coordinated election period. All other beneficiaries wishing to disenroll from their endorsed program must notify their endorsed sponsor of their intent, and, if they wish to enroll in another endorsed program during a special election period, provide the endorsed sponsor their reason for disenrollment.

As required in section 1860D–31(c)(1)(D)(ii) of the Act, and as specified in § 403.811(b)(6) of our regulations, an endorsed sponsor may involuntarily disenroll any discount card enrollee, other than a transitional assistance enrollee, if the discount card enrollee fails to pay any annual enrollment fee charged by the endorsed sponsor.

As provided in § 403.811(b)(7) of our regulations and as discussed under section II.C.6 of this document, a discount card enrollee who changes endorsed programs during a special election period may be charged a separate annual enrollment fee by the endorsed sponsor operating the newly selected endorsed program.

Under section 1860D–31(g)(2)(E) of the Act and § 403.811(b)(5) of our regulations, transitional assistance enrollees who disenroll from their endorsed programs generally will forfeit any transitional assistance remaining available to them at the time of their disenrollment. Transitional assistance enrollees who disenroll during the first year of the program and are ineligible for a special election period must re-apply and re-qualify for transitional assistance for the second year of the program should they wish to receive additional transitional assistance. The earliest an individual may re-apply for the Transitional Assistance Program for 2005 is through their re-enrollment in an endorsed card program during the annual coordinated election period. Any transitional assistance provided to these individuals during the second year of the program may be prorated depending on when they re-apply for transitional assistance in accordance with § 403.808(b) of our regulations.

Section 1860D–31(g)(2)(E) of the Act gives the Secretary the discretion to identify exceptions to this policy. As specified in § 403.808(f) of our regulations, we will permit transitional assistance enrollees who change their endorsed program during the annual coordinated election period or who enroll in another endorsed program during a special election period to carryover to their newly selected endorsed program any transitional assistance remaining available to them at the time of their disenrollment from their former endorsed program.

B. General Rules About Solicitation, Application, and Medicare Endorsement Period

We will solicit applications from entities seeking to offer beneficiaries negotiated prices on covered discount card drugs. We will endorse applicants' drug discount card programs that meet the requirements discussed below, and will permit successful applicants to market and label their programs as ''Medicare-approved.''

Although under section 1860D–31(h)(2)(D)(ii) of the Act we have the discretion to limit the number of endorsed sponsors in a State to two, we will endorse all applicants that, together with their subcontractors and other entities with which they have entered into a legal arrangement to operate an endorsed program (hereinafter collectively referred to as ''subcontractors''), meet or exceed the requirements for endorsement and sign our endorsed sponsor contract. We will also select a limited number of applicants for special endorsement. Endorsed sponsors receiving special endorsement are, for the purpose of fulfilling their responsibilities as special endorsed sponsors, exempt from meeting certain conditions of endorsement provided they agree to:

- Apply transitional assistance toward the cost of covered discount card drugs obtained from pharmacies serving residents of skilled nursing facilities and nursing facilities (hereafter referred to as ''long-term care pharmacies'') and/or pharmacies serving American Indians or Alaska Natives (AI/ANs) operated by the Indian Health Service, Indian tribe and tribal organizations, or urban Indian organizations (hereinafter referred to as ''I/T/U pharmacies''); and/or

• Offer an endorsed program in all the U.S. territories.

We will select applicants for special endorsement based on a competitive process, with consideration given to which applicants can best serve these populations. Applicants seeking special endorsement also must apply and, except in specified circumstances, meet the requirements for basic endorsement; however sponsors seeking special endorsement may request waivers of requirements, allowing, for example, an applicant to apply for special endorsement solely for the purpose of long-term care pharmacy business to the exclusion of all other types of pharmacies. The requirements and procedures related to special endorsements are discussed in further detail in sections II.I. and II.J. of this document.

Except as provided in section 403.804 (c)(2) of our regulations and discussed below in section II. O.2.C. of the preamble, we anticipate that endorsed sponsors may begin information and outreach activities, as well as enrollment activities as early as Spring 2004, and expect that these activities will begin no later than 6 months from the date of enactment of the Act; we reserve the right to terminate an endorsed sponsor's endorsement if the endorsed sponsor is not ready to fully operate its endorsed program and begin information and outreach activities by the 6 month deadline. The date upon which we will permit an endorsed sponsor to begin these activities will depend on its satisfaction of certain conditions, including—

• Finalizing pharmacy network contracts;

• Negotiating manufacturer rebates or discounts;

• Entering into an endorsed sponsor contract with us;

• Operationalizing call centers;

• Entering into all subcontracts necessary to ensure full compliance with the conditions of endorsement;

• Obtaining our approval of all information and outreach materials; and

• Establishing and obtaining CMS approval of a system for conducting electronic transactions with us (or our subcontractor), including successful testing of such system.

As stated above, we expect these requirements to be met within 6 months of enactment, and may terminate an endorsed sponsor's endorsement if the requirements are not met by this time. These requirements are discussed in greater detail below.

A solicitation for applications for Medicare endorsement under the Medicare drug discount card program will follow publication of this interim final rule. We expect to publish the solicitation on or near the date of publication of this rule. Following publication of the solicitation, potential applicants seeking clarification on the application process and requirements for endorsement may submit questions to us. In addition, we will hold a pre-application conference for potential applicants approximately 2 weeks after publication of the solicitation.

In order to ensure that we successfully implement the Medicare drug discount card program no later than 6 months after enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, we anticipate that applicants will first need to submit completed applications to CMS within 45 days after the publication date of the solicitation. Applicants must certify that based on best knowledge, information, and belief, the reported information is accurate, complete, truthful, and supportable.

We will require applicants to provide with their applications certain information and test files, as specified in the solicitation. Such information and files will be used by us to expedite our implementation of the data systems necessary to support enrollment in the Medicare drug discount card program, determinations of beneficiaries' eligibility for transitional assistance, and comparison of endorsed programs negotiated prices.

Medicare endorsement of a sponsor's drug discount card will be valid for the duration of the Medicare drug discount card program, which in accordance with section 1860D–31(a)(2)(C)(i)(I) of the Act will terminate on December 31, 2005. Section 1860D–31(a)(2)(C)(ii) of the Act authorizes the Secretary to issue rules governing the transition period, including rules ensuring that the balance of any transitional assistance remaining available to a transitional assistance enrollee on January 1, 2006 remain available during the transition period. Under this authority we require endorsed sponsors to continue operating their endorsed program during the transition period, including ensuring that their card enrollees have access to negotiated prices and that transitional assistance enrollees can apply any transitional assistance remaining available to them toward the cost of covered discount card drugs obtained under the program during the transition period.

See section II.F. of this document for a discussion of termination of an endorsed sponsor's endorsement.

Section 403.804(d) of our regulations specifies that as a condition of endorsement, an endorsed sponsor must sign a contract. The contract signature will certify that the endorsed sponsor will comply with all requirements set forth in the contract, will implement its endorsed program in accordance with the program description contained in its application, and will operate its endorsed program consistent with the requirements set forth in the Act, this rule, and all other applicable Federal and State laws, including administering transitional assistance for eligible enrollees and conducting information and outreach activities consistent with our guidelines.

C. Sponsor Requirements for Eligibility for Endorsement Under the Medicare Drug Discount Card and Transitional Assistance Program

Section 1860D–31(a)(1)(A) of the Act requires the Secretary to endorse qualified applicants seeking to offer endorsed discount card programs to Medicare beneficiaries. Section 1860D–31 of the Act sets forth specific requirements that applicants must satisfy to be eligible for endorsement and that endorsed sponsors must meet to retain their endorsement. In addition, section 1860D–31(h)(8) of the Act authorizes the Secretary to prescribe additional requirements of endorsement that the Secretary concludes protect and promote the interests of beneficiaries. Accordingly, we require applicants seeking endorsement under the Medicare drug discount card program to demonstrate that they meet a series of requirements related to—

• Organizational structure and experience;

• Service area;

• Pharmacy network access;

• Administering transitional assistance;

• Prescription drug offering;

• Eligibility and enrollment processes;

• Customer service, including information and outreach;

• Grievance processes;

• HIPAA administrative simplification provisions and other marketing and security provisions;

• Document retention; and

• Data reporting to CMS.

In this section of the document we describe these conditions for endorsement.

Special rules govern Medicare managed care organizations wishing to limit enrollment in their endorsed programs to members of one or more of their Medicare managed care plans.

Rules governing these exclusive card programs are discussed in section II.G. of this document.

Applicants seeking special endorsement—that is, applicants wishing to offer an endorsed program in the U.S. territories and/or applicants willing to include within their pharmacy networks' long-term care and/or I/T/U pharmacies—also are subject to special rules, as set forth in § 403.816 and § 403.817 of our regulations and discussed in sections II.I and II.J of this document.

1. Applicant Structure and Experience

Under section 1860D–31(h)(1)(A) of the Act, the Secretary is authorized to designate the type of non-governmental entities that are appropriate to act as endorsed sponsors, which may include pharmacy benefit management companies, wholesale or retail pharmacy delivery systems, insurers (including insurers offering Medicare supplemental policies), and Part C plans. Although we have the authority to limit the types of entities that may act as endorsed sponsors, the only specific structural requirement for a sponsor is that it be a non-governmental, single legal entity doing business in the United States. We choose not to impose other structural requirements at this time because our conditions for endorsement ensure that applicants, either individually or through subcontracts, will have the necessary experience and integrity to act as endorsed sponsors. Thus, as long as an applicant can meet our conditions for endorsement through subcontracting, except as stated above, we do not mandate the legal form of the endorsed sponsor.

Although only one legal entity may act as the applicant, our regulations at § 403.804(c)(1) permit applicants to combine their capabilities with other entities in order to meet the requirements for endorsement. As further discussed below, applicants must include documentation related to their legal arrangements with subcontractors.

As specified in section 1860D–31(h)(1)(B) of the Act, an applicant is eligible for endorsement under the Medicare drug discount card program if the applicant, together with its subcontractors, has demonstrated experience and expertise in operating a drug discount card or similar program and meets certain requirements related to business stability and integrity. We interpret this provision to mean that applicants, together with their subcontractors, must: (1) Demonstrate 3 years of private sector experience in pharmacy benefit management; (2) currently serve at least 1 million covered lives; and (3) demonstrate fiscal stability and business integrity, as provided in § 403.806(a) and § 403.806(b) of our regulations. Medicare managed care organizations offering exclusive card programs, while required to comply with most of the conditions related to applicant structure, are subject to alternative requirements, as discussed in greater detail in section II.G. of this document.

a. 3 Years of Private Sector Experience

Section 403.806(a)(2) of the regulations provides that each applicant, together with its subcontractors, must have 3 years of private sector experience within the United States in the following:

- Adjudication and processing of claims at the point of sale;
- Negotiating with prescription drug manufacturers and others for rebates and discounts on prescription drugs; and
- Administration and tracking of an individual subsidy or benefit in real time.

We require that this experience must have occurred in the United States to ensure that the applicant, together with its subcontractors, is familiar with applicable Federal laws, including those enforced by the Food and Drug Administration. We believe requiring 3 years prior experience will ensure that endorsed sponsors are able to quickly establish their endorsed programs, thereby promoting implementation of the Medicare drug discount card program within 6 months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In addition, the 3 years prior experience requirement ensures that endorsed sponsors have the necessary experience and capacity to offer card enrollees quality discounts and customer service. Moreover, given the relative newness of the drug card industry and high market turnover, we believe requiring less than 3 years experience would create an untenable risk of having the Medicare name associated with less than stable and reputable organizations.

b. 1 Million Covered Lives

In addition to requiring 3 years of relevant experience, our regulations at § 403.806(a)(3) require that a single entity which is either the applicant or a subcontractor operate a pharmacy benefit program, a drug discount card, a low-income drug assistance program, or a similar program that serves at least 1 million covered lives.

We interpret covered lives to mean discrete individuals who have signed enrollment agreements with or paid (or have paid on their behalf) an enrollment fee or insurance premium to the applicant (or its subcontractors), or some comparable documentation. An applicant must include in its application documentation demonstrating that the applicant meets this requirement. If an applicant contracts with other entities for purposes of administering an endorsed program, the entity satisfying the 1 million covered lives requirement need not be the same entities satisfying the 3 years experience requirement. We choose not to link the 1 million covered lives requirement with the 3-year experience requirement in order to provide entities the flexibility to combine their capabilities. For example, an entity with the requisite experience may not have the enrollment capacity, but may acquire this capacity by contracting with another entity for purposes of administering the endorsed program. (A single entity, however, must meet the 1-million covered lives requirement. Therefore, an entity with 600,000 covered lives could not combine with an entity with 400,000 covered lives and meet the conditions for endorsement.)

As discussed in the impact analysis, we estimate that during the first year of the Medicare drug discount card program, over 7 million beneficiaries may wish to enroll in the program, and anticipate that endorsed sponsors should have the capacity to accept between 1 to 10 percent of this volume. This influx of Medicare beneficiaries—100,000 to several hundred thousand beneficiaries—enrolling in an endorsed program would represent a sizable expansion over most card programs' current operations. Our 6-month implementation timeline requires that endorsed sponsors be able to quickly accommodate this potentially large influx of enrollees over a relatively short period of time. Current levels of covered lives provides evidence of an applicant's immediate capacity to do so.

In examining our data on the number of covered lives served by a variety of organizations, we found that a standard of 1 million lives strikes a balance between ensuring a competitive marketplace with a number of different endorsed programs available to Medicare beneficiaries and ensuring that endorsed sponsors have the capacity to handle a large influx of card enrollees.

c. Demonstration of Financial Stability and Business Integrity

As required by section 1860D–31(h)(1)(B) of the Act, and as provided for in § 403.806(b)(1) of our regulations, an applicant must demonstrate the financial stability and business integrity of itself, and any of its subcontractors on which the applicant relies to—

(1) Develop the pharmacy network;

(2) Handle the negotiation of drug rebates or discounts;

(3) Administer enrollment, including transitional assistance eligibility determinations;

(4) Administer transitional assistance; or

(5) Meet the 3-years of experience and/or covered lives requirements.

The application should include the following documents or information for the applicant and each of these subcontractors:

- A summary of the entity's history, structure, and ownership, including a chart showing the structure of ownership, subsidiaries, and business affiliations;
- The most recent audited financial statements (balance sheet, income statement, statement of cash flow along with auditor's opinions, and related footnotes), which must demonstrate that the entity's total assets are greater than total unsubordinated liabilities and that the entity has sufficient cash flow to meet its obligations as they come due;
- Financial ratings, if any, for the past 3 years; and
- Listing of past or pending investigations (if known to the entity) and legal actions brought against the entity (and its parent entities, if applicable) by any financial institution, government agency (local, State, or Federal), or private organization over the past 3 years on matters relating to health care and prescription drug services and/or allegations of fraud, misconduct, or malfeasance. The application should include a brief explanation of each action, including the following: (1) Circumstances giving rise to the action; (2) the action's status (pending or closed); and (3) if closed, details as to resolution of the action and any monetary damages.

Additionally, we plan to conduct an independent investigation of each entity, with respect to the above factors, which will include a review of Federal databases available to us that may contain information pertaining to legal issues involving the entity.

In deciding whether to endorse an applicant with a record of legal actions brought against it, we will evaluate that record based on factors that include: (1) Whether the action is a pending investigation or has resulted in a settlement or judgment against the applicant, (2) whether the settlement or judgment has been issued recently (for example, within the past 3 years), (3) whether the conduct on which the judgment or settlement was based involved allegations of fraud or abuse, (4) whether the conduct was related to reimbursement for health care services or products, and (5) whether the applicant is currently operating under a corporate integrity agreement with the DHHS Office of the Inspector General.

We require the applicant to demonstrate the business stability and integrity of the applicant and these subcontractors to ensure that we endorse only those endorsed sponsors that will be reliable, stable, and operate with integrity. We believe the specific requirements are an appropriate method for determining the business integrity and financial stability of an applicant and its subcontractors. For example, by requiring that assets exceed liabilities, we increase the likelihood that an endorsed sponsor will remain in the Medicare drug discount card program for the life of the program. Similarly, reviewing financial ratings and past or pending investigations allows us to represent to our beneficiaries that we have endorsed applicants that are financially sound and committed to a high level of business integrity.

As discussed elsewhere in this document, an applicant that is a Medicare managed care organization offering an exclusive card program will be deemed to have met these business stability and integrity requirements through its compliance with § 422.400, if a Part C plan, or §§ 417.120 and 417.122, if a Medicare cost plan.

Following its receipt of endorsement, as provided in § 403.806(b)(2) of our regulations, an endorsed sponsor (including both the applicant and its subcontractors) must continue to operate with fiscal stability and business integrity, in accordance with the same standards applicable to the applicant. Also, we require at § 403.806(c) that endorsed sponsors comply with all applicable Federal and State laws, including the Federal anti-kickback statute, section 1128B(b) of the Act (42 U.S.C. 1320a–7b(b)). As provided in § 403.806(b)(3) of our regulations, Medicare endorsement of a discount card program shall not be construed to express or imply any opinion that an endorsed sponsor or any subcontractor is in compliance with or not liable under the False Claims Act, Federal anti-kickback statute, or other laws, regulations, or policies regarding improper billing, claims submission, or related conduct.

d. Contracts With Subcontractors and Pharmacies

Although only one legal entity may act as the applicant, our regulations at § 403.804(c)(1) permit applicants to combine their capabilities with other entities in order to meet the requirements for Medicare endorsement. As will be further described in the solicitation, applicants must include documentation, including contracts or signed letters of agreement, related to their legal arrangements with these subcontractors if the applicant has combined with such entities to meet the following requirements—

- Years of experience and/or covered lives;
- Establishing a pharmacy network or home delivery through mail order;
- Negotiating manufacturer discounts or rebates;
- Conducting enrollment and transitional assistance eligibility;
- Administering transitional assistance;
- Operating the customer service call center;
- Administering a grievance process; and
- Developing information and outreach materials.

The contracts or signed letters of agreement must—

- Clearly identify the parties to the contract;
- Describe the functions to be performed by the subcontractor;
- Contain language indicating that the subcontractor has agreed to participate in the Medicare drug discount card program (except for a network pharmacy if the existing contract would allow participation in this program);
- Describe any payment the subcontractor will receive under the contract;
- Extend for the lifetime of the Medicare drug discount card program;
- Be signed and executed by representatives of each party with legal authority to bind the party;
- Require the subcontractor to comply with State and Federal privacy and security requirements applicable to the endorsed sponsor or the subcontractor, and our marketing and document retention requirements, including the requirements provided in § 403.812 and § 403.813 of our regulations and discussed in section II.C.9. of this document.

In addition, as will be further explained in the solicitation, an endorsed sponsor also must include in

its contracts with pharmacies participating in its network such terms and conditions as necessary to ensure that the endorsed sponsor meets all requirements for endorsement. This includes the requirement that subcontractors comply with all applicable Federal and State laws (including the anti-kickback law). Each application for endorsement must include one sample copy of every customized contract or letter of agreement used across the entire network. That is, we are asking to see every version of the contracts/letters of agreement across the network.

If the applicant is unable to provide with its application final versions or templates of letters of agreement or contracts that represent the exact terms and conditions under the program with each of its subcontractors and pharmacies satisfactory to CMS, the applicant may submit revised documentation following receipt of the Medicare endorsement. We expect the applicant, however, to provide such documentation no later than 6 months after the date of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and we reserve the right to revoke endorsement if the materials are submitted later. In addition, an applicant may not commence outreach and enrollment activities prior to our receipt of such documentation and our determination that such documentation meets our requirements. The 6-month deadline and prohibition on outreach and enrollment activities may be waived for endorsed sponsors receiving special endorsement for the purpose of fulfilling obligations related to special endorsement provided such sponsors make a good faith effort to meet these documentation requirements as soon as possible, as provided in § 403.816 and § 403.817.

2. Service Area

As provided in section 1860D–31(h)(3) of the Act, if an endorsed program enrolls beneficiaries residing in any part of a State, the program must permit any discount card eligible beneficiary residing in any portion of the State to also enroll in its endorsed program. We interpret this to mean, and provide in § 403.806(f)(1) of our regulations, that a State is the smallest service area permitted under the Medicare drug discount card program. Accordingly, an endorsed program may not limit enrollment to only a portion of a State, with the exception of exclusive card programs, which, as discussed in section II.G. of this document, may limit their service area to the service area of the Medicare managed care plan(s) whose members may enroll in the exclusive card program (which may include part of a State). Further, an endorsed program's service area could be regional, meaning it operates in more than one State (contiguous or not). In addition, we define ''national'' endorsed programs as endorsed programs operating in each of the 50 States and the District of Columbia; an endorsed program that does not operate in each of the 50 States and the District of Columbia may not describe itself as a ''national'' endorsed program. Finally, an endorsed program may not operate outside of the 50 States and the District of Columbia, with the exception of sponsors receiving special endorsement permitting them to operate in the territories, as discussed in section II.J of this document.

3. Pharmacy Network Access

As provided in section 1860D–31(e)(1)(B) of the Act, an endorsed discount card sponsor must ensure that its card enrollees have convenient access to covered discount card drugs at negotiated prices by securing the participation in its network of a sufficient number of pharmacies that dispense drugs (other than solely by mail order) directly to card enrollees. Specifically, consistent with the statement of work of solicitation #MDA906–03–R–0002 of the Department of Defense under the TRICARE Retail Pharmacy (TRRx) as of March 13, 2003, we are requiring in § 403.806(f)(3) of our regulations that, at all times during the program, beginning upon the date an endorsed sponsor initiates its outreach and enrollment activities—

- In urban areas served by the endorsed program, at least 90 percent of Medicare beneficiaries, on average, live within 2 miles of a pharmacy participating in the endorsed program's network;
- In suburban areas served by the endorsed program, at least 90 percent of Medicare beneficiaries, on average, live within 5 miles of a pharmacy participating in the endorsed program's network; and
- In rural areas served by the endorsed program, at least 70 percent of Medicare beneficiaries live, on average, within 15 miles of a pharmacy participating in the endorsed program's network.

For the purposes of meeting these access standards, as also defined in the statement of work of solicitation #MDA906–03-R–0002 of the Department of Defense—

- Urban is defined as a five-digit ZIP Code in which the population density is greater than 3,000 persons per square mile;
- Suburban is defined as a five-digit ZIP Code in which the population density is between 1,000 and 3,000 persons per square mile; and
- Rural is defined as a five-digit ZIP Code in which the population density is less than 1,000 persons per square mile.

The endorsed sponsor must meet or exceed these access standards at the endorsed program level, that is, across the entire geographic region serviced by the endorsed program. Only pharmacies that are under contract and are not mail order can be included in the count.

As we will explain further in the solicitation, applicants must demonstrate their capacity to satisfy the pharmacy network access standard using mapping software, provided by us, which will compute beneficiaries' access to the pharmacies participating in the applicant's network using one hundred percent of beneficiary counts (that is, the entire beneficiary population) by zip code. These data and the population density information will be provided by CMS on request. Tables generated by the mapping software must be included with the application and must include the urban, suburban, and rural areas in each of the States covered under the applicant's drug discount card program.

As discussed in greater detail in II.J. of this document, endorsed programs receiving special endorsement to operate in the territories may exclude the territories from the calculation as to whether the endorsed sponsor meets the above pharmacy access standard.

Exclusive card programs are not required to meet these same pharmacy access standards; rather, as discussed in greater detail in section II.G. of this document, exclusive card programs will be subject to an alternative access standard.

In accordance with section 1860D–31(e)(1)(B) of the Act, § 403.806(f)(4) of the regulations provides that endorsed sponsors will not be permitted to offer a mail order only option to their card enrollees. However, because some card enrollees may prefer to obtain their drugs from mail order pharmacies, endorsed programs will be allowed to offer a home delivery option via a mail order pharmacy, in addition to including their retail pharmacy in their networks. As discussed in greater detail in II.J. of this document, we may waive this requirement to allow mail order only in the territories for endorsed programs receiving special endorsement to operate in the territories.

4. Prescription Drug Offering

a. Covered Discount Card Drugs

Endorsed sponsors must offer their card enrollees discounts on covered discount card drugs. Section 1860D–31(a)(4)(A) of the Act states that the term ''covered discount card drug'' has the same meaning given the term ''covered Part D drug'' in section 1860D–2(e) of the Act. Section 1860D–2(e), in turn, is based on sections 1927(k)(2)(A)(i), (A)(ii), and (A)(iii) of the Act. This definition is incorporated into § 403.802 of our regulations under the definition of ''covered discount card drug.'' The definition applies only to the following types of prescription drugs:

(1) FDA-approved drugs;

(2) Drugs used or sold prior to the enactment of the Drug Amendments of 1962 (Pub. L. 87–781); and

(3) Drugs described in section 107(c)(3) of the Drug Amendments of 1962 and any drug for which the Secretary has determined there is a compelling justification for its medical need.

If the Secretary has determined, in the context of the Medicaid program, that there is a compelling justification for the medical need of a drug, such drug will be incorporated into our definition of ''covered discount card drug'' for purposes of this program.

Section 1860D–2(e) of the Act also includes in the definition of ''covered discount card drug'' a biological product which (1) may only be dispensed upon prescription, (2) is licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) and (3) is produced at an establishment licensed under each section to produce that product. Vaccines licensed under section 351 of the Public Health Service Act also are ''covered discount card drugs.'' Finally, section 1860D–2(e) of the Act includes insulin in the definition of covered discount card drug.

Necessary medical supplies associated with the injection of insulin are also included in this definition. We interpret necessary medical supplies for this purpose to include syringes, needles, alcohol swabs, and gauze. We do not consider test strips or lancets to be supplies associated with injection since these supplies are more directly related to testing.

The definition of covered discount card drug includes drugs when they are used for a medically accepted indication. The term ''medically accepted indication'' is defined in section 1927(k)(6) of the Act and generally means any use of a covered drug which is approved under the Federal Food, Drug, and Cosmetic Act, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia: American Hospital Formulary Service Drug Information; United States Pharmacopoeia-Drug Information; the DRUGDEX Information System; and American Medical Association Drug Evaluations. While we do not expect endorsed sponsors to collect diagnosis information to confirm diagnoses associated with every dispensed drug, endorsed sponsors should make an effort to responsibly comply with this provision.

Section 1860D–2(e)(2)(A) of the Act categorically excludes from the definition of ''covered discount card drug'' the following drugs or classes of drugs, or their medical uses, and we have no authority to alter this Congressional exclusion:

- Agents when used for anorexia, weight loss, or weight gain.
- Agents when used to promote fertility.
- Agents when used for cosmetic purposes or hair growth.
- Agents when used for the symptomatic relief of cough and colds.
- Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
- Nonprescription drugs.
- Outpatient drugs for which the manufacturer seeks to require associated tests or monitoring services be purchased exclusively from the manufacturer or its designee as a condition of sale.
- Barbiturates.
- Benzodiazepines.

Additionally, as provided in section 1860D–2(e)(2)(B) of the Act, a drug prescribed for a card enrollee that would otherwise be a covered discount card drug will not be considered a covered discount card drug if payment for that drug, as prescribed and dispensed or administered to the card enrollee, is available under Part A or Part B of Medicare (or would be available except for application of a deductible). That is, for prescribed drugs that may be payable under Medicare Part A or Part B, Medicare participating pharmacies should bill Medicare for the drug, and not the card enrollee or, in the case of transitional assistance enrollees, the endorsed sponsor, and non-Medicare participating pharmacies should refer the beneficiary to a Medicare participating pharmacy. When a pharmacy submits a claim under Medicare Part B, the rules applicable to pharmacies' claims adjudication under Part B will apply. Only after denial of a claim submitted under Part B may a pharmacy adjudicate a claim under the Medicare drug discount card program.

Furthermore, endorsed discount card sponsors should not reconcile any claims under the Medicare drug discount card program previously rejected under Medicare Part A or Part B when the covered discount card drug was purchased by a non-pharmacy provider to provide to the card enrollee. For example, if a physician provides a drug to a card enrollee incident to an office visit that is not covered by Medicare Part B, then endorsed sponsors may not apply transitional assistance toward the cost of such drug.

b. Formulary and Minimum Prescription Drug Offerings

Studies performed for the Department of Health and Human Services (BoozAllenHamilton, *Pharmaceutical Industry Scan,* August 6, 2002) have shown that one of the primary methods pharmacy benefit management companies and insurers negotiate drug discounts is through the establishment of a formulary. Through formularies that are properly structured, pharmacy benefit management companies, in consultation with a panel of physicians, pharmacists, and other health care professionals, establish clinically appropriate, safe, and cost-effective lists of covered prescription drugs. While clinical appropriateness must be foremost in the development of a formulary, a properly designed formulary can also promote lower costs for beneficiaries as pharmaceutical manufacturers compete, using, among other things, rebates, volume discounts, and generic drugs to supply the drugs that meet the formulary requirements at the lowest price. Therefore, in § 403.806(d)(1) of our regulations, we allow endorsed sponsors to establish formularies, whereby endorsed sponsors limit the set of drugs for which a discount is offered. However, even if an endorsed sponsor uses a formulary, it must permit transitional assistance enrollees to apply transitional assistance toward the cost of any covered discount card drug, including those not on the endorsed sponsor's formulary, offered by a pharmacy contracted by the sponsor for the endorsed discount card program's network. Our past research demonstrates that allowing sponsors to use a formulary will result in deeper discounts for card enrollees, and enhanced use of generic drugs, and we therefore have the authority to permit such formularies under section 1860D–31(h)(8) of the Act, as larger discounts and reduced prescription drug costs promote the interests of card enrollees.

While we recognize the useful role of formularies in providing discounts to beneficiaries, we also want to insure that sponsors, in constructing their formularies, include, at a minimum, the types of drugs commonly needed by beneficiaries. In establishing a minimum requirement, it is not our intention to build the operating framework of a sponsor's formulary, but rather to present a floor, as we believe a minimum requirement is better than none at all. As provided in § 403.806(d)(2) of our regulations and consistent with promoting and protecting beneficiaries as specified in section 1860D–31(h)(8) of the Act, each endorsed discount card program will be required to provide a negotiated price for at least one drug in each of the lowest level categories under each of the therapeutic groupings (hereafter, collectively referred to as ''categories'') representing the drugs commonly needed by Medicare beneficiaries as listed in Table 2. This minimum requirement in no way precludes sponsors from adding additional categories or differentiating the categories we provide as they construct their formularies. In fact, we anticipate that sponsors would do that through their usual process involving a pharmacy and therapeutics committee. The categories in Table 2 were structured to ensure that beneficiaries enrolling in Medicare-endorsed discount card programs will be offered discounts on many of the types of drugs most commonly needed by the Medicare population. There are a total of 209 categories (represented in italics within the table) for which card sponsors are required to offer a drug at a negotiated price. As some drugs can be classified into more than one category, a drug can be used only once to satisfy the criterion of providing a negotiated price for a drug in a category.

Moreover, under the rationale that discounts on commonly used generic drugs are also typically made available under current industry practice, and that offering discounts on generics improves beneficiary understanding of sources of prescription drug discounts, we are requiring that endorsed sponsors provide discounts on a range of generic drugs. Specifically, sponsors must provide at least one generic drug for a negotiated price in at least 55 percent of the required categories (italicized in Table 2). Fifty-five percent represents about 95 percent of those categories that include a Class A generic drug according to the FDA's Orange Book.

We believe it is important that the Medicare name be associated only with endorsed programs that offer at least the types of drugs commonly needed by Medicare beneficiaries, while still maintaining the ability to negotiate discounts. Thus, we believe that requiring at least one drug per category, including generic drugs, strikes the proper balance between achieving drug discounts for card enrollees and offering some assurance that discounts will be available for the drugs Medicare enrollees most commonly need.

It is important to note that endorsed sponsors have the flexibility to provide negotiated prices on as many drugs as they choose beyond the minimum number and types needed to satisfy this endorsement qualification criterion, and we expect that many endorsed sponsors will choose to do so in order to make their discount cards attractive to beneficiaries.

We employed a contractor to provide technical assistance to develop the list of categories in Table 2.[1] The following set of principles served to guide a comprehensive approach to develop the list of categories:

- The category list is based on covered discount card drugs, as defined in section 1860D–2(e) of the Act, and also represents the types of drugs commonly needed by Medicare beneficiaries, as determined through analyses of survey data from the 2000 Medicare Current Beneficiary Survey, 2002–2003 Scott Levin-Verispan pharmacy data, and Food and Drug Administration information.
- One category list will set minimum requirements for discount card offerings, regardless of whether an enrollee has access to transitional assistance funds. Importantly, provided that the drug is offered at the pharmacy, enrollees with transitional assistance can use these funds to purchase covered discount card drugs for which no discount is provided.
- A given category could not contain only a single drug.
- The list is intended to wrap around rather than represent existing Medicare Part B outpatient drug coverage.[2] As such, drugs, biologicals, and vaccines administered in physician offices, hospital outpatient departments, dialysis centers, or provided outside of retail pharmacies were not reviewed unless they also can generally be obtained through retail pharmacies and appeared in data sources used to identify drugs commonly used by Medicare beneficiaries.
- In compliance with section 1860D–2(e) of the Act, non-covered discount card drugs were excluded from review.

To develop the listing of therapeutic categories of drugs most commonly needed by Medicare beneficiaries, we first analyzed drug utilization and expenditure data from the 2000 Medicare Current Beneficiary Survey (MCBS), a CMS-sponsored continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries, to produce lists of the top 200 drugs used based on number of prescriptions and the top 200 drugs used based on expenditures. Separate lists were compiled for elderly enrollees and disabled enrollees to ensure that important drugs for both populations were captured.

We supplemented the list of commonly used drugs derived from the Medicare Current Beneficiary Survey by analyzing commercial datasets (Scott-Levin/Verispan Source Prescription Audit (SPA) and Physician Drug & Diagnosis Audit (PDDA)) for other commonly used drugs in the elderly populations. These data provide a comprehensive overview of the national performance of all prescription drugs dispensed by retail pharmacies for the 12-month period ending in May 2003. Utilization share percentages for people age 65 and over were applied to the data. Out of this data set, we obtained the top 200 drugs used based on number of prescriptions and the top 200 drugs used based on expenditures for the age 65 and over group. Prescription data is electronically collected on a monthly basis from approximately 35,000 U.S. retail pharmacies, including chains, independents, mass merchandisers, and food stores. It is estimated that SPA data cover approximately 70 percent of all dispensed prescriptions in the U.S. The Scott-Levin PDDA database includes data from approximately 365,000 office-based physicians in 29 specialties. Finally, to ensure that our list of commonly used drugs included new drugs and excluded retired and over-the-counter drugs (where over-the-counter drug is defined in our regulations at § 403.802 to mean non-prescription drug), we consulted current Food and Drug Administration (FDA) materials, including the FDA's ''Additions/Deletions for Prescription and OTC Drug Product Lists'' for June 2002 through July 2003.

After the list of drugs commonly needed by Medicare beneficiaries was

[1] Contract 500–02–0024 Modification #3, AMS, subcontracted to Navigant Consulting and Independent Pharmaceutical Consultants, Inc. *Identification of Baseline Therapeutic Categories for the Medicare Drug Discount Card Program.* December 5, 2003.

[2] Medicare coverage of outpatient drugs under Part B is principally for certain drugs and biologicals used in dialysis, cancer treatment, organ transplantation, certain vaccines and drugs used with DME such as infusion pumps and nebulizers.

finalized, we assigned therapeutic class codes and sorted each drug into therapeutic classes. We accomplished this by using an enhanced classification tool made available from First DataBank. The First DataBank Enhanced Therapeutic Classification System (ETC) [3] provides a method for classifying drugs and drug products into classes and sub-classes using a parent-to-child relationship hierarchy. Using a combination of identifiers and formulation-based and name-based drug concepts, the system provides for maximum flexibility and allows for categorization of drugs into more than one therapeutic classification as necessary. The drugs were assigned to therapeutic categories and sub-categories based on National Drug Code and/or drug short name. The classification tool was then used to sort the listing of commonly used drugs according to therapeutic categories and sub-categories. The category list then underwent the following steps:

- It was reviewed for major therapeutic classes that did not appear in the listing. In addition, non-covered discount card drugs were eliminated and drugs covered under Part B were flagged.
- The revised draft classification and sub-classification system was reviewed by a pharmacy team, external to CMS, consisting of 5 PhD and clinical pharmacists, and two geriatricians/internists, to determine the level of specificity required to ensure that the types of medications required by Medicare beneficiaries are represented. The category list was also compared with several commercial formulary categorization schemes.
- Several non-CMS internal medicine physicians with specialties in geriatrics and several non-CMS specialists with expertise in serving Medicare beneficiaries, reviewed the specifications and drugs listed to ensure that the category list represents types of drugs that are commonly needed by the Medicare population, and to provide the guidance concerning the drugs they routinely prescribe to Medicare beneficiaries in their areas of specialization, for the consideration of sponsors in their development of formularies for the Medicare drug discount card program. A total of 11 physicians took part in this review process.
- CMS clinicians, including 2 pharmacists and a physician, conducted a final review of the categories. We then finalized the categories based on this input.

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[3] According to First DataBank, the following sources were used in the compilation of data for the ETC: American Hospital Formulary Service (AHFS) Drug Information, Pharmacotherapy: A Pathophysiologic Approach, Martindale: The Extra Pharmacopeia, Applied Therapeutics: The Clinical Use of Drugs, Goodman and Gilman's The Pharmacological Basis of Therapeutics, Harrison's Principals of Internal Medicine, The Merck Manual of Diagnosis and Therapy, Current Medical Diagnosis and Treatment, The Merck Index, and manufacturer package inserts.

Table 2 Therapeutic Classes and Subclasses/Groups for Medications Frequently Used by Medicare Beneficiaries

Analgesic, Anti-inflammatory or Antipyretic
- Analgesic, Anti-inflammatory or Antipyretic - Non-Narcotic
  - NSAID's
    - *Cyclooxygenase Inhibitors Non-Selective and Combinations*
    - *Cyclooxygenase-2 (COX-2) Selective Inhibitors and Combinations*
  - *Salicylates and Salicylate Combinations*
  - *Analgesic or Antipyretic Non-Narcotic and Combinations*
  - *Disease Modifying Anti-Rheumatoid Drugs (DMARD)*
- Analgesics - Narcotic
  - Analgesic Narcotic Agonists and Combinations
    - *Analgesic Narcotic Agonists*
    - *Analgesic Narcotic Agonist Combinations*
    - *Analgesic Narcotic Partial/Mixed Agonists and Combinations*

Anorectal Preparations
- *Anorectal - Glucocorticoids*
- *Rectal/Lower Bowel- Glucocorticoids*

Anti-Infective Agents
- Antibacterial Agents
  - *Aminoglycosides*
  - *Antibacterial Folate Antagonists*
  - *Antibacterial Nitrofuran Derivatives and Combinations*
  - Antimycobacterial Agents
    - *Antitubercular Agents*
    - *Antileprotic Agents*
  - BetaLactam Antibiotics
    - *Penicillins*
    - *Cephalosporins*
  - *Glycopeptide Antibiotics (Vancomycin)*
  - *Lincosamides*
  - *Macrolides and Combinations*
  - Quinolones
    - *Fluoroquinolones and Combinations*
  - Tetracyclines and Combinations
    - *Tetracyclines*
- Antifungals
  - *Antifungal - Amphoteric Polyene Macrolides*
  - *Antifungal - Azole Agents*
  - *Antifungal Other*
- Antivirals
  - *Antiretrovirals*
  - *CMV Agents*
  - Hepatitis Agents
    - *Hepatitis B Treatment Agents*
    - *Hepatitis C Treatment Agents*
  - *Herpes Agents*
- Antiparasitics
  - *Antiprotozoal*

Antiprotozoal/Antibacterial Agents
Antiprotozoal/Antibacterial - Nitroimidazole Derivatives
Antineoplastics
Alkylating Agents
Antimetabolites
Antimetabolite - Folic Acid Analogs
Antimetabolite - Purine Analogs
Antimetabolite - Pyrimidine Analogs
Antimetabolite - Urea Derivatives
Antineoplastic - Hormone/Hormone Antagonist Agents
Antineoplastic - Antiandrogens
Antineoplastic - Aromatase Inhibitors
Antineoplastic - Selective Estrogen Receptor Modulators (SERMs)
Antineoplastic - Progestins
Chemotherapy Rescue/Antidote Agents
Cardiovascular Therapy Agents
Angina Therapy
Antianginal - Coronary Vasodilators (Nitrates) and Combinations
Antiarrhythmics
Antiarrhythmic - Class I
Antiarrhythmic - Class I-A
Antiarrhythmic - Class I-C
Antiarrhythmic - Class II
Antiarrhythmic - Class III
Antiarrhythmic - Class IV
Antihyperlipidemics
Antihyperlipidemic - Bile Acid Sequestrants
Antihyperlipidemic - Fibric Acid Derivatives
Antihyperlipidemic - HMG CoA Reductase Inhibitors
Antihyperlipidemic - Nicotinic Acid Derivatives
Antihyperlipidemic Agents Other (including ZETIA)
Beta Adrenergic Blockers
Beta Blockers Cardiac Selective, All
Beta Blockers Non-Cardiac Selective, All
Alpha-Beta Blockers
Calcium Channel Blockers
Calcium Channel Blockers - Benzothiazepines
Calcium Channel Blockers - Dihydropyridines
Calcium Channel Blockers - Phenylakylamines
Cardiac Inotropes
Diuretics
Diuretic - Loop and Combinations
Diuretic - Potassium Sparing Diuretics and Combinations
Diuretic - Potassium Sparing (Single Agent), All
Diuretic - Potassium Sparing in Combination
Diuretic - Thiazides and Related, and Combinations
Antihypertensive Therapy Agents
ACE Inhibitors
Angiotensin II Receptor Blockers (ARBs)
Antihypertensive Therapy Combinations
Central Alpha-2 Receptor Agonists
Peripheral Alpha-1 Receptor Blockers

Pulmonary Antihypertensive Agents
Vasodilators
Direct Acting Vasodilators
Central Nervous System Agents
Attention Deficit-Hyperact Disorder (ADHD) Therapy
Attention Deficit-Hyperactivity (ADHD) Therapy, Stimulant-Type
Antianxiety Agents
Antianxiety Agent - Antihistamine Type
Antianxiety Agent - Non-Benzodiazepine
Anticonvulsant
Anticonvulsant - Carboxylic Acid Derivatives
Anticonvulsant - Hydantoins
Anticonvulsant - Iminostilbene Derivatives
Anticonvulsant Others
Antidepressants
Antidepressant - Alpha-2 Receptor Antagonists (NaSSA)
Antidepressant - Monamine Oxidase (MAO) Inhibitors
Antidepressant - Norepinephrine & Dopamine Reuptake Inhibitors (NDRIs)
Antidepressant - Serotonin-2 Antagonist/Reuptake Inhibitors (SARIs)
(1) *Antidepressant - Selective Serotonin & Norepinephrine Reuptake Inhibitors (SSRIs & SNRIs)*
Antidepressant - Tricyclics & Related (Non-Select Reuptake Inhibitors)
Antidepressant Combinations
Antimanic Agents
Antiparkinson Therapy
Antiparkinson Therapy - Anticholinergic Agents
Antiparkinson Therapy - Dopaminergic
Antiparkinson's Adjuvants
Antiparkinson Combination Agents
Antipsychotics
Antipsychotic - Dopamine Antagonists
Antipsychotic - Dopamine/Serotonin Antagonists
Antipsychotic - Atypical Agents, General
Migraine Therapy
Migraine Therapy - Serotonin Agonists
Migraine Therapy - Carboxylic Acid Derivatives
Sedative/Hypnotics
Chemical Dependency, Agents to Treat
Smoking Deterrents and Combinations
Cognitive Disorder Therapy
Cognitive Disorder Therapy - Antidementia
Antidementia - Cholinomimetics (ACHE Inhibitors)
Dermatological
Acne Therapy
Acne Therapy Topical
Dermatological - Anti-infectives
Dermatological - Antibacterials
Dermatological - Antifungals
Dermatological - Anti-infective Combinations
Dermatological - Antineoplastic or Premalignant Lesions
Dermatological - Antipruritics
Dermatological - Antiseborrheic Products and Combinations
Dermatological - Burn Products

Dermatological - Emollients and Combinations
Dermatological - Glucocorticoids and Combinations
Dermatological - Keratolytics/Antimitotics
Dermatological - Protectants and Combinations
Dermatological - Rosacea Therapy, Topical
Electrolyte Balance/Nutritional Products
Prenatal Vitamins and Combinations
Endocrine
Corticosteroids
Glucocorticoids and Combinations
Androgen-Anabolic
Anabolic Steroids
Estrogens and Combinations
Estrogens
Estrogen Combinations
Progestins
Diabetic Therapy
Insulin
Insulin - Human and Combinations
Oral Antidiabetic Agents
Alpha-Glucosidase Inhibitors
Oral Antidiabetic - Biguanides
Oral Antidiabetic - Insulin-Release Stimulant Type
Insulin Response Enhancers
Oral Antidiabetic Combinations
Hyperglycemic Agents and Combinations
Thyroid Therapy
Thyroid Hormones and Combinations
Anterior Pituitary Hormones and Hormone Antagonists
Calcium & Bone Metabolism Regulators
Posterior Pituitary Hormones
Antidiuretic and Vasopressor Hormones
Prolactin Inhibitors
Gastrointestinal Therapy Agents
Gastrointestinal Antispasmodics
GI Antispasmodic - Belladonna Alkaloids
GI Antispasmodic - Quaternary Ammonium Compounds
GI Antispasmodic - Synthetic Tertiary Amines
GI Antispasmodic Combinations
Peptic Ulcer Therapy
Peptic Ulcer - Antisecretory Agents
Peptic Ulcer - H-2 Antagonists
Peptic Ulcer - Proton Pump Inhibitors
Peptic Ulcer - Cytoprotectives
Peptic Ulcer - Prostaglandin Analogues
Peptic Ulcer Therapy Combinations
Antacids and Combinations
Antidiarrheals
Laxatives
Laxative - Saline and Osmotic
Laxative - Surfactant
Laxative Combinations

Antiemetics
Antiemetic - Antihistamines and Antihistamine Combinations
Antiemetic - Phenothiazines
Antiemetic - Selective Serotonin 5-HT3 Antagonists
Gastrointestinal Prokinetic Agents
Gallstone Solubilizing Agents and Combinations
Colonic Acidifier (Ammonia Inhibitor)
Inflammatory Bowel Agents
Phosphate Binders
Digestive Aids
Genitourinary Therapy
Urinary Anti-infectives
Urinary Antibacterials
Urinary Antibacterial - Quinolones
Urinary Antibacterial - Nitrofuran Derivatives
Urinary Antispasmodics
Urinary Antispasmodic - Anticholinergics
Urinary Antispasmodic - Smooth Muscle Relaxants
Urinary Antispasmodic Combinations
Urinary Ph Modifiers
Urinary Ph Modifier - Alkalinizers
Urinary Analgesics
Prostatic Hypertrophy Agents
Prostatic Hypertrophy Agent - 5-Alpha Reductase Inhibitors
Gout and Hyperuricemia Therapy
Gout - Acute Therapy
Hyperuricemia Therapy
Gout and Hyperuricemia Combination Drugs
Hematological Agents
Anticoagulants
Hematopoietic Agents
Hematopoietic Agents - Hematopoietic Growth Factors
Erythropoietins
Granulocyte Colony-Stimulating Factor (G-CSF)
Granulocyte/Macrophage Colony-Stimulating Factor (GM-CSF)
Hematorheologic Agents
Platelet Aggregation Inhibitors & Combinations
Immunosuppressive Agents

Impotence Agents

Locomotor System
Musculoskeletal Therapy Agents
Skeletal Muscle Relaxants
Skeletal Muscle Relaxant - Central Muscle Relaxants
Skeletal Muscle Relaxant Combinations
Neuromuscular Therapy Agents
Neuromuscular Therapy Agents - ALS Agents
Mouth/Throat/Dental - Preparations
Mouth and Throat - Anti-infectives
Mouth and Throat - Antifungals
Mouth and Throat - Glucocorticoids

Multiple Sclerosis Agents

Ophthalmic Agents
- Ophthalmic - Anti-infectives
  - Ophthalmic Antibacterial
    - *Ophthalmic - Fluoroquinolones*
    - *Ophthalmic - Macrolides*
    - *Ophthalmic - Steroidal Antibiotics*
  - *Ophthalmic Anti-infective Combinations*
- Ophthalmic - Anti-inflammatory
  - *Ophthalmic - Anti-Inflammatory, Glucocorticoids*
  - *Ophthalmic - Anti-Inflammatory, NSAIDs*
- Ophthalmic - Antiallergy
  - *Ophthalmic - Antihistamines*
  - *Ophthalmic - Mast Cell Stabilizers*
- Ophthalmic - Intraocular Pressure Reducing Agents
  - *Ophthalmic - Selective Alpha Adrenergic Agonists*
  - *Ophthalmic - Beta-blockers*
  - *Ophthalmic - Prostaglandin Analogs*
  - *Ophthalmic - Miotics*
  - *Ophthalmic - Carbonic Anhydrase Inhibitors*
  - *Ophthalmic - Intraocular Pressure Reducing Combinations*
- Ophthalmic - Mydriatics and Cycloplegics
  - *Ophthalmic - Anticholinergics*
- Ophthalmic Combinations
  - *Ophthalmic - Anti-infective/Anti-inflammatory Combinations*

Otic
- Otic Combinations
  - *Otic - Anti-infective/Glucocorticoid Combinations*

Respiratory Therapy Agents
- Antihistamines
  - *Antihistamines - 1st Generation*
  - *Antihistamines - 2nd Generation*
- Asthma Therapy Agents
  - *Asthma Therapy - Anticholinergics*
  - *Asthma Therapy - Beta Adrenergic Agents*
  - *Asthma Therapy - Glucocorticoids*
  - *Asthma Therapy - Leukotriene Modulators*
  - *Asthma Therapy - Xanthines*
  - *Asthma Therapy Combinations*
- Nasal Preparations
  - *Nasal Anti-infectives*
  - *Nasal Antiallergy*
  - *Nasal Anticholinergics*
  - *Nasal Corticosteroids*

Vaginal Products
- Vaginal Anti-infectives
  - *Vaginal Antifungals*
- *Vaginal Estrogens*

Footnotes:

(1) Combined category, not part of First DataBank therapeutic classification system.

Notes:

Non-italicized categories represent therapeutic class titles or headings. Endorsed sponsors will not be required to provide drugs in these categories.

Italicized categories represent those categories where an endorsed sponsor must provide at least one prescription drug at a discount within the category.

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In the interest of protecting beneficiaries' health, we believe there are several issues applicants should consider in developing their formularies, if they plan to use one. First, there are several medications that are not widely recommended for use in the elderly population based on their potential to cause adverse outcomes (Beers MH. Explicit criteria for determining potentially inappropriate medication use by the elderly. *Arch Intern Med.* 1997; 157:1531–1536). However, under certain clinical conditions, some of these medications may be appropriate for use in the elderly population. Endorsed sponsors should evaluate whether or not to include these drugs on their formularies, as well as ways in which to help reduce the potential for adverse drug reactions, described further in section II.C.7. of this document.

Second, another key area for consideration by endorsed sponsors is the importance of ensuring that negotiated prices are available to special populations. Certain groups, such as beneficiaries who are HIV positive, beneficiaries with a mental illness, and beneficiaries with cancer may require treatment with a variety of specific medication combinations, which may not be easily substitutable. The medical treatment of these beneficiaries and other special populations may be significantly compromised if discounts are not made available on particular medications that they require.

Finally, we believe endorsed sponsors should consider ensuring that there are appropriate selections and dosage forms of drugs within each class or subclass as needed (for example, long-acting versus short-acting). In some cases, this might require more than one drug to satisfy a single subclass or group. Specifically, there are several therapeutic classes that contain both short-acting and long-acting medications. These medications commonly come in both standard oral dosage forms and time-release dosage forms.

We are requesting that applicants address these issues in their applications if they will use a formulary so that we may have a fuller understanding of how drug discount card programs will address the needs of Medicare beneficiaries.

c. Pricing

As provided in sections 1860D–31(e)(1)(A) and 1860D–31(h)(4) of the Act, and cited in § 403.806(d)(1) of our regulations, each endorsed sponsor will be required to provide card enrollees access to negotiated prices on covered discount card drugs. Section 1860D–31(e)(1)(A)(ii) of the Act defines negotiated prices as taking into account negotiated price concessions (such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations) for covered discount card drugs, and includes any dispensing fees for such drugs. Thus, as a general matter, to the extent discounts, rebates, subsidies or other price concessions are obtained by endorsed sponsors, the negotiated prices must take these concessions into account and some of the concessions should be shared with beneficiaries in the form of lower prices.

In addition, section 1860D–31(i) of the Act specifically requires that endorsed sponsors disclose to us the percentage of manufacturer price concessions or rebates passed on to Medicare beneficiaries, with section 1860D–31(h)(4) of the Act requiring endorsed sponsors to pass these savings on to card enrollees. We interpret these provisions as reflecting Congressional intent that endorsed sponsors meet the threshold of obtaining some level of manufacturer rebates, discounts, or other price concessions on some covered discount card drugs. In addition, we believe requiring endorsed sponsors to obtain manufacturer rebates, discounts, or other price concessions on some covered discount card drugs will promote and protect the interests of Medicare beneficiaries.

Therefore, as stated in § 403.806(d)(6) of our regulations, as a condition of endorsement, endorsed sponsors must obtain manufacturer rebates, discounts, or other price concessions on at least some covered discount card drugs.

In requiring endorsed sponsors to disclose to us the extent to which they pass through to card enrollees manufacturer discounts, rebates or other remunerations or price concessions, section 1860D–31(i) of the Act anticipates that endorsed sponsors might not pass through to card enrollees 100 percent of such manufacturer price concessions. We therefore interpret section 1860D–31(h)(4) of the Act as requiring endorsed sponsors to pass through to card enrollees some, but not necessarily all, of these price concessions. Rather than establish minimum quantitative requirements for either the level of manufacturer rebates, discounts, or other price concessions endorsed sponsors must obtain or the share of such price concessions that must be passed through to card enrollees, we will allow endorsed sponsors to determine this in light of their understanding of consumer preferences and the impact of market forces on their business model. Research conducted for us has shown that pharmacy benefit managers frequently obtain and pass through substantial manufacturer rebates for their commercial populations (BoozAllenHamilton, *Pharmaceutical Industry Scan,* August 6, 2002). In addition, we believe that market competition will encourage endorsed sponsors to pass through to enrollees a high percentage of the rebates, discounts, or other remuneration or price concessions. In particular, our price comparison Web site, discussed in greater detail in section II.E. of this document, will promote competition by allowing beneficiaries to compare maximum negotiated prices for drugs under different endorsed programs. Further, as described below, endorsed sponsors' negotiated prices for covered discount card drugs will not be taken into account for the purposes of establishing the best price under section 1927(c)(1)(C) of the Act. We therefore anticipate that endorsed sponsors will pass a substantial share of manufacturer price concessions through to beneficiaries in the form of negotiated prices at the point of sale. We have chosen not to establish minimum threshold levels for manufacturer price concessions because doing so could have the unintended effect of undercutting market competition as endorsed sponsors might cluster their drug price offering around that threshold.

We believe this approach provides endorsed sponsors with maximum flexibility within the basic program requirement in designing their endorsed program and negotiating price concessions with a broad range of manufacturers at levels that are commensurate with the structure of their endorsed programs.

In recognition of current industry practice, we anticipate that the level of discount offered to card enrollees will vary across the full complement of covered discount card drugs offered at negotiated prices. Moreover, as provided in § 403.806(d)(4) of our regulations, prices may vary across pharmacy contracts. We believe it is necessary to permit such price variation in order to provide endorsed sponsors sufficient flexibility to accommodate local market conditions and competition. As part of our educational efforts, we will explain to beneficiaries the possibility of price variation by pharmacy, and expect endorsed sponsors to do the same.

Additionally, we will allow endorsed sponsors to vary prices and formularies by enrollee characteristics, such as transitional assistance eligibility status, to offer lower negotiated prices to low-

income card enrollees, or card enrollees with a particular disease. We believe this flexibility promotes the objective of improving beneficiaries' access to prescription drug discounts by allowing card sponsors to structure formularies and prices for these populations for whom prescription drug expenses are a significant burden. An endorsed sponsor choosing to incorporate this flexibility into its endorsed program must ensure that its alternative offerings do not restrict any card enrollee's access to its basic option should the card enrollee not wish to participate in the alternative offering.

Further, CMS recognizes that endorsed sponsors may change their negotiated prices over time for legitimate business purposes. However, because beneficiaries are generally locked into the endorsed program of their choice for a calendar year, we would not want beneficiaries to enroll in cards with unrealistically low advertised prices, only to see those prices arbitrarily increase in subsequent weeks or months. Therefore, as provided in § 403.806(d)(9) of our regulations, we require that, except during the week of November 15, 2004, (which coincides with the beginning of the annual coordinated election period), endorsed sponsors must ensure that any increase in the negotiated price does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP), and/or an amount proportionate to the changes in the endorsed sponsor's cost structure, including material changes to any discounts, rebates, or other price concessions the endorsed sponsor receives from a pharmaceutical manufacturer or pharmacy. We will monitor whether negotiated prices decline in proportion to decreases in AWP.

As discussed in section II.C.7. of the document, an endorsed sponsor must make available to its card enrollees, over its customer service telephone line, upon request, information about negotiated prices.

Under section 1860D–31(h)(8) of the Act, and as provided in § 403.806(d)(7) of our regulations, endorsed sponsors must ensure that card enrollees are charged at the point of sale the lower of the negotiated price or the pharmacy's usual and customary price for a covered discount card drug. We expect an endorsed sponsor to arrange with its network and mail order pharmacies that if, at time of purchase, a drug's usual and customary price is lower than the negotiated price under the endorsed sponsor's endorsed program, the pharmacy will make available to card enrollees the lower usual and customary price.

Additionally, as provided in section 1860D–31(d)(3) of the Act and stated in § 403.806(d)(8) of our regulations, endorsed sponsors are required to ensure that pharmacies inform card enrollees of any differential between the price of the covered discount card drug to the card enrollee and the price of the lowest priced generic drug that is therapeutically equivalent and bioequivalent and available at that pharmacy. This information must be provided at the time the card enrollee purchases the drug, or in the case of drugs purchased by mail order, at the time of delivery of that drug. As permitted under sections 1860D–31(d)(3)(B) and 1860D–31(g)(5) of the Act, for the reasons discussed in section II.I. of this document, we exempt from this requirement covered discount card drugs obtained from long-term care pharmacies or I/T/U pharmacies.

As provided in section 1860D–31(e)(1)(D) of the Act, the prices negotiated for covered discount card drugs under an endorsed discount card program (notwithstanding any other provision of law) will not be taken into account for the purposes of establishing the best price under section 1927(c)(1)(C) of the Act. Section 103(e) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 amends section 1927(c)(1)(C)(i) of the Act by adding a new subparagraph (V) to exclude from best price any negotiated prices charged under an endorsed program. This exemption applies only to prices obtained from a drug manufacturer for the ingredient cost of the drug under the Medicare drug discount card program; prices negotiated for discount cards that are not Medicare endorsed programs would not meet the criteria of the exemption. Furthermore, since this rule relates to the Medicare drug discount card program, the rule does not address application of the best price rules to non-endorsed drug discount cards. We will not codify into regulation the statutory exemption from best price for negotiated prices under endorsed programs because we do not currently have regulations implementing section 1927(c)(1) of the Act.

d. Transitional Assistance

As discussed under section II.A. of this document, certain low-income Medicare beneficiaries enrolled in the Medicare drug discount card program will be eligible to receive transitional assistance of up to $600 per year, which may be applied toward the cost of covered discount card drugs obtained under the program.

Section 1860D–31(h)(1)(C) of the Act requires endorsed sponsors to administer the transitional assistance on our behalf and to demonstrate to the Secretary that they have satisfactory arrangements that account for the transitional assistance provided to transitional assistance enrollees. Therefore, as stated in § 403.806(e) of our regulations, endorsed sponsors must:

- Establish accounting procedures to manage the transitional assistance funds;
- Ensure that transitional assistance is applied toward the lower of a covered discount card drug's negotiated price (if any) or usual and customary price;
- Permit transitional assistance enrollees to apply transitional assistance toward the cost of any covered discount card drug obtained under the endorsed sponsor's endorsed program, regardless of whether that drug is on the endorsed sponsor's formulary (if any) or whether a discount has been negotiated for that drug.
- As required under section 1860D–31(d)(2)(C) of the Act, make available electronically or by telephone at the point-of-sale of covered discount card drugs the amount of transitional assistance remaining available to the transitional assistance enrollee; and
- As required under section 1860D–31(d)(2)(B) of the Act and discussed in section II.C.7. of this document, endorsed sponsors should inform transitional assistance enrollees of the endorsed sponsor's toll-free telephone number where they can obtain information on the amount of transitional assistance available to them.

In tracking the amount of transitional assistance available to transitional assistance enrollees, endorsed sponsors must take into account that any transitional assistance remaining available to a beneficiary on December 31, 2004 should be rolled over to 2005 and applied toward the cost of covered discount card drugs obtained under the program during 2005, and any transitional assistance remaining available to a beneficiary on December 31, 2005 may be applied toward the cost of covered discount card drugs obtained under the program during the transition period.

Endorsed sponsors must maintain a real-time claims adjudication system that, among other capabilities, will—

- Communicate to pharmacies the applicable coinsurance rates— 5 percent or 10 percent;
- Ensure that transitional assistance is applied only toward the cost of

covered discount card drugs obtained under the program; and

• Track the amount of transitional assistance available to each transitional assistance enrollee.

We understand that in some circumstances real-time claims adjudication may not be possible, for instance, due to coordination of benefits issues. To accommodate these circumstances, endorsed sponsors must have the capacity to process claims off-line for transitional assistance.

As discussed below in section II.G. of this document, exclusive card sponsors may permit their transitional assistance enrollees to apply transitional assistance toward any copayments, coinsurance, and deductible amounts for covered discount drug cards obtained under their Medicare managed care plan outpatient drug benefit. Medicare managed care organizations seeking to offer an exclusive card program must indicate in their applications their intent to permit transitional assistance enrollees to apply transitional assistance toward the cost of covered discount card drugs obtained under their Medicare managed care plan and explain their process for doing so.

Applicants must include in their applications details on their proposed methods for managing and accounting for transitional assistance.

As discussed in section II.C.6. of this document, endorsed sponsors will not be permitted to charge their transitional assistance enrollees any annual enrollment fee; rather, we will pay any enrollment fee on their behalf.

Endorsed sponsors will be required to establish procedures for applying transitional assistance toward the cost of covered discount card drugs obtained by transitional assistance enrollees under the Medicare drug discount card program. Such procedures must include applying the coinsurance rules set forth in section 1860D–31(g)(1)(B) of the Act, as stated in § 403.808(e) of our regulations and discussed in section II.A.4.a. of this document. Further, as stated in § 403.806(e)(6) of our regulations, endorsed sponsors must ensure that transitional assistance is not applied to cover the portion of the negotiated price that transitional assistance enrollees are responsible for paying under the coinsurance rules. That is, endorsed sponsors must ensure that the amount of transitional assistance applied toward the cost of covered discount card drugs obtained by transitional assistance enrollees is the negotiated price (or usual and customary price, if lower) minus the coinsurance. For example, if a beneficiary has a $600 transitional assistance balance and he or she obtains a covered discount card drug under the Medicare drug discount card program with a negotiated price of $100, the beneficiary would pay, depending on his or her income, a coinsurance of 5 percent or 10 percent ($5 or $10), the endorsed sponsor would pay the negotiated price minus the coinsurance amount ($95 or $90), and following the transaction, the amount of transitional assistance remaining available to the transitional assistance enrollee would be $505 or $510. In their applications, applicants must describe their approach for applying the coinsurance rules.

Section 101(e)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 exempts from the prohibition under section 1128B(b)(3) of the Act pharmacies who waive or reduce coinsurance for enrollees with transitional assistance provided such waiver or reduction meets the conditions in clauses (i) through (iii) of section 1128A(i)(6)(A). Thus, pharmacies participating in an endorsed program's network could not be criminally prosecuted under section 1128B(b)(3) of the Act for waiving or reducing coinsurance under the Medicare drug discount card program provided the pharmacies comply with the provisions of clauses (i) through (iii) of section 1128A(i)(6)(A) of the Act, which include the following—

• The waiver is not to be advertised;

• The coinsurance is not routinely waived; and

• The coinsurance is waived only after determining (in good faith) that—

• The eligible beneficiary is in financial need; or

• The pharmacy has made reasonable collection efforts but still failed to collect the coinsurance due.

Pharmacies and endorsed sponsors seeking further guidance regarding waivers or reduction of coinsurance may request advisory opinions from the Office of the Inspector General. To request an advisory opinion, entities should submit an original and 2 copies of a written request that contains certain specified information to the following address:

Chief, Industry Guidance Branch, U. S. Department of Health and Human Services, Office of Inspector General, Office of Counsel to the Inspector General, Room 5527, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

For more information on the advisory opinion process and the information included in the request, please refer to *www.oig.hhs.gov/fraud/advisoryopinions.html.*

In addition, as discussed under section II.H. of this document, States may establish arrangements to pay directly to endorsed sponsors some or all of the coinsurance on behalf of transitional assistance enrollees in their State. If a pharmacy waives or reduces a transitional assistance enrollee's coinsurance amount or if the State pays some or all of the coinsurance, the endorsed sponsor must ensure that no more than 90 or 95 percent, as applicable, of the negotiated price is paid using transitional assistance funds.

5. Products and Services Inside and Outside the Scope of the Endorsement

Section 1860D–31(e)(1)(C) of the Act prohibits an endorsed discount card sponsor (and any pharmacy included in the endorsed sponsor's network) from charging card enrollees any amount, other than the annual enrollment fee and negotiated prices (which include dispensing fees), for any items and services required to be provided by the endorsed sponsor under the Medicare drug discount card program. Therefore, our regulations at § 403.806(h)(2) prohibit endorsed sponsors (and their network pharmacies) from charging any amount for required services other than the enrollment fee and negotiated prices. Required services include, for example—

• Conducting enrollment;

• Offering negotiated prices on covered discount card drugs;

• Ensuring convenient pharmacy access;

• Reducing the likelihood of medication errors and adverse drug interactions;

• Providing customer service and information and outreach materials;

• Providing a grievance mechanism; and

• Administering transitional assistance.

Section 1860D–31(h)(7)(A) of the Act allows endorsed sponsors to provide certain non-required services under their endorsements as well, but only if such products or services are directly related to a covered discount card drug, or are discounts for over-the-counter drugs (that is, non-prescription drugs). Thus, endorsed sponsors may voluntarily choose to provide under their Medicare endorsement discounts on over-the-counter drugs, and products or services that are related to covered discount card drugs but which are not required services under the Medicare drug discount card program. For example, an endorsed sponsor might offer discounts on durable medical equipment that is related to a covered

discount card drug. Any product or service that is either not related to a covered discount card drug, or is not a discount for an over-the-counter drug, could not be provided under the endorsement and would be considered outside the scope of a sponsor's Medicare endorsement.

Although an endorsed sponsor (and pharmacies participating in their networks) may provide products and services related to covered discount card drugs and may offer discounts on over-the-counter drugs, our regulations provide at § 403.806(h)(1) that endorsed sponsors (and pharmacies participating in their networks) may not offer any such product or service for an additional fee (nor may any of their subcontractors or pharmacies in the network charge an additional fee for services offered under the endorsement). Endorsed sponsors therefore must fund all such products and services (whether optional or required) through the enrollment fee, and, if necessary, through rebates, discounts, and other price concessions garnered from manufacturers and pharmacies. We believe that we have the authority to recognize as outside the scope of endorsement those products and services offered for an additional fee. Section 1860D–31(h)(8) of the Act charges us with protecting and promoting the interests of Medicare beneficiaries. Were we to allow endorsed sponsors to charge additional fees, we believe beneficiaries might, in effect, be charged annual enrollment fees higher than the $30 limit mandated by section 1860D–31(c)(2)(B) of the Act, especially if endorsed sponsors were to condition enrollment in their endorsed programs on beneficiaries paying these additional fees. In addition, beneficiaries may be unable to access negotiated prices and transitional assistance, as intended by Congress, if endorsed sponsors require that they pay additional fees for optional products and services. Further, we believe permitting endorsed sponsors to charge additional fees could be confusing to beneficiaries. For example, beneficiaries may find it confusing and frustrating that endorsed sponsors can charge a diabetic an additional fee to access discounts on durable medical equipment related to drugs for diabetics when they cannot charge a case management fee related to helping the beneficiary manage his or her diabetes. Our beneficiary research has demonstrated that beneficiaries expect a discount card program to be simple to understand and easy to use (Bearing Point and Sutton Group. CMS Formative Research on Prescription Drug Shopping Habits: Round 1 Findings, Final. April 8, 2003). We believe that the most straightforward and easily understood structure for an endorsed program is one that provides all products and services related to covered discount card drugs and discounts on over-the-counter drugs for the single enrollment fee.

We clarify that we do not intend to prohibit pharmacies from charging beneficiaries for drugs; rather, this policy concerns not the price of a drug itself, but products or services directly related to the drug and access to discounts on over-the-counter drugs. Pharmacies and endorsed sponsors therefore may charge beneficiaries negotiated prices for covered discount card drugs and discounted prices for over-the-counter drugs.

In accordance with section 1860D–31(h)(7)(B) of the Act, our regulations at § 403.813(a) and § 403.806(g)(5)(iv) provide that an endorsed sponsor's information and outreach materials may describe only those products or services within the scope of the Medicare endorsement; the information and outreach materials may not include descriptions of products or services offered by the endorsed sponsor outside the scope of the endorsement. Because only products and services that are both (1) related to a covered discount card drug or are discounts for over-the-counter drugs and (2) offered for no fee (other than the enrollment fee or negotiated prices) are considered within the scope of the Medicare endorsement, an endorsed sponsor's information and outreach materials may not include information on products or services offered for an additional fee. We interpret this to mean that endorsed sponsors may not commingle communications about endorsed sponsors' products or services offered outside the scope of endorsement with information and outreach materials describing products and services within the scope of endorsement. In addition, if endorsed sponsors offer for no additional fee non-required products and services related to covered discount card drugs or they offer discounts on over-the-counter drugs, the endorsed sponsor must describe these products and services in its information and outreach materials, which are subject to our review as described in section II.C.7. of this document.

Finally, as provided in § 403.813(a)(1) and (2) and discussed in section II.C.9. of this document, an endorsed sponsor may not use or disclose a card enrollee's individually identifiable health information created, collected, or maintained under the Medicare drug discount card program for the purpose of marketing products or services offered outside the scope of endorsement.

6. Eligibility and Enrollment Responsibilities

Sections 1860D–31(f)(1)(A) and (c)(1) of the Act direct the Secretary to establish procedures for determining beneficiaries' eligibility for the Medicare drug discount card program and transitional assistance and for enrolling eligible beneficiaries in endorsed programs. Sections 403.810 and 403.811 of our regulations set forth these procedures, which are discussed in part in section II.A. of this document. Endorsed sponsors are expected to implement these requirements as provided in § 403.806(k) of the regulations. This section discusses the obligations of endorsed sponsors related to eligibility determinations and enrollment. Section 1860D–31(c)(1)(B) of the Act also requires endorsed sponsors to use a standard enrollment form, and section 1860D–31(c)(2) of the Act permits endorsed sponsors to charge an annual enrollment fee up to, but no more than, $30 per year. This section also discusses our rules pertaining to the standard enrollment form and annual enrollment fee.

a. Eligibility and Enrollment Process

An endorsed sponsor may enroll a Medicare beneficiary in its endorsed program only after we verify the beneficiary's eligibility. We require endorsed sponsors to interact with CMS's enrollment systems to ensure that only eligible beneficiaries enroll in the Medicare drug discount card program; that beneficiaries enroll in only one endorsed program at a time and with few exceptions, in only one endorsed card program per year, as required under section 1860D–31(c)(1)(C)(i) of the Act and § 403.811(a)(6) and (a)(7) of our regulations; and that members of a Medicare managed care plan offering an exclusive card program do not enroll in other endorsed programs.

Medicare beneficiaries seeking to enroll in an endorsed sponsor's program must submit information to the endorsed sponsor by completing the standard enrollment form or by providing the necessary information to the sponsor via other means (for example, telephone, internet, or facsimile), as specified by CMS and permitted by the endorsed sponsor. Beneficiaries who wish to receive transitional assistance must complete the standard enrollment form for transitional assistance and submit this

form to their endorsed sponsor. We expect endorsed sponsors to promptly transmit to us all standard data elements captured on a beneficiary's completed enrollment form.

Prior to transmitting to us any standard data elements, we expect that the endorsed sponsor will ensure that the beneficiary's enrollment form is complete. If a beneficiary's enrollment form is incomplete, the endorsed sponsor must promptly contact the beneficiary or return the beneficiary's incomplete application to him or her to obtain the missing information.

In addition to reviewing an enrollment form for completeness, endorsed sponsors are expected to review whether an enrollment form on its face indicates that the beneficiary is ineligible for the Medicare drug discount card program or, if applicable, transitional assistance. Specifically, if the beneficiary is applying to enroll in the endorsed sponsor's endorsed program, the endorsed sponsor should review the enrollment form to determine whether:

- The beneficiary resides within the endorsed program's service area; and
- The beneficiary has any outpatient drug coverage under a State Medicaid plan (including a 1115 waiver).

If the beneficiary is applying for transitional assistance, the endorsed sponsor must review the enrollment form to determine whether:

- The beneficiary has signed the form;
- The beneficiary's income as listed on the enrollment form exceeds 135 percent of the poverty line applicable to the beneficiary's family size;
- The beneficiary has coverage for outpatient covered discount card drugs under one or more of the following sources: (a) TRICARE, (b) a Federal Employee's Health benefit plan, or (c) a group health plan or health insurance coverage other than a Part C plan or a group health plan consisting solely of excepted benefits, such as Medigap; and
- The beneficiary does not reside in one of the 50 States or the District of Columbia.

We also expect endorsed sponsors to determine the appropriate coinsurance level for each transitional assistance enrollee based on the income information he or she provides on the standard enrollment form.

If the endorsed sponsor determines that the beneficiary is ineligible for its endorsed program or, if applicable, transitional assistance, the endorsed sponsor should promptly notify the beneficiary that he or she is not eligible. The endorsed sponsor may wish to discuss with the beneficiary whether the individual wishes to make any changes to his or her enrollment form. Otherwise, the endorsed sponsor is expected to issue a notice of negative eligibility determination, as discussed in greater detail below.

As discussed in section II.A.3. of this document, if a beneficiary applies for transitional assistance when he or she applies for an endorsed program, the endorsed sponsor may not enroll the beneficiary in their endorsed program if the beneficiary is determined ineligible for transitional assistance. This requirement is specified in § 403.811(a)(3) of our regulations.

We will inform an endorsed sponsor of beneficiaries' eligibility for the sponsor's endorsed program and, if applicable, transitional assistance. If a beneficiary is determined ineligible for the endorsed sponsor's program and/or transitional assistance, we will inform the endorsed sponsor of the reasons for the negative determination. We expect endorsed sponsors to promptly notify a beneficiary in writing of any negative eligibility determination made either as a result of the endorsed sponsor's initial review of an individual's complete enrollment form (or information submitted as part of the enrollment process) or of CMS' verification process. If the beneficiary has been determined ineligible for the sponsor's endorsed program and/or transitional assistance, the notice must communicate to the beneficiary—

- The reason for the negative eligibility determination;
- The beneficiary's right to request reconsideration of the eligibility determination and the process for doing so; and
- If not determined eligible for transitional assistance, the beneficiary's option of enrolling in the endorsed program without access to transitional assistance.

The model information and outreach materials that will accompany information and outreach guidelines referenced in section II.C.7. of this document will include model language for these notices, as discussed under section II.C.7. of this document. Our reconsideration process is discussed in greater detail under section II.A.5. of this document.

The determination process for this program relies on self-certification and verification. As discussed above in section II.A.2. of this document, if, as part of our verification process for transitional assistance , we are unable to verify a beneficiary's ability to meet the income threshold specified in § 403.810(b)(3) of our regulations, we may direct endorsed sponsors to request that the beneficiary submit additional income information. Section 403.810(f)(2) of our regulations provides that CMS can require such beneficiaries to fulfill this request as one condition of eligibility for transitional assistance.

Under section 1860D–31(c)(1)(A)(i) of the Act, and as provided in § 403.811(a)(10) of our regulations, a discount card eligible individual may enroll only in an endorsed program serving residents of the State in which he or she resides. Therefore, an endorsed sponsor may only enroll in its endorsed program beneficiaries that are residents of a State within the endorsed program's service area. We expect the endorsed sponsor to advise beneficiaries that those who change their address to an address outside the endorsed program's service area during the year must disenroll from the endorsed program and request a special election period if they wish to enroll in a new card program whose service area includes their new address. The model information and outreach materials to be provided with the information and outreach guidelines will include model language addressing this issue. We also plan to educate beneficiaries that any discount card eligible individual planning to change residence during the year should enroll in a national endorsed program.

As discussed under sections II.A.3. and II.G. of this document, Medicare managed care organizations may group enroll, into their exclusive card programs, eligible beneficiaries enrolled in those Medicare managed care plans that include access to an exclusive card program as part of the plan's benefit package. Prior to doing so, these organizations must notify affected plan members of their intent to enroll eligible beneficiaries as a group into their exclusive card program and grant beneficiaries ample opportunity to decline enrollment in the exclusive card program. We encourage organizations offering exclusive card programs to inform affected plan members that, if they decline enrollment in the exclusive card program, they will not be permitted to enroll in any other endorsed program.

Under § 403.814(b)(5)(iii) of our regulations, we permit exclusive endorsed sponsors electing to group enroll their plan members into their exclusive card program to use a modified version of the standard enrollment form provided such form has been submitted and approved by us along with the exclusive endorsed sponsor's other information and outreach materials. If a Medicare managed care organization group enrolls its plan members into its exclusive card

program, any transitional assistance eligible beneficiary must be afforded the opportunity to apply for transitional assistance.

Section 1860D–31(c)(3) of the Act requires that endorsed sponsors issue a discount card to all of its discount card enrollees for use as proof of enrollment and to facilitate identification of the discount card enrollee and the appropriate endorsed program at the point of sale. Section 1860D–31(c)(3) of the Act gives the Secretary the discretion to specify a standard format for the discount cards. We require in § 403.806(g)(4) of our regulations that all discount cards follow a standard format that complies with National Council for Prescription Drug Programs standards. We will further discuss this format in our information and outreach guidelines.

b. Standard Enrollment Form

Section 1860D–31(c)(1)(B) of the Act requires endorsed sponsors to use a ''standard'' enrollment form that is specified by the Secretary. The standard enrollment form will collect eligibility data elements in a standard format for use by the endorsed sponsor and CMS in determining the beneficiary's eligibility for the Medicare drug discount card program and, if applicable, transitional assistance. We interpret the requirement for a standard enrollment form to mean that, although such forms do not have to be identical, an endorsed sponsor's enrollment form must contain certain data elements and language. These data elements will be specified in the information and outreach materials that accompany the solicitation, but will include:

- Information on eligibility criteria for the Medicare drug discount card program and transitional assistance;
- Documentation of a beneficiary's request for a determination of his or her eligibility for the Medicare drug discount card program and enrollment in the endorsed sponsor's endorsed program;
- Documentation (in the form of a signature) of a beneficiary's request for a determination of his or her eligibility for transitional assistance and request for enrollment assuming eligibility determination is positive;
- Beneficiary's income level and family size;
- Authorization to verify the information reported on the enrollment form, including the beneficiary's income, if applicable; and
- Certification of whether the beneficiary has outpatient prescription drug coverage under one or more of the following sources: (a) TRICARE, (b) a Federal Employee's Health benefit plan, or (c) a group health plan or health insurance coverage other than a Part C plan or a group health plan consisting solely of excepted benefits, such as Medigap.

We have developed a standard enrollment form that is as easy to understand as possible. Endorsed sponsors may customize the layout, graphics, and language of their enrollment form so long as the form conforms to the requirements of this section and the information and outreach guidelines referenced in section II.C.7. of this document. An endorsed sponsor must submit to us its enrollment form along with its other information and outreach materials for our review and approval.

As specified in § 403.814(b)(5)(iii) of our regulations, a Medicare managed care organization offering an exclusive card program that wishes to group enroll its plan members into its exclusive card program may use a modified version of the standard form. Any such modifications must conform to the requirements we will specify in the information and outreach guidelines (see § 403.806(g)(5)(i) of our regulations).

c. Transition Period

As discussed in section II.B.2. of this document, we require endorsed sponsors to continue operating their endorsed program during the transition period, including providing its discount card enrollees access to negotiated prices during this period. In accordance with section 1860D–31(a)(2)(C)(ii)(II) of the Act, § 403.811(c)(6) of our regulations specifies that endorsed sponsors may not charge an annual enrollment fee during the transition period. In addition, as provided in § 403.808(f), endorsed sponsors must permit transitional assistance enrollees to apply any transitional assistance remaining available to them on December 31, 2005 toward the cost of covered discount card drugs obtained under the program during the transition period. Endorsed sponsors may not enroll any beneficiaries in their endorsed programs during the transition period.

d. Enrollment Fee

Section 1860D–31(c)(2) of the Act provides that endorsed sponsors may charge an annual enrollment fee up to, but no more than, $30 per year.

Section 1860D–31(c)(2)(c) of the Act requires that an endorsed sponsor charge all beneficiaries residing in the same State the same enrollment fee. As specified in § 403.811(c)(4) of our regulations, for endorsed programs with service areas larger than a State, the endorsed sponsor may charge a different annual enrollment fee in each State of up to, but not more than, $30.

Section 1860D–31(c)(2)(G) provides that the Secretary may establish special rules with respect to payment of any annual enrollment by discount card enrollees who enroll in a new endorsed program during a calendar year. As provided in § 403.811(b)(7) of our regulations, when a discount card enrollee enrolls in a new endorsed program during a special election period, the endorsed sponsor of the new endorsed program may charge the discount card enrollee its annual enrollment fee. We allow the new endorsed sponsors to charge their annual enrollment fee because we believe that much of the enrollment fee covers the start-up costs of enrolling a beneficiary into an endorsed program.

Section 1860D–31(c)(2)(G) of the Act allows the Secretary to provide special rules regarding payment of the enrollment fee for discount card eligible individuals, which include transitional assistance enrollees who enroll in a new endorsed program during the calendar year. For transitional assistance enrollees who change endorsed programs during a special election period, we will pay any annual enrollment fee charged by the new endorsed program. Further, section 1860D–31(c)(2)(C) of the statute and § 403.811(c)(4) of the regulations provides for a uniform enrollment fee for all discount card enrollees. The requirement means that the Secretary will pay the same enrollment fee (if any) for individuals receiving transitional assistance that the endorsed sponsor is charging those not receiving transitional assistance and residing in the same State.

Section 1860D–31(c)(2)(A) of the Act, as reflected in § 403.811(c)(3) of our regulations, prohibits an endorsed sponsor from prorating its annual enrollment fee for portions of a calendar year. Accordingly, an endorsed sponsor that charges an enrollment fee must charge its discount card enrollees the same enrollment fee in a given calendar year, regardless of when during the calendar year the discount card enrollee enrolls in the endorsed sponsor's endorsed program.

Section 403.811(a)(2) of our regulations provides that if the beneficiary indicates on the enrollment form that he or she only seeks to enroll in the endorsed sponsor's endorsed program and is not seeking transitional assistance, the endorsed sponsor may charge the beneficiary an annual

enrollment fee in a form and manner determined by the endorsed sponsor.

As discussed above in section II.A.3. of this document, and provided in § 403.811 (a)(3) of our regulations, beneficiaries may not enroll in an endorsed sponsor's endorsed program when they also apply for transitional assistance, unless they are determined eligible for transitional assistance at the time of application. To ensure that a beneficiary does not pay any enrollment fee prior to a determination of his or her eligibility for transitional assistance, § 403.811(c)(2) of our regulations provides that endorsed sponsors may not charge beneficiaries applying for transitional assistance any annual enrollment fee at the time of application. Should a beneficiary be determined eligible for transitional assistance and enrolled in the endorsed program, the endorsed sponsor may then charge CMS any enrollment fee. Beneficiaries determined ineligible for transitional assistance may apply for enrollment in an endorsed drug discount card program and, if found eligible to enroll in the endorsed program, must pay the annual enrollment fee (if any) in a form and manner determined by the endorsed sponsor.

As required in section 1860D–31(c)(2)(E) of the Act, and specified in § 403.808(c) of our regulations, we will pay any annual enrollment fee on behalf of transitional assistance enrollees. Should a discount card enrollee be determined eligible for transitional assistance after already enrolling in an endorsed program, we will pay the annual enrollment fee and the endorsed sponsor must immediately refund to the discount card enrollee, or any State that has paid the enrollment fee on behalf of the card enrollee, any annual enrollment fee for the calendar year previously paid by the discount card enrollee or State. If the discount card enrollee is first determined eligible for transitional assistance in 2005, we will not pay any enrollment fee for 2004 and the endorsed sponsor will not be required to refund to the discount card enrollee any enrollment fee paid by him or her in 2004. This policy is incorporated into § 403.811(c)(5) of our regulations.

As discussed in greater detail in section II.H.2. of this document, under section 1860D–31(c)(2)(F) of the Act and § 403.815(a) of our regulations, a State may pay some or all of any enrollment fee for some or all discount card enrollees (other than transitional assistance enrollees) residing in the State. As specified in § 403.815(a)(1) of our regulations, these payment arrangements should be negotiated directly between the State and the endorsed sponsor.

e. Disenrollment

Section 1860D–31(c)(1)(D)(ii) of the Act and § 403.811(b)(6) of our regulations permit an endorsed sponsor to involuntarily disenroll any discount card enrollee, other than a transitional assistance enrollee, who fails to pay the annual enrollment fee charged by the endorsed sponsor. We expect endorsed sponsors to provide discount card enrollees prior written notice before involuntarily disenrolling them for failure to pay the enrollment fee.

Under section 1860D–31(c)(1)(D)(i) of the Act, a discount card enrollee also may voluntarily disenroll from an endorsed program at any time. Discount card enrollees generally must notify an endorsed sponsor of their desire to disenroll from the endorsed sponsor's endorsed program. We expect endorsed sponsors to promptly submit to CMS all disenrollment requests they receive. In addition, if an endorsed sponsor involuntarily disenrolls one of its discount card enrollees for failure to pay any enrollment fee, we expect the endorsed sponsor to promptly notify us of such disenrollment. As discussed above in section II.A.6. of this document, discount card enrollees who disenroll from a Medicare managed care plan offering an exclusive card program are no longer eligible for that exclusive card program. The exclusive endorsed sponsor must disenroll these beneficiaries from its exclusive card program.

If a discount card enrollee contacts the endorsed sponsor in order to disenroll from an endorsed program, the endorsed sponsor is responsible for—

- Disenrolling the discount card enrollee from its endorsed program and promptly notifying us of such disenrollment;
- Determining whether the discount card enrollee is eligible for a special election period based on the reason provided for the disenrollment, if any; and
- If the endorsed sponsor determines that a discount card enrollee is eligible for a special election period, promptly notifying us of this determination.

7. Information and Outreach, and Other Customer Service

a. Information and Outreach

Section 1860D–31(d)(2)(A) of the Act requires that each prescription drug card endorsed sponsor that offers an endorsed discount card program will make available to eligible beneficiaries for the discount card program (through the Internet and otherwise) information that the Secretary identifies as being necessary to promote informed choice among endorsed discount card programs including information on enrollment fees and negotiated prices for covered discount card drugs. Furthermore, section 1860D–31(h)(7)(A) of the Act limits drug card endorsed sponsors to providing under their endorsements only (1) products and services directly related to covered discount card drugs, or (2) discounts on over-the-counter drugs. Section 1860D–31(h)(7)(B) then prohibits endorsed sponsors from marketing—under their endorsements—any products and services other than those described in section 1860D–31(h)(7)(A).

Under the above authority, we have drafted regulations which condition endorsement on card sponsors providing information and outreach according to our rules. To further explain these regulations and provide guidance to endorsed sponsors, we plan to publish information and outreach guidelines on our Web site at the same time we release the solicitation for applications. These information and outreach guidelines will provide further interpretations of our regulations and will contain the procedures endorsed sponsors can use to apply for and receive approval of their information and outreach materials.

Our regulations at § 403.806(g) contain our requirements for the information to be included in materials. Endorsed sponsors must provide to Medicare beneficiaries in their service area(s) information and outreach materials on the endorsed program, including discounts on over-the-counter drugs, if offered. Our regulations also incorporate the statutory requirement that information and outreach materials promote informed choice and contain information on enrollment fee and negotiated prices.

As we will explain further in the information and outreach guidelines, we will implement and interpret these statutory and regulatory requirements by requiring endorsed sponsors to disclose to Medicare beneficiaries (prior to enrollment, after enrollment, and upon request) the following information at a minimum—

(1) A detailed description of the program that includes information on how to become enrolled in a program, eligibility qualifications for transitional assistance, and how transitional assistance works;

(2) A description of the services the sponsor provides for no additional fee,

such as drug interaction counseling or allergy alerts;

(3) The availability of a grievance process and how it works;

(4) If applicable, any special rules for beneficiaries in long term care facilities, American Indians/Alaska Natives who use I/T/U pharmacies, as well as residents of the U.S territories;

(5) The toll-free telephone numbers described in § 403.806(g)(6) of our regulations;

(6) A list of contracted pharmacies and prescription drugs offered for a negotiated price, how coinsurance works, and a guarantee that contracted pharmacies will provide the lower of the negotiated price or the usual and customary price;

(7) Enrollment fees (if any);

(8) A notice that drugs and prices may change or vary and a description of how the enrollee can obtain information regarding those changes and variations;

(9) A clear description of the service area in which the endorsed program is available;

(10) A privacy notice for protected health information. Further guidance will be provided in the information and outreach guidelines on the notice of privacy practices for protected health information; and

(11) A description of any circumstances and special procedures that relate to potential transitional assistance enrollee liabilities stemming from procedures endorsed sponsors have in place to manage transitional assistance against an enrollee's cap or transitional assistance balance transfer to a newly elected endorsed program.

Endorsed sponsors must also make available, upon request, the negotiated prices for prescription drugs.

In addition to the above information, section 1860D–31(d)(2)(B) of the Act provides that an individual's transitional assistance balance must be available and provided as requested by toll-free line. Because this provision also requires that the toll-free line is publicized, we will require in the information and outreach guidelines that the toll-free number be included in all media through which the sponsor communicates with beneficiaries (for example, magazines, television, newspapers, billboards, radio, pre-enrollment, or post-enrollment materials).

Section 1860D–31(d)(2)(C) of the Act requires endorsed sponsors to make available, at the point of sale, information on the remaining balance of transitional assistance. Endorsed sponsors, therefore, must explain in their information and outreach materials that, at the point of sale, enrollees can request that network pharmacies determine—either electronically or by telephone—how much of the enrollee's transitional assistance remains. Endorsed sponsors must also include information in the member handbook or summary of program features on how an enrollee can obtain his or her transitional assistance balance.

Additionally, in accordance with section 1860D–31(d)(3) of the Act, information and outreach materials must explain how enrollees will be informed of the differential between the price of the drug to the enrollee and the price of the lowest priced therapeutically equivalent and bioequivalent generic covered discount card drug available at that pharmacy. Our forthcoming information and outreach guidelines will provide further detail on the method for communicating this information to beneficiaries, including to beneficiaries who purchase drugs through mail order.

All information required to be included in information and outreach materials, must, as required under section 1860D–31(d)(2)(A) of the Act, be provided both through the Internet and through some tangible medium, such as mailings (see § 403.806(g)(1) of our regulations). For information provided on the Internet, endorsed sponsors must establish a process for informing members when the web page was last updated, for example, by putting a date and disclaimer on the web page to promote beneficiary understanding that the information could be dated. In their applications, we require endorsed sponsors to demonstrate how they will maintain Web sites that provide information and outreach.

In II.C.5. of this document, we discuss products and services considered inside and outside the scope of endorsement, and explain that products or services outside the endorsement may not be offered or marketed under the endorsement. We further explain in section II.C.9. of this document that marketing related to non-endorsed services will be prohibited, even if the endorsed sponsor obtains beneficiary consent to receive such marketing. In keeping with these rules, our information and outreach provisions provide that any communication provided by sponsors that would concern services outside the endorsement may not be co-mingled with information and outreach materials relating to endorsed items or services. Therefore, when endorsed sponsors are acting in their capacity as endorsed sponsors, and are using data or information they collected through the operation of their endorsed program, they may not co-mingle information and outreach materials on endorsed features with any materials on non-endorsed features. This, however, would not prohibit entities, when they are not acting in their capacity as endorsed sponsors, from publicizing their endorsed programs or providing information about such programs. Thus, for example, an exclusive card sponsor could describe its endorsed program in its Medicare managed care plan marketing materials if those materials are CMS-approved, but it could not describe its Medicare managed care plan general features in materials which are directed solely toward its endorsed program enrollee population.

Our forthcoming information and outreach guidelines also will provide certain rules regarding the proper procedures for conducting information and outreach. For example, the guidelines will provide that, in conducting information and outreach, endorsed discount card sponsors may not engage in activities that could mislead or confuse beneficiaries or provide cash or other monetary rebates (for example, coupons or discounts on pharmacy products and services) as an incentive for enrollment.

Section 1860D–31(c)(3) of the Act provides that each endorsed sponsor must issue to each enrollee a card in a standard format specified by the Secretary that establishes proof of enrollment and that can be used in a coordinated manner to identify the endorsed sponsor, program, and beneficiary (*see also* § 403.806(g)(4) of our regulations). We will, in the information and outreach guidelines, provide guidance according to the requirements of the National Council for Prescription Drug Programs (NCPDP) for pharmacy identification cards. NCPDP is recognized as the industry standard for current prescription drug programs. We will review and approve pharmacy identification cards.

Our information and outreach guidelines will also include standards for use of a Medicare endorsement emblem. Use of the emblem may occur only after written notification of endorsement. Endorsed discount card sponsors may use the emblem on information and outreach materials such as newsletters, discount cards, stationery, and other promotional items designed to inform Medicare beneficiaries about the program.

Finally, as a condition of endorsement, we will require endorsed sponsors to file with us all information and outreach materials (*See also* § 403.806(g)(5)). These materials will require our review and approval (within

the time period discussed below) prior to the endorsed sponsor being able to disseminate them. We believe there is sufficient authority in section 1860D–31 of the Act for us to require prior submission and review of information and outreach materials. For example, section 1860D–31(d)(2) of the Act gives the Secretary the authority to identify the information necessary to be included in information and outreach materials to ''promote informed choice among endorsed discount card programs.'' In order to ensure that information and outreach materials are, in fact, promoting informed choice, we believe prior filing and review is necessary. Additionally, section 1860D–31(h)(8) of the Act authorizes us to craft conditions for endorsement that we believe would ''protect and promote the interests of Medicare beneficiaries.'' We believe that ensuring that marketing materials contain the necessary information, adequately reflect the drug discount card program, and do not violate any of our conditions for endorsement will protect Medicare beneficiaries. Our review of these materials will ensure that beneficiaries are not misled or confused about the services offered by drug discount card programs, that beneficiaries receive the information necessary to make informed choices in their selection of a drug discount card program, and that the Medicare name is not misused—for example, to advertise services unrelated to this program.

Therefore, we require in § 403.806(g)(5) of our regulations that information and outreach materials must have our review and approval (within the time period discussed in § 403.806(g)(5)(iii)) in order for them to be disseminated. We define information and outreach materials to include the same kinds of materials described in 42 CFR § 422.80(b) as well as enrollment forms, eligibility determination forms, membership cards, Web site content and any information on over-the-counter drugs (*see also* § 403.806(g)(5)(v) of our regulations). Examples of information and outreach materials that will be reviewed include, but are not limited to—

- General audience materials;
- Telephone or sales scripts for presentations;
- Presentation materials and slides;
- Membership communications, such as member handbooks and letters regarding contractual changes in benefits, procedures, or enrollment fee;
- Enrollment forms, eligibility determination forms, and membership cards;
- Information regarding over-the-counter drugs offered for a discount; and
- All forms of advertising, including television, radio, print, and Internet.

In order for us to conduct our review, our regulations provide that all information and outreach materials must be submitted to us for approval 30 days before dissemination. We will include model language in our guidelines, and materials that use that model language will receive a streamlined review process and will be approved in fewer than 30 days. Our guidelines will also include a File and Use Program, which will be another approach for streamlining the review process. Further guidance will be provided in the information and outreach guidelines regarding the criteria for the File and Use Program.

The endorsed sponsor may disseminate the information and outreach materials if we do not disapprove the initial submission of these materials by the end of the 30-day period. This rule applies only to the initial submission of materials. Resubmission of materials (that is, submissions made after receiving comments or questions on the initial submission) will not be subject to the deemed approval rule in § 403.806(g)(5)(iii) of our regulations.

Exclusive card sponsors will have a modified review process that will facilitate the coordination of their information and outreach materials with the Medicare managed care plan marketing materials. Further details on the review process will be provided in the Information and Outreach Guidelines, the solicitation, and also in the pre-application conference that will be announced in the solicitation.

b. Call Center

As stated in section 1860D–31(d)(2)(B) of the Act, each endorsed sponsor must have a mechanism (including a toll-free telephone number) for providing, upon request, specific information (such as negotiated prices and the amount of transitional assistance remaining available through the program) to their enrollees. Therefore, in § 403.806(g)(6), we are requiring that, as a condition of endorsement, each endorsed card endorsed sponsor must maintain a toll-free customer call center to assist beneficiaries in understanding the drug discount card program offered. The call center must be open during regular business hours and must provide customer telephone service in accordance with standard business practices. We interpret this to mean that the call center will be available at least Monday through Friday from 8 a.m. to 4:30 p.m. Eastern to Pacific Standard times for those zones in which the discount card program will operate. We also interpret the requirement that the call center will be operated in accordance with standard business practices to mean that—

- 70 percent of customer service representatives' time while on the job will be spent answering telephones and responding to enrollee inquiries;
- 80 percent of all incoming customer calls will be answered within 30 seconds;
- The abandonment rate for all incoming customer calls will not exceed 5 percent; and
- There will be an explicit process for handling customer complaints.

These standards are required or exceeded by the 1–800 Medicare call center contractors.

As stated earlier and included in § 403.806(e)(5) of our regulations endorsed sponsors are required to provide through their toll-free numbers information on the amount of available transitional assistance (section 1860D–31(d)(2)(B) of the Act).

Endorsed sponsors must also have in place a reliable means for accommodating pharmacy inquiries regarding the endorsed sponsor's program. We believe this requirement promotes and protects beneficiaries by ensuring that pharmacists can have their questions answered about the card program's drug offering on behalf of the beneficiary. Endorsed sponsors could, for example, accommodate pharmacist inquiries by incorporating a specific number in the Interactive Voice Response (IVR) for the pharmacist to select so that hold times will be minimized (many pharmacies use this already for ease of access for physicians). We are aware that endorsed sponsors, as part of their current business operations, generally have some established mechanism for responding to pharmacy inquiries. However, we do not intend to mandate a specific approach because we do not want to inadvertently force a higher cost solution. Instead, we will permit individual endorsed sponsors to decide on methods for effectively addressing pharmacy inquiries.

Endorsed discount card programs may establish additional mechanisms for communicating with enrollees and pharmacies, such as e-mail or fax.

c. Reduction of Medication Errors and Adverse Drug Reactions

In our regulations at § 403.806(g)(7), we require that each endorsed discount

card program must provide a system to reduce the likelihood of medication errors and adverse drug interactions and to improve medication use (section 1860D–31(e)(2) of the Act). Endorsed sponsors have flexibility to design their own individual systems to accomplish these goals. We will require applicants to describe their systems and discuss how these goals will be accomplished. Published scientific and clinical literature should support the proposed approaches. If applicants have experience using their proposed systems to accomplish these goals, applications should describe past achievements in reducing medication errors and adverse drug interactions and in improving medication use.

8. Grievance Process

Section 1860D–31(h)(5) of the Act specifies that endorsed sponsors must establish and maintain a grievance process to track and address in a timely manner enrollees' complaints about any aspect of the endorsed sponsor's operations. The grievance process does not include the reconsideration process, described in section 1860D–31(f)(4) of the Act and discussed in section II.A.5. of this document, which affords beneficiaries an opportunity to seek review of an initial determination that they are ineligible to receive transitional assistance or enroll in an endorsed program.

A grievance is any card enrollee's complaint or dispute expressing dissatisfaction with the manner in which he or she has received services under an endorsed program. The subjects of a grievance may include the timeliness, appropriateness, access to, and/or setting of services provided by the endorsed sponsor, such as waiting times, demeanor of pharmacy or customer service staff, or disrespect shown a card enrollee. A grievance may also include a dispute concerning the endorsed sponsor's failure to offer discounts on particular covered discount card drugs, ensure its pharmacies charge a certain price for covered discount card drugs, apply transitional assistance toward the cost of a covered discount card drug obtained by a transitional assistance enrollee under the program, or correctly calculate the correct coinsurance amount for a covered discount card drug obtained by a transitional assistance enrollee.

In § 403.806(j) of our regulations, we require endorsed sponsors to maintain meaningful procedures for timely review and resolution of their card enrollees' grievances. We will publish more specific guidelines on grievance procedures in our solicitation. These guidelines will include the following features—

(1) Endorsed sponsor's ability to collect information concerning the grievance;

(2) Timely transmission of grievances to appropriate decision-making levels within the endorsed sponsor's organization, including to any subcontractors;

(3) Taking prompt and appropriate action to address a grievance, including conducting a full investigation of the grievance if warranted; and

(4) Communication of the results of an investigation to all concerned parties, consistent with applicable State law.

9. HIPAA Administrative Simplification Provisions and Other Marketing and Security Provisions

a. General

Section 1860D–31(h)(6)(A) of the Act provides that for the purpose of the Medicare drug discount card program, the operations of an endorsed program are covered functions and an endorsed sponsor is a covered entity for purposes of applying Part C of title XI and all regulatory provisions promulgated thereunder, including regulations (relating to privacy) adopted pursuant to the authority of the Secretary under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). We therefore provide in § 403.812(a) of our regulations that endorsed sponsors are covered entities and must comply with the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164 as set forth in § 403.812 of our regulations. Section 403.812(a) of our regulations also provides that those functions of an endorsed sponsor the performance of which are necessary or directly related to the operations of the endorsed discount card program are covered functions for purposes of applying to endorsed sponsors the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164.

Section 1860D–31(h)(7)(B) of the Act provides that an endorsed sponsor only may market those products and services under its endorsed program that are directly related to a covered discount card drug, or discounts on non-prescription drugs to the extent such marketing is otherwise permitted under the Medicare discount drug card program, and the use of beneficiary information for such communications is permitted by the HIPAA Privacy Rule.

b. Overview of HIPAA Administrative Simplification Regulations

The HIPAA Administrative Simplification Regulations are a suite of regulations that provide for the standardization of certain electronic financial and administrative health care transactions, as well as for the privacy and security of individually identifiable health information.[4] The regulations apply to three types of entities, which collectively are termed ''covered entities''—health care providers who transmit protected health information in electronic form in connection with a transaction for which the Secretary has adopted a standard, health plans, and health care clearinghouses. Section 1860D–31(h)(6)(A) of the Act essentially specifies a fourth type of covered entity, the endorsed sponsors. Therefore, as a condition of endorsement, endorsed sponsors must comply with the HIPAA Administrative Simplification regulations in the manner described in § 403.812 of our regulations.

Section 1860D–31(h)(6)(A) of the Act provides that only the endorsed sponsor's operations of an endorsed program are covered functions. Consequently, activities performed by an endorsed sponsor outside of the scope of its endorsement under the Medicare drug discount card program are not made covered functions by the Act. However, if these other activities would make the endorsed sponsor a health plan, covered health care provider, or health care clearinghouse, as currently defined by HIPAA, then the endorsed sponsor may otherwise be a covered entity that is subject to the Administrative Simplification regulations. An endorsed sponsor performing non-covered functions may declare itself a hybrid entity in accordance with 45 CFR 164.105, with its health care component including any component performing operations that make the entity an endorsed sponsor.

As provided in § 403.812(f) of our regulations, nothing in this discussion or § 403.812 of our regulations should be considered a modification of the HIPAA Administrative Simplification regulations or as otherwise affecting the applicability of the Administrative Simplification regulations to covered entities other than endorsed sponsors. Moreover, as provided in § 403.812(f) of our regulations, if an endorsed sponsor is also a health plan, covered health care provider, or health care clearinghouse, the Administrative Simplification

[4] The suite includes regulations for the electronic health care transactions and code sets, unique health identifiers for health plans, health care providers, and employers, and security and privacy.

regulations as set forth in parts 160, 162, and 164 will still govern the performance of those functions which make it a health plan, health care clearinghouse, or covered health care provider.

c. HIPAA Privacy Rule

As covered entities, endorsed sponsors are responsible for complying with the HIPAA Privacy Rule. The Privacy Rule limits the uses and disclosures a covered entity may make with individually identifiable health information (known as protected health information), requires that safeguards be applied to the information to protect it, and gives individuals rights with respect to the protected health information about them, including rights to access and correct the information. Thus, endorsed sponsors are responsible for safeguarding the protected health information of beneficiaries of the program, and must limit the uses and disclosures made with the information to only those permitted by the Privacy Rule and these regulations. In addition, under the program, beneficiaries have certain rights to be informed of the uses and disclosures the endorsed sponsor is permitted or required to make with their protected health information, to access their records, and to have corrections made to their records, among other rights. *See* 45 CFR part 160 and subparts A and E of part 164 for the full set of standards, implementation specifications, and requirements of the Privacy Rule.

1. Endorsed Sponsors To Be Treated in Same Manner as Health Plans

The standards, implementation specifications, and requirements in the HIPAA privacy regulations do not apply uniformly to all covered entities; rather, certain provisions apply only to one or two of the different types of covered entities. We believe we have the discretion to prescribe the manner in which the regulations will apply to endorsed sponsors, as section 1860D–31(h)(6)(A) is silent on this issue. Although endorsed sponsors are not by definition health plans under HIPAA, we believe that the HIPAA privacy regulations should apply to endorsed sponsors in the same manner as applicable to health plans because endorsed sponsors' operations more closely resemble those of health plans than health care clearinghouses or providers.

Health plans are organizations that provide, or pay the cost of, ''medical care,'' which is defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(2)) as amounts paid for (1) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body; (2) amounts paid for transportation primarily for and essential to such medical care; or (3) amounts paid for insurance covering such medical care or transportation. As endorsed sponsors do not themselves provide or pay the cost of medical care, they are not by this definition health plans under HIPAA. However, endorsed sponsors resemble health plans in several respects.

Whereas health plans typically negotiate discount rates for health care products and services, endorsed sponsors similarly will negotiate discounted prices for covered discount card drugs. In addition, health plans coordinate health care for its enrollees, in part by assessing the interaction of various modalities of treatment, which endorsed sponsors also provide albeit on a more limited basis by assessing and avoiding adverse drug interactions and providing educational activities that resemble some of a health plan's care coordination activities. Endorsed sponsors' processing payment for covered discount card drugs provided to transitional assistance enrollees is also somewhat similar to a health plan's payment infrastructure and processes, although unlike health plans, generally speaking, endorsed sponsors would not be bearing capitated risk under this program.

In contrast, the functions performed by endorsed sponsors do not resemble the functions performed by health care providers or health care clearinghouses. A health care provider means a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), or any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. Under the Medicare discount drug card program, endorsed sponsors will not provide medical or health services to beneficiaries, but instead will arrange for discount card enrollees to have access to negotiated prices and related products and services. A health care clearinghouse is a public or private entity that processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction or receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity. Endorsed sponsors, however, will not be required to perform such services. Accordingly, except as otherwise provided and discussed below, § 403.812(b) of our regulations provide that the HIPAA privacy regulations will apply to endorsed sponsors in the same manner as they apply to health plans.

2. Waiver by the Secretary

Section 1860D–31(h)(6)(B) provides that, in order to promote participation of endorsed sponsors in the Medicare drug discount card program, the Secretary may waive portions of the HIPAA Privacy Rule for a limited period of time as the Secretary deems appropriate. While the Secretary expects endorsed sponsors to be able to comply with the Privacy Rule and, therefore, does not at this time anticipate a need to exercise his waiver authority, the Secretary reserves the right to do so at a later time, if such waiver is deemed necessary to promote participation of endorsed sponsors in the Medicare drug discount card program.

3. Administering the Drug Card Program

The Privacy Rule permits covered entities to use or disclose protected health information without individual authorization for health care treatment and payment activities, as well as for certain legal, financial, and administrative functions—known as health care operations—that support treatment and payment activities. To carry out their obligations under the Medicare drug discount card program, endorsed sponsors will have to conduct a number of activities pertaining to products and services offered under the endorsement that may involve the use or disclosure of beneficiary information. These activities and services will include processing beneficiary applications and enrollment in the program, reducing the likelihood of medication errors and adverse drug interactions, providing customer service and information and outreach materials, and administering transitional assistance. (For a description of the services required as part of the endorsement, see section II.C.5 of this document.) The use or disclosure of beneficiary protected health information for these activities are encompassed within the Privacy Rule's definition's of ''payment'' and ''health care operations'' and, thus, may be conducted without beneficiary authorization.

4. Special Marketing Restrictions for Endorsed Sponsors

Under the Medicare drug discount card program, as explained above, endorsed sponsors will be required to provide information and outreach about products and services offered under the endorsement. Section 1860D–31(h)(7)(B) of the Act provides that an endorsed sponsor may only market those products and services directly related to a covered discount card drug, or discounts for non-prescription drugs to the extent such marketing is otherwise permitted under the Medicare drug discount drug card program and the Privacy Rule. Accordingly, § 403.813(a)(1) provides that an endorsed sponsor may only market those products and services offered within the scope of its endorsement, that is, products and services directly related to a covered discount card drug, and discounts for non-prescription drugs. Thus, only products and services offered by an endorsed sponsor within the scope of its endorsement may be included in an endorsed sponsor's information and outreach materials.

As discussed in section II.C.5. of this document, products or services offered by an endorsed sponsor following termination of its endorsement or termination of the Medicare drug discount card program are considered outside the scope of endorsement. Therefore, § 403.813(b)(4) of our regulations provides that individually identifiable health information created, collected or maintained by an endorsed sponsor may not be used to market any product or service following termination of an endorsed sponsor's endorsement or the program.

Under the Privacy Rule, most uses or disclosures of protected health information to make marketing communications require individual authorization. The Privacy Rule at 45 CFR 164.501, however, defines the term ''marketing'' to mean the making of a communication about a product or service that encourages the recipient of the communication to purchase or use the product or service, with the exception of communications that—

(1) Describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication;

(2) Are for treatment of the individual; or

(3) Are for case management or care coordination, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.

Since information and outreach under the Medicare drug discount program is limited to communicating about products and services offered within the scope of endorsement, these activities fall within the exception to the definition of marketing under the Privacy Rule for describing health-related products or services provided by the covered entity. Thus, using or disclosing beneficiary protected health information to provide information and outreach is not marketing under the Privacy Rule, but rather, as described above, is permitted without beneficiary authorization as part of the endorsed sponsor's health care operations.

To use or disclose protected health information to make communications that do not fall within the exceptions to the definition of ''marketing'' under the Privacy Rule at 45 CFR 164.501, a covered entity must obtain individual authorization in accordance with 45 CFR 164.508(a)(3). However, section 1860D–31(h)(7)(B) of the Act limits the marketing that may be conducted by endorsed sponsors to only that which pertains to products and services offered under the Medicare drug discount program or discounts on over-the-counter drugs. For purposes of this marketing prohibition, we will consider a communication to be marketing if the communication is about a product or service and encourages recipients of the communication to purchase or use the product or service. Thus, a sponsor may not market if the marketing involves products or services falling outside the endorsed sponsor's endorsement, that is, services that do not directly relate to a covered discount card drug, or to discounts for a non-prescription drug. Section 403.813(a)(2) of our regulations expressly provides that an endorsed sponsor may not request of a drug card applicant or enrollee the use or disclosure of protected health information to market any products or services not offered under the program. Thus, endorsed sponsors may not market such products or services under § 403.806(d)(3) of our regulations even if they obtain authorization from discount card enrollees to do so, as permitted by the Privacy Rule. Due to this prohibition, endorsed sponsors are not permitted, at the time of enrollment or any other time, to ask beneficiaries if they would be interested in receiving marketing materials related to products and services offered outside the program. Similarly, endorsed sponsors may not commingle any information and outreach materials that describe their endorsed program with any marketing materials related to products and services offered outside the program.

This prohibition applies regardless of whether the marketing of products or services outside the program involves the use or disclosure of protected health information of discount card enrollees. Accordingly, marketing of a product or service outside the program that does not involve the use of discount card enrollees' protected health information, such as advertising for contact lenses or travel on an endorsed sponsor's Web site, is not permitted under the Medicare drug discount card program, even though such marketing would not involve the use of protected health information.

Many entities that sponsor an endorsed program also may engage in activities outside the Medicare drug discount card program. For example, a Part C organization may be both a sponsor of an endorsed program and operate a Part C plan. The marketing prohibition set forth under section 1860D–31(h)(7)(B) of the Act only applies to entities when acting in their capacity as an endorsed sponsor. Accordingly, although an entity in its endorsed sponsor capacity may not commingle with other marketing materials any information and outreach materials related to products and services offered under its endorsed program, it may commingle such materials when acting in another capacity, to the extent otherwise permitted under law. For example, a Part C organization which sponsors an endorsed program may, in its role as a Part C plan, commingle information and outreach materials describing its endorsed program with Part C plan marketing materials to the extent permitted under the Privacy Rule and the Part C marketing rules under Medicare Part C. We will deem an entity as acting in its capacity as an endorsed sponsor when it either (1) uses beneficiaries' information created, collected or maintained under its endorsed program to conduct marketing, or (2) targets its marketing to all or a subset of its discount card enrollees (or potential discount card enrollees). We will deem an entity as acting in another capacity when it (1) does not use beneficiaries' information created, collected or maintained under its endorsed program to conduct marketing, and (2) does not target its marketing to all or a subset of its discount card enrollees (or potential discount card enrollees). For example, we will consider a Part C organization as acting in its endorsed sponsor capacity if it targets its marketing to members of its

Part C plan who are also enrolled in its endorsed program, to the exclusion of other plan members. In contrast, we will consider a Part C organization as acting in its capacity as a Part C plan if it directs its marketing to all or a subset of its Part C plan membership, including those not enrolled in its endorsed program, and, to the extent it uses individual information, such information was not collected or maintained under the Part C organization's endorsed program. Similarly, we will consider an organization's Web site listing its full range of products and services, including but not limited to its endorsed program, as targeted to the public at-large; however, we will consider its web pages specifically describing its endorsed program as targeting potential discount card enrollees, and therefore such web pages may not include information related to products and services offered outside the scope of endorsement.

Section 403.813(a) of our regulations is not enforceable under HIPAA but will be enforced by CMS under the Medicare drug discount card program.

5. Other Uses and Disclosures Without Authorization

Under 1860D–31(i)(1) of the Act and as discussed in section II.A., II.C., and II.F. of this document, endorsed sponsors are required to disclose to the Secretary certain information, some of which may contain protected health information. The Privacy Rule at 45 CFR 164.512(a) permits covered entities to use or disclose protected health information without individual authorization where the use or disclosure is required by other law. Thus, the Privacy Rule permits endorsed sponsors to make the required disclosures to the Secretary without beneficiary authorization. Similarly, the Privacy Rule at 45 CFR 164.512(d) permits covered entities to use or disclose protected health information without individual authorization to a health oversight agency for oversight activities that are authorized by law. Both of these provisions would permit endorsed sponsors to provide CMS with the information needed for the Secretary's oversight and reporting requirements.

6. Uses and Disclosures Requiring an Authorization

For uses and disclosures of protected health information that are not otherwise permitted under the Privacy Rule, an endorsed sponsor must obtain a beneficiary's written authorization for such uses or disclosures in accordance with 45 CFR 164.508. For example, a Medicare beneficiary may authorize the endorsed sponsor to disclose his/her protected health information to a third party, such as an employer. However, as explained above and provided for in § 403.813(a)(2) of our regulations, an endorsed sponsor may not market products or services outside the scope of its endorsement under the Medicare drug discount card program even if it obtains from discount card enrollees authorization to do so. Additional information about this marketing prohibition can be found above in this section and also in section II.C.5 of this document.

7. Notice of Privacy Practices

In accordance with the Privacy Rule at 45 CFR 164.520, prior to enrolling a beneficiary in its endorsed program, or at the time of enrollment, an endorsed sponsor must notify each beneficiary as to how the endorsed sponsor is permitted or required to use and disclose the beneficiary's protected health information, as well as of the beneficiary's rights and the endorsed sponsor's duties with respect to that information. The notice must be in plain language and clearly explain these rights and the uses and disclosures permitted or required under this rule and other applicable law, including that the endorsed sponsor may use or disclose protected health information to communicate about products and services offered by an endorsed sponsor inside, and only inside, the scope of its endorsement. The notice may be combined with other information and outreach materials, provided that the content requirements of the Privacy Rule are fully met.

8. Endorsed Sponsors as Business Associates

As defined in the Privacy Rule, a business associate is a person or entity that performs or assists in the performance of certain functions or activities on behalf of, or provides certain services to, a covered entity, that involve the use or disclosure of individually identifiable health information. The Privacy Rule requires that the covered entity obtain satisfactory assurances, usually in the form of a written contract, from the business associate that the business associate will appropriately safeguard the protected health information it creates or receives on behalf of the covered entity. The contract or other written arrangement between the covered entity and its business associate must meet the requirements at 45 CFR 164.504(e).

For purposes of administering transitional assistance, endorsed sponsors are business associates of CMS under the Privacy Rule. Transitional assistance will be a benefit offered and paid for by the Medicare program, a health plan, with CMS contracting with endorsed sponsors to administer transitional assistance on behalf of CMS in conjunction with their other responsibilities under the Medicare drug discount card program. As such, the contract between CMS and endorsed sponsors will include the terms necessary to satisfy the requirements of the Privacy Rule at 45 CFR 164.504(e).

The application of the Privacy Rule to endorsed sponsors under our regulations does not affect business associate arrangements or requirements between the endorsed sponsor and one or more covered entities for activities that are outside of the endorsed drug card program. However, because an endorsed sponsor is also a covered entity, when an endorsed sponsor is acting as a business associate of another covered entity, the endorsed sponsor will violate the Privacy Rule if it violates its business associate contract with the other covered entity (*see* 45 CFR 164.502(e)(1)(iii)).

9. Enforcement by the HHS Office for Civil Rights

The HHS Office for Civil Rights (OCR) is responsible for implementing and enforcing the HIPAA Privacy Rule. OCR has authority to investigate complaints and to conduct compliance reviews, and may impose civil money penalties on covered entities for violations where appropriate. Thus, any violations by an endorsed sponsor with respect to its obligations under the Privacy Rule as a covered entity are subject to such enforcement by OCR. OCR maintains a Web site with Frequently Asked Questions and other compliance guidance at *http://hhs.gov/ocr/hipaa*.

OCR's enforcement authority pertains only to the HIPAA Privacy Rule. Thus, any violations with respect to compliance with the other HIPAA Administrative Simplification Rules or proper operation of an endorsed program will be enforced by CMS. In addition, if an endorsed sponsor's actions also violate the requirements of the Medicare drug discount card program, such actions also may be sanctioned under § 403.820(a) of our regulations. See section II.F. of this document for further information about CMS oversight and monitoring of endorsed sponsors.

d. Administrative Data Standards

As covered entities, endorsed sponsors must comply with any applicable standards, implementation specifications, and requirements set forth in 45 CFR part 162, subparts I *et seq.*, when conducting a transaction (as that term is defined under section 1173 (a) of the Act and 45 CFR 160.103) as of the compliance date of a final rule issued under that Part. In addition, such sponsors are business associates of the Medicare program (a health plan covered entity), as they perform certain administrative functions related to transitional assistance on our behalf. We will, therefore, require in our contracts with endorsed sponsors that, when conducting all or part of a transaction on our behalf, they comply with, and require their agents and subcontractors to comply with, all requirements under 45 CFR part 162 applicable to CMS as a covered entity.

e. National Identifiers

As covered entities, endorsed sponsors must comply with the standards, implementation specifications, and requirements of 45 CFR parts 160 and 162, relating to the use of national identifiers, as of the compliance date of any final rule issued under part 162.

f. Security

As covered entities, endorsed sponsors must comply with the standards, implementation specifications, and requirements of the HIPAA Security Rule (''Security Rule'') set forth in 45 CFR parts 160 and 164, subparts A and C to ensure the confidentiality, integrity, and availability of all electronic protected health information they create, receive, maintain or transmit as of the compliance date of the final Security Rule (April 15, 2005). In addition, endorsed sponsors as covered entities must have appropriate administrative, technical and physical safeguards in place to protect the privacy of beneficiary information under 45 CFR 164.530(c) of the Privacy Rule. An applicant must include in its application the following:

- An attestation that as of the date upon which it will begin enrollment activities, appropriate administrative, technical and physical safeguards will be in place to protect the privacy of protected health information in accordance with 45 CFR 164.530(c); and
- An attestation that it will meet the standards, requirements, and implementation specifications as set forth in the Security Rule as of the date it begins enrolling beneficiaries in its endorsed programs, or, if the endorsed sponsor will be unable to provide this attestation, the applicant's plan for coming into compliance with the specifications as set forth in the Security Rule as of the compliance date for the Security Rule.

Endorsed sponsors are encouraged, but not required, to use Information Security Program references as provided by the National Institute of Standards and Technology (NIST), in documenting their efforts to implement reasonable security measures.

We believe these attestation requirements are critical to beneficiary confidence in the Medicare drug discount card program and their decision to enroll in an endorsed program. Furthermore, as endorsed sponsors are using the Medicare name and acting on our behalf in administering transitional assistance, we believe these requirements are important to promoting the continued confidence of beneficiaries in the Medicare program. We specifically require that applicants attest that they will be in compliance with the Security Rule as of their initiation of enrollment activities, or provide their plan for coming into compliance as of the compliance date. This approach will allow us to evaluate whether their information security measures will comply with the Privacy Rule standard under 45 CFR 164.530(c) and whether they will adequately protect the confidentiality, integrity, and availability of discount card enrollees' electronic protected health information.

10. Document Retention

Section 403.813(b) of our regulations requires endorsed sponsors to retain records that they or their subcontractors create, collect, or maintain while participating in the Medicare drug discount card program for at least six years following termination of the transition period. This retention period may be extended by the Secretary if an endorsed sponsor's records relate to an ongoing investigation, litigation, or negotiation by the Secretary, the OIG, the Department of Justice, or a State, or such documents otherwise relate to suspicions of fraud and abuse or violations of Federal or State law.

We recognize that under the Privacy Rule, CMS, as a covered entity, must require its business associates, upon termination of the contract, to return or destroy protected health information created or received in their capacity as business associates, or if such return or destruction is not feasible, to extend the contract protections to the retained information and limit further uses and disclosures to the purposes that made the return or destruction infeasible. Our record retention policy will make it infeasible for endorsed sponsors to return or destroy protected health information, as they will be required to retain all program information for at least six years after termination of the program. Therefore, as required by the Privacy Rule, the business associate contract protections for the retained information will continue to be applied and any further use or disclosure of the information will be limited to health care operations and health oversight activities that made return or destruction of the information infeasible, as well as other uses or disclosures that may be required by law.

In addition, our record retention policy will require endorsed sponsors to continue to apply security and privacy protections to the record and the information contained therein to the same extent endorsed sponsors are required to do so prior to termination. We establish this requirement under the authority granted the Secretary under section 1860D–31(h)(8) of the Act to protect and promote the interests of beneficiaries. The interests of beneficiaries are furthered by continuing to protect the confidentiality, integrity, and availability of their protected health information for so long as these records are retained by an endorsed sponsor.

We believe our retention policy is necessary to preserve our ability and that of other Federal and State agencies to exercise appropriate oversight over endorsed sponsors and protect the interests of beneficiaries. We believe six years represents an appropriate time period for this requirement because there is a six year statute of limitations on bringing actions for civil monetary damages under section 1860D–31(i)(3) of the Act against endorsed sponsors that knowingly engage in conduct that violates the requirements of section 1860D–31 or our regulations. Our record retention policy is subject to enforcement under § 403.820(a) of our regulations.

11. Endorsed Sponsor Reporting

Section 1860D–31(h)(4) of the Act provides that endorsed sponsors shall pass on negotiated prices to discount card enrollees, including discounts with pharmacies and manufacturers, to the extent disclosed to the Secretary. Further, section 1860D–31(i)(1) of the Act provides that endorsed sponsors shall disclose to the Secretary (in a manner specified by the Secretary) information relating to program

performance, use of prescription drugs by discount card enrollees, the extent to which discounts, rebates or other remunerations or price concessions made available to the endorsed sponsor by a manufacturer are passed through to discount card enrollees through pharmacies or otherwise, and such other information as the Secretary may specify. As provided under these authorities and in order to promote and protect the interests of beneficiaries, endorsed sponsors are required to maintain for auditing purposes, data and other information that will accomplish oversight objectives.

Additionally, we will collect information as part of our education and outreach efforts described in Section II.E, to provide beneficiaries comparative prices on covered discount card drugs across all endorsed programs.

To meet these objectives, we specifically require in § 403.806(i) of our regulations that endorsed sponsors report certain types of information. Examples include:

- Savings obtained through rebates, discounts, and other price concessions from pharmacies and manufacturers;
- Savings shared with discount card enrollees by manufacturer, by all retail pharmacies, by all mail order pharmacies, and by all brand name and generic covered discount card drugs;
- Dispensing fees;
- Certified (by the chief financial officer) financial accounting records on transitional assistance used by the transitional assistance enrollees in each month;
- Participant utilization and spending statements;
- Performance on customer service metrics such as call center performance;
- Grievance logs;
- Compliance with the pharmacy network access standards; and
- Notice of, and the rationale for, negotiated price increases, except for increases during the week of November 15, 2004, due to reasons other than changes in average wholesale price (AWP), including submission of an attestation that, based on best knowledge, information, and belief, the rationale for the price increase is accurate, complete, truthful, and supportable.

In addition, to support our education and outreach efforts endorsed sponsors must report the following—

- Customer service hours,
- Customer service contact information,
- Endorsed program Web site address,
- Annual enrollment fee, and
- Negotiated prices (including any applicable dispensing fee) for every covered discount card drug included in the endorsed program's offering.

This is not an exhaustive list of the types of card program performance we will monitor and evaluate, as we will, as described in section II.F. of the preamble, also conduct activities independent of this information to, for example, monitor whether marketing materials are properly used; evaluate beneficiary experience under the endorsed programs; and conduct program integrity activities.

The data and information that endorsed sponsors will be required to report consist of performance measures and indicators typically provided by third party administrators of pharmacy benefits in the current drug industry. Endorsed sponsors must certify the validity and completeness of the data and other information they report.

Further, during the endorsement period, endorsed sponsors will be required to notify us of any material modifications to their endorsed programs if the modification could put them at risk of no longer meeting any of the terms of the endorsement.

Section 1860D–31(i)(1) of the Act provides that section 1927(b)(3)(D) of the Act, which guides the protection of proprietary pricing information under the Medicaid program, shall also apply to the drug pricing data (other than aggregated data) under the Medicare drug discount card program. Consistent with the requirements of 1927(b)(3)(D) of the Act, we will handle any non-aggregated pricing information in a manner that ensures that the non-aggregated discounts or rebates or other remuneration or price concessions from manufacturers to endorsed sponsors, and reported by the endorsed sponsors, will not be made available in a format that discloses the identity of particular drugs, manufacturers, or wholesalers. However, the information may be disclosed in the circumstances described in section 1927(b)(3)(D)—

(1) As the Secretary deems necessary to carry out section 1860D–31 of the Act;

(2) To permit the Comptroller General to review the information provided; and

(3) To permit the Director of the Congressional Budget Office to review the information provided.

We will provide a reporting tool to ensure consistent and comparable reporting by endorsed sponsors. In developing the tool, we will make an effort to minimize the reporting burden on endorsed sponsors.

D. CMS Reimbursement of Transitional Assistance

All endorsed sponsors must enter into an agreement with CMS that will provide for reimbursement from CMS to endorsed sponsors for any transitional assistance applied toward the cost of covered discount card drugs obtained by transitional assistance enrollees in accordance with section 1860D–31(g)(3) of the Act. Under the contract, sponsors will submit requests to debit each enrollee's transitional assistance balance via the Department of Health and Human Services' Payment Management System. These amounts will be reported to CMS and used to reconcile payments, as provided in § 403.822(c) of our regulations.

Endorsed sponsors will be required to submit monthly reports detailing the total amount of transitional assistance applied toward the cost of covered discount card drugs obtained by transitional assistance enrollees. These reports will be reconciled against transitional assistance balance reports used to authorize payments to endorsed sponsors.

Endorsed sponsors will only be reimbursed for transitional assistance applied toward the cost of covered discount card drugs for claims that are fully adjudicated for payment; we will not reimburse endorsed sponsors for pending claims. Further, as provided in § 403.822(e) of our regulations, Federal funding in excess of the amount of the balance included in CMS' systems is not permitted.

We also expect endorsed sponsors to establish a process for holding pharmacies harmless, that is reimbursing pharmacies for their costs if the endorsed sponsor erroneously informs the pharmacy that the amount of transitional assistance remaining available to a transitional assistance enrollee is more than the amount actually available to the transitional assistance enrollee.

As discussed above in section II.C.6. of this document, should a discount card enrollee be determined eligible for transitional assistance after already enrolling in an endorsed program, we will pay the annual enrollment fee and the endorsed sponsor must immediately refund to the card enrollee, or any State that has paid the enrollment fee on behalf of the discount card enrollee, any annual enrollment fee for the calendar year previously paid by the discount card enrollee or State. The endorsed sponsor would include this payment in its report to us for our reimbursement.

Endorsed sponsors will be required to have a process for managing payment

against an individual's transitional assistance cap to ensure that not more than the amount of transitional assistance available is provided to the individual. Additionally, endorsed sponsors will need to have a process for managing transitional assistance in the event a transitional assistance enrollee switches endorsed discount card programs with a transitional assistance balance remaining. In this case, the endorsed sponsor must ensure that the amount of transitional assistance reported to CMS as remaining available for transfer to the new endorsed program is a final number; that is, CMS will not adjust the number at a later date to account for outstanding claims at the time the amount was reported, nor will CMS provide additional reimbursement to the endorsed sponsor to make up any difference. In their applications, applicants must describe their processes for (1) managing payment against transitional assistance caps, and (2) managing payment such that remaining transitional assistance balances reported to CMS at the time of an enrollee's disenrollment represent final amounts. If processes that endorsed sponsors put in place to manage payment in these cases could create a financial liability for a transitional assistance enrollee, endorsed sponsors will be required to inform these enrollees of such circumstances and any special procedures.

Our procedures for reimbursing endorsed sponsors for transitional assistance will be discussed in further detail in the solicitation and pre-application conference.

E. CMS-Provided Beneficiary Education

1. General

In accordance with section 1860D–31(d)(1) of the Act, we plan to disseminate to beneficiaries eligible for the discount card general information about the availability of the program and general program features, such as the limitation of enrollment to only one discount card at a time, the initial enrollment date, and the potential use of formularies containing the drugs on which discounts are available. We also plan to disseminate general information about the availability of transitional assistance and the qualifying standards for the assistance. In addition to the general information, we plan to disseminate specific comparison information to promote informed consumer choice among endorsed discount card programs, including—

- Enrollment fee;
- Customer service hours;
- Contact information;
- Program Web site; and
- Negotiated prices, to include the dispensing fee.

Finally, we plan to develop messages that are understandable and meaningful for beneficiaries to support specific information about the program in order to increase beneficiary knowledge about and motivation to consider this program.

Section 1860D–31(d)(1)(C) of the Act states that both the general information and the specific comparative information should, ''to the extent practicable,'' be disseminated so that ''discount card eligible individuals are provided such information at least 30 days prior to the initial enrollment date.'' We will make available general program information and a subset of comparison information for each card program 30 days before the initial enrollment date and will coordinate later information dissemination activities with our annual coordinated education campaign on Medicare options. The provided comparison information will not contain negotiated prices. Provision of ''price comparison'' information to the public requires populating a database with data files from each endorsed sponsor, with a standard format and terminology, of negotiated prices, to include dispensing fee information for each covered discount card drug. To ensure the accuracy of prices on the Web site, endorsed sponsors must be allowed to validate their submitted price information. These activities cannot be completed before the start of the initial enrollment date. In the 30 days prior to the initial enrollment date, discount card eligible individuals will be able to access specific prices by contacting endorsed sponsors through the contact information we will provide.

2. Medicare Web site and Toll-free Information Line

Both general and comparison information will be made available to Medicare beneficiaries on our Web site, *http://www.medicare.gov,* as well as through the toll-free Medicare information line (1–800–MEDICARE), which is available 24 hours per day, 7 days a week. To generate awareness about the program and resources available to answer consumer questions, we plan to use paid advertising, including television, to reach the general audience and the Hispanic market. We also expect a Medicare publication describing program features will be available on *http://www.medicare.gov* and through 1–800 Medicare 30 days prior to the initial enrollment date. We also expect to include an overview of this program in the 2005 *Medicare & You* handbook, which will reach beneficiaries in time to elect a new drug card for 2005. In addition, we will strive to disseminate information to community level organizations, State Health Insurance Assistance Programs, and our other partners that represent the needs and the interests of the diverse Medicare beneficiary population.

To report on negotiated prices, as requested in section 1860D–31(d)(1)(B)(i) of the Act, we will provide, through *http://www.medicare.gov,* a price comparison Web site that will include maximum, and possibly ranges of, negotiated prices, including the dispensing fee, in actual dollars for the purpose of comparing across endorsed discount card programs. These prices will reflect an estimate of the maximum price charged at the point of sale. This Web site should also include information about generic substitutes. All of this comparative information will assist beneficiaries in deciding which Medicare discount card will offer them the greatest financial advantage. We will provide education that drugs and prices may vary over time.

As described in § 403.806(i)(4)(v), to support the price comparison Web site, drug card sponsors may submit updated data files on a weekly basis to include information on customer service hours, contact information, program Web site, enrollment fee, and negotiated prices, including the dispensing fee. We will specify a standard file format and timing for submitting these data elements to us in the solicitation for endorsed sponsors. At a minimum, each file will include the maximum negotiated price for every covered discount card drug under the card program. As required in § 403.806(d)(5) of our regulations, maximum negotiated prices available under the endorsed discount card program must match those reported on the price comparison Web site. We believe that a weekly update of information is frequent enough to allow endorsed sponsors to adjust to fluctuating supply prices, but also ensures that accurate price information is available to discount card eligible individuals and card enrollees at all times. The effort to allow more frequent updates is not practical because we must coordinate creating a new database of prices from all endorsed sponsors.

As discussed in section II.C.7. of this document, in order to communicate the Secretary's endorsement of a prescription drug discount card program, as required in section 1860D–31(a)(1)(A) of the Act, we will create

and authorize the use of a Medicare-Endorsed Prescription Drug Card emblem. This emblem will be used to communicate that Medicare has endorsed a stable and reputable drug card. We will develop standards for use of the emblem to be included in the Information and Outreach Guidelines.

In addition to answering beneficiary questions about the drug discount card program, the 1–800 MEDICARE call center will also log and help triage discount card members' complaints for resolution through the complaints tracking process discussed in greater detail under section II.F. of this document.

Physicians and pharmacists are an important source of information for discount card eligible beneficiaries. Although not required by the legislation, we also plan to conduct provider outreach activities through a variety of channels to make physicians and pharmacists aware of this program and to educate them about the specific features. We hope that increased physician and pharmacist awareness will bolster beneficiary awareness and improve the quality of their card choice and their ultimate cost-savings. We also believe that physician and pharmacist promotion of the program will encourage low-income individuals to enroll and access the available transitional assistance.

F. CMS Oversight and Monitoring

1. General

Consistent with section 1860D–31(i)(2) of the Act, we will develop a drug discount card program oversight system to ensure compliance with program requirements.

We will develop and operate a complaint (also referred to as ''grievance'') tracking system to monitor and manage complaints that are not satisfactorily resolved through the endorsed sponsors' customer complaints process. In accordance with section 1860D–31(d)(1)(D) of the Act, we will develop a system for collecting beneficiary complaints through our 1–800–MEDICARE toll-free telephone number. This system will likely be augmented by a system for gathering and responding to complaints acquired through the *http://www.medicare.gov* Web site as well as through Congressional and other types of correspondence. We will also analyze the reports provided by endorsed sponsors on their program performance. In addition, we plan to conduct mystery shopping and a beneficiary satisfaction survey. We plan to use these various sources of information to observe possible trends that indicate less than satisfactory performance, significant departures from the marketed card program offering, or fraud or other violations of State and Federal laws. We anticipate tracking complaints related to—

- Deceptive marketing and enrollment practices;
- Violations of the confidentiality provisions;
- Persistent inconsistencies in formulary or pricing information compared to those available at the point of sale;
- Inadequate endorsed sponsor customer service;
- Persistent problems with pharmacy network services or providers;
- Denying transitional assistance to qualified beneficiaries;
- Arbitrary variations in negotiated prices offered; and
- Any additional changes that put the endorsed sponsor at risk of failing to continue to meet the endorsement requirements.

We will also refer complaints to Federal and State authorities when violations of laws under the jurisdictions of these agencies are in question.

a. Marketing and Enrollment Policies

We will also review information from our own enrollment systems for data that may indicate endorsed sponsors' failure to comply with the program's marketing or enrollment policies. We will examine claims and pricing data reported by endorsed sponsors to determine whether enrollees are receiving the savings promised through their discount cards. Finally, we will review the grievance logs submitted by each of the endorsed sponsors to examine trends in types of complaints and to ascertain whether endorsed sponsors are responding appropriately to enrollee service complaints.

b. Transitional Assistance Payments

We will also monitor the allocation and tracking of the annual transitional assistance payments for eligible enrollees. As a qualification for endorsement, under section 1860D–31(h)(1)(C) of the Act, endorsed sponsors are required to have satisfactory arrangements to account for the transitional assistance. To ensure that transitional assistance is made available on behalf of the proper beneficiaries and that it is used only to purchase covered discount card drugs, we will contract with auditors to analyze select claims and other information maintained by the sponsors related to the payment and tracking of the transitional assistance. As necessary, we will exercise our authority, under section 1860D–31(i)(2) of the Act, to conduct audits and to inspect the records of endorsed sponsors related to the operation of the drug discount card program.

2. Intermediate Sanctions

Under section 1860D–31(i)(3) of the Act, we may impose intermediate sanctions against endorsed sponsors in the form of suspended marketing and enrollment activities in a manner similar to the sanctioning process under Part C. In § 403.820(a)(3), we have identified the following bases related to significant performance requirements for the imposition of intermediate sanctions—

(1) Substantial failure to maintain an adequate contracted retail pharmacy network;

(2) Substantial failure to comply with our information and outreach guidelines;

(3) Substantial failure to provide enrollees with negotiated prices consistent with information provided on our price comparison Web site and/or reported by the sponsor;

(4) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), substantial failure to ensure that the negotiated price for a covered discount card drug does not exceed an amount proportionately greater than the change in the drug's average wholesale price (AWP), and/or an amount proportionate to changes in the endorsed sponsor's cost structure (including material changes to any discounts, rebates, or other price concessions the endorsed sponsor receives from a pharmaceutical manufacturer or pharmacy);

(5) Charging card program enrollees additional fees beyond the $30 enrollment fee;

(6) Charging transitional assistance enrollees any enrollment fee;

(7) Charging a coinsurance rate higher than 10 percent for those above 100 percent of the poverty line and up to 135 percent of the poverty line, or charging a coinsurance rate higher than 5 percent for those at or below 100 percent of the poverty line;

(8) Substantial failure to properly administer the transitional assistance funding for transitional assistance enrollees;

(9) Substantial failure to provide us or our designees with requested information related to the endorsed sponsor's drug card operations;

(10) Substantial failure to comply with the requirements of the

endorsement, including failing to perform the operational requirements of this program, or the failure to submit an acceptable plan of correction within the time frame specified by CMS; and

Upon determining that at least one basis exists for imposing an intermediate sanction, our regulations at § 403.820(a)(4) provide that we will notify the non-compliant endorsed sponsor of our intent to impose sanctions. The endorsed sponsor will have 15 days to challenge the accuracy of our finding. If the endorsed sponsor does not challenge the finding, the sanctions will go into effect 15 days after the endorsed sponsor received the sanction notice from us. If the endorsed sponsor does challenge the finding, we will notify the sponsor of the effective date in the reconsideration determination notice that we will send to the endorsed sponsor. Once intermediate sanctions are imposed, the endorsed sponsor will be required to demonstrate to us that it has come into compliance with card program requirements before the sanctions are lifted.

3. Civil Monetary Penalties

Section 1860D–31(i)(3) of the Act authorizes the imposition of civil monetary penalties (CMP) against endorsed sponsors that knowingly engage in conduct that violates the requirements of section 1860D–31 of the Act or engage in false or misleading marketing practices. In § 403.820(b) of our regulations, we interpret this to mean that those endorsed sponsors that knowingly engage in conduct that violates the conditions of their endorsement agreement with us or that constitutes false or misleading marketing practices may be subject to CMPs.

We have divided the sanction authority between CMS and the Department of Health and Human Services Office of the Inspector General (OIG). As in Part C, where CMP authority is shared between these two agencies, we have assigned sanction authority to OIG for those violations that concern misleading or defrauding a beneficiary. We have also assigned sanction authority to the OIG for misuse of transitional assistance funds. On the other hand, we will have the authority to impose CMPs in those instances where the endorsed sponsor's conduct constitutes non-compliance with an operational requirement not directly related to beneficiary protection. Accordingly, as provided in § 403.820(b)(1) of our regulations, OIG will have the authority to impose CMPs against an endorsed sponsor whom it determines has knowingly—

(1) Misrepresented or falsified information in information and outreach or comparable material provided to a program enrollee or other persons;

(2) Charged a program enrollee in violation of the terms of the endorsement contract; or

(3) Used transitional assistance funds in any manner that is inconsistent with the purpose of the transitional assistance program.

As provided in § 403.820(b)(2) of our regulations, we will have the authority to impose CMPs for an endorsed sponsor's—

(1) Substantial failure to maintain an adequate retail pharmacy network;

(2) Substantial failure to comply with our information and outreach guidelines;

(3) Substantial failure to provide us or our designees with requested information related to the endorsed sponsor's drug card operations;

(4) Substantial failure to provide enrollees with levels of discounts or prices consistent with information provided in its marketing materials;

(5) Charging card program enrollees additional fees beyond an enrollment fee, charging transitional assistance-qualified enrollees any enrollment fee, charging a co-payment higher than 10 percent for those above 100 percent of the poverty line and up to 135 percent of the poverty line, or charging a co-payment higher than 5 percent for those at or below 100 percent of the poverty line;

(6) Substantial failure to administer properly the transitional assistance, including the charging of coinsurance, for the endorsed sponsor's eligible enrollees;

(7) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), substantial failure to ensure that the negotiated price for a covered discount card drug does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP) and/or an amount proportionate to the changes in the endorsed sponsor's cost structure (including materials changes to any discounts, rebates, or other price concessions the sponsor receives from a pharmaceutical manufacturer or pharmacy); or

(8) Any other failure to substantially comply with the requirements of the endorsement, or the failure to submit an acceptable plan of correction within the timeframe specified by CMS.

The CMS and the OIG may impose CMPs of up to $10,000 per violation. We will impose CMPs and afford endorsed sponsor appeal rights according to the procedures stated in 42 CFR parts 1003 and 1005.

We note that in addition to the sanctions described above, a card sponsor's misuse of the Medicare name or emblem may subject them to the penalties stated at 42 U.S.C. 1320b-10, which prohibits the misuse of the Medicare name or emblem. In general, the statute authorizes the OIG to impose penalties on any person who misuses the term, ''Medicare,'' or other names associated with DHHS in a manner which the person knows or should know gives the false impression that it is approved, endorsed, or authorized by DHHS. Offenders are subject to fines of up to $5000 per violation or, in the case of a broadcast or telecast violation, $25,000.

4. Termination by CMS

Pursuant to section 1860D–31(i)(3) of the Act, and as provided in § 403.820(c) we may terminate the contract of any endorsed sponsor upon a determination that the sponsor no longer meets the requirements for participation in the Medicare drug discount card program or that the sponsor has engaged in false or misleading marketing practices (for example, use of non-CMS-approved marketing materials, marketing outside the approved service area, use of beneficiary information to market services not directly related to the endorsed sponsor's Medicare card program). The bases stated above for the imposition of intermediate sanctions also serve as the bases for termination for failure to meet the requirements for participation in the Medicare drug discount card program. Prior to terminating a contract, we will afford the endorsed sponsor an opportunity to develop and execute a CMS-approved corrective action plan.

We will afford an endorsed sponsor the opportunity to appeal our decision to terminate an endorsement contract as well as our decision not to enter into a contract with an entity that applied for endorsement. In each case, we will provide notice to the endorsed sponsor stating the reasons for terminating the contract or failing to endorse the program. These sponsors will have 15 days from the date of the notice to file a request in writing for reconsideration to us. We will then designate a hearing officer who is impartial and has no interest in the matter pending for decision. CMS and the sponsor will have the opportunity to submit evidence and participate in a hearing convened by the hearing officer. The hearing officer will issue a decision as soon as

practicable after the hearing. This decision is final and binding on the parties and, as provided in § 403.820(f)(11) of our regulations, is not subject to judicial review.

Endorsed sponsors whose endorsement we terminate must notify all of their card program enrollees in writing within 10 days of receiving our notice of termination.

5. Termination by Endorsed Sponsor

An endorsed sponsor may terminate its contract with us in the event that we substantially fail to perform our obligations related to this program, as provided in § 403.820(d). These obligations would include, but are not limited to, our operation of the drug card enrollment system, price comparison Web site, and reimbursement for transitional assistance, as well as payment of enrollment fees for beneficiaries eligible for transitional assistance and timely review of marketing materials. An endorsed sponsor entering into a contract with us has a reasonable business expectation that we will adequately support the operation of the discount card program and that it will not be held to the contract in the event that we are in significant breach of that contract. Accordingly, we are adopting this termination provision to promote the efficient administration of the Medicare drug discount card program, consistent with section 1102 of the Act.

The endorsed sponsor will be required to provide a notice of termination to us 90 days prior to its intended effective date and to its enrollees by mail 60 days prior to the same date. The notice will provide affected enrollees with a description of remaining endorsed discount card programs available in its own area and the process for enrolling in a new endorsed discount card program.

6. Termination by Mutual Consent

As provided in § 403.820(e) of our regulations, CMS and an endorsed sponsor may agree to terminate or modify an existing contract. If a contract is terminated by mutual consent, the endorsed sponsor must follow the enrollee notice procedures as required in the case of a termination of the contract by an endorsed sponsor. We have adopted the provision, as specified in § 403.820(e), for mutual modification or termination to address those circumstances when both parties may agree that a contract termination is in the best interests of the endorsed sponsor, taxpayers, Medicare beneficiaries, and the Medicare program, allowing us to terminate an endorsed sponsor's endorsement contract before its term expires. This is also a contracting provision that we are adopting to promote the efficient administration of the Medicare drug discount card program, consistent with section 1102 of the Act.

G. Special Rules Concerning Medicare Managed Care Organizations

1. General Requirements for Medicare Managed Care Organizations

As discussed in section II.C.1 of this document and codified in §§ 403.804(b) and 403.804(c) of our regulations, section 1860D–31(h)(1)(A)(iv) of the Act provides that a Part C organization is eligible to be an endorsed sponsor if it meets the requirements for endorsement either individually or in combination with one or more other entities. Sections 403.804(b) and 403.804(c) of our regulations also make reasonable cost reimbursement plans eligible to be endorsed sponsors provided they meet the requirements for endorsement. Medicare managed care organizations—organizations offering coordinated care plans as described in section 1851(a)(2)(A) of the Act and reasonable cost reimbursement plans under section 1876(h) of the Act—qualifying for endorsement may offer their endorsed program to all discount card eligible individuals residing in their service area(s) or only to those discount card eligible individuals enrolled in one or more of the Medicare managed care organization's plan(s). All other Part C organizations qualifying for endorsement must offer their endorsed program to all discount card eligible individuals residing in their service area(s). Part C organizations and reasonable cost reimbursement contracts that offer an endorsed program to all discount card eligible individuals must meet the requirements for endorsement applicable to all other applicants endorsed sponsors. However, as discussed below in section II.G.2.a of this document, special rules apply to Medicare managed care organizations that limit enrollment in their endorsed program to members of one or more of their Medicare managed care plans.

Under section 1860D–31(g)(7) of the Act, any nonuniformity in benefits offered by a Part C organization to its Part C plan members resulting from implementation of the Medicare drug discount card program, including payment or waiver of any enrollment fee for an endorsed program and limiting transitional assistance to transitional assistance enrollees, will not be taken into account in applying the requirement, set forth in section 1854(f)(1)(D) of the Act that any additional benefits offered by a Part C organization be provided uniformly to all Part C plan members. Accordingly, as provided in § 403.814(c) of our regulations, a Part C organization will not be violation of this uniformity of benefits rule if it:

- Pays the annual enrollment fee, if any, for its Part C plan members choosing to enroll in an endorsed program—whether operated by the Part C organization or another endorsed sponsor—provided that any such benefit is reflected in the Part C plan's Adjusted Community Rate (ACR) filing;
- Waives the annual enrollment fee for its Part C plan members enrolling in its endorsed program, provided that any such benefit is reflected in the Part C plan's Adjusted Community Rate (ACR) filing;
- Provides transitional assistance to transitional assistance enrollees.

Although section 1860D–31 of the Act does not explicitly state that it is creating an exception to the uniform premium rule under section 1854(c) of the Act and 42 CFR 422.100(d)(2), it authorized Part C plans to offer non-uniform benefits that would be inconsistent with the rule. For the reasons set forth below, we believe that in doing so, Congress created a new implicit statutory exception to the uniform premium rule. Under the uniform premium rule, as implemented in regulations, a Part C organization must offer its Part C plan at a uniform premium, with uniform benefits and cost-sharing levels throughout the plan's service area (or segment of the plan's service area as provided in 42 CFR 422.304(b)(2)). Absent an exception to this rule, a Part C organization offering its endorsed program to members of its Part C plan as an optional supplemental benefit would be required to offer the benefit to all of its members within the plan's service area (or segment of the service area), and charge them the same annual enrollment fee. However, as discussed above in section G.1. of this document, a Part C organization is prohibited by statute from offering its endorsed program to members of its Part C plan(s) that are not eligible for the Medicare drug discount card program. Similarly, a Part C organization offering an endorsed program may not collect an annual enrollment fee from transitional assistance enrollees, but instead must collect this fee from CMS. Consequently, a Part C organization offering an endorsed program to members of its Part C plan(s) cannot comply with the requirements of section 1860D–31 without violating the uniform premium rule.

As discussed in Norman J. Singer's *Statutes and Statutory Construction* (6th ed.), where two statutory provisions irreconcilably conflict, courts generally hold that the more recently enacted statutory provision prevails. Applying this principle, we believe that in enacting the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Congress intended implicitly to except from the uniform premium rule under Part C any non-uniformity resulting from a Part C organization's implementation of its endorsed program. We further note that in section 1860D–31(g)(7) of the Act Congress clearly indicated its intent to allow non-uniformity in benefits among a Part C plan's members as a result of a Part C organization's implementation of its endorsed program. Accordingly, as provided in § 403.814(c) of our regulations, a Part C organization would not be violation of the uniform premium rules under section 1854(c) of the Act and 42 CFR 422.100(d)(2) if it:

- Offers its endorsed program to members of its Part C plan who are discount card eligible individuals, to the exclusion of those members who are not discount card eligible individuals; or
- Collects an annual enrollment fee only from discount card enrollees who are not eligible for transitional assistance.

Section 18060D–31(a)(3) provides that discount card eligible individuals cannot be required to enroll in an endorsed program. In keeping with the voluntary nature of the Medicare discount drug card program, and as specified in § 403.814(a) of our regulations, a Part C organization or reasonable cost reimbursement plan may not require enrollment in any endorsed program, whether operated by the organization or another entity, as a condition of enrollment in any of its Part C or reasonable cost reimbursement plans.

In addition, a Part C or reasonable cost reimbursement organization may not require transitional assistance enrollees enrolled in its Part C or reasonable cost reimbursement plan to exhaust their transitional assistance prior to obtaining covered discount card drugs under any drug benefit offered by its Part C or reasonable cost reimbursement plan. We believe this policy is consistent with the Part C rules under 42 CFR 422.100(d)(2) and section 1876(g)(2) of the Act which require that any additional benefit offered by a Part C or reasonable cost reimbursement plan must be offered uniformly to all plan members. Requiring transitional assistance enrollees to utilize their transitional assistance prior to obtaining covered discount card drugs under their Part C or reasonable cost reimbursement plan drug benefit would violate these uniformity of benefits rules because non-transitional assistance enrollees would be entitled to obtain covered discount card drugs under the Part C or reasonable cost reimbursement plan drug benefit while transitional assistance enrollees would be prohibited from doing so until they exhaust their transitional assistance. In other words, non-transitional assistance enrollees would receive more generous drug coverage under the Part C or reasonable cost reimbursement plan than transitional assistance enrollees. (Section 1860D–31(g)(7) of the Act waives the uniformity of benefits rule under Part C only for purposes of implementing the Medicare drug card program; that is, when non-uniformity directly results from implementation of the drug card statutory provisions. Because any requirement that transitional assistance enrollees first exhaust their transitional assistance would stem not from implementation of the Medicare drug discount card program but from the benefits package offered under a Part C plan, the uniformity of benefits waiver under section 1860D–31(g)(7) of the Act would not apply.) We also note that our prohibiting Part C organizations from requiring their transitional assistance enrollees to first exhaust their transitional assistance prior to utilizing their drug benefit under their Part C plan means Part C plans will not need to take transitional assistance into account in their annual ACR filings.

As discussed in II.A.6. of this document and provided in our regulations at § 403.811(b)(2)(iii), discount card enrollees may disenroll from their endorsed program and enroll in a new endorsed program during a special election period when enrolling in or disenrolling from a Part C or reasonable cost reimbursement plan offering an endorsed program, irrespective of whether the Part C or reasonable cost reimbursement plan offers an endorsed program of any kind. We will automatically disenroll card enrollees from their endorsed program when they enroll in or disenroll from a Medicare manage care plan offering an exclusive card program. Further, in accordance with our regulations at § 403.808(f)(3), any transitional assistance remaining available to a transitional assistance enrollee electing to switch to a new endorsed program following his or her enrollment in or disenrollment from a Part C or reasonable cost reimbursement plan offering an endorsed program will follow the transitional assistance enrollee to his or her new endorsed program.

2. Special Rules for Applicants Seeking To Offer Exclusive Card Programs

a. Endorsement Requirements for Applicants Seeking To Offer Exclusive Card Programs

Applicants seeking to offer an exclusive card program must indicate their intent to do so on their applications. For Medicare managed care organizations seeking to offer an exclusive card program, if the Medicare managed care organization combines with one or more other entities eligible to meet the requirements of endorsement, the Medicare managed care organization must be the applicant, as required under § 403.814(b)(1) of our regulations. We require this because we want to ensure that our endorsed sponsor contract—and, ultimately, accountability for an endorsed program—is with the Medicare managed care organization itself, and not with any of the entities with which it combines to offer an endorsed program. If a Medicare managed care organization will not offer an exclusive card program, we will permit another entity with which the Medicare managed care organization combines to be the applicant.

We will not require Medicare managed care organizations operating more than one Medicare managed care plan to offer its exclusive card program to members of all of its Medicare managed care plans; rather, the Medicare managed care organization may limit enrollment in its exclusive card program to members of only certain Medicare managed care plans it operates. Members of the organization's other Medicare managed care plans are free to enroll in any other endorsed program, including any non-exclusive endorsed program offered by the Medicare managed care organization, provided they meet the eligibility criteria for the program.

Section 1860D–31(h)(9)(B) of the Act exempts exclusive card sponsors from certain requirements generally applicable to endorsed sponsors, including: (1) The requirement set forth in section 1860D–31(h)(3) of the Act and § 403.806(f)(1) and § 403.806(f)(2) of our regulations concerning minimum service areas; and (2) the pharmacy access standard under section 1860D–31(e)(1)(B) of the Act and § 403.806(f)(3) of our regulations.

Although a Medicare managed care organization may limit enrollment in its

exclusive card program to members of one or more of its Medicare managed care plans that include the exclusive card program as part of the plans' benefit package, the Medicare managed care organization must offer its exclusive card program to all discount card eligible individuals enrolled in those specific Medicare managed care plan(s). A Medicare managed care organization may not limit enrollment in its exclusive card program to only some discount card eligible individuals enrolled in those Medicare managed care plan(s) to the exclusion of other discount card eligible individuals because this would violate the uniformity of benefits provisions under section 1854(f)(1)(D) of the Act and 42 CFR 422.100(d)(2).

We also implement the exception from pharmacy access standards in section 1860D–31(h)(9)(B)(ii) of the Act and § 403.814(b)(3)(i) of our regulations by deeming exclusive card sponsors as having met such standards if—

- The network is not limited to mail-order pharmacies; and
- The network is equivalent to the pharmacy network under any outpatient drug benefit offered under the Medicare managed care organization's Medicare managed care plan which was previously approved by us under the Medicare Part C or Section 1876 rules.

If the Medicare managed care organization does not offer a drug benefit under its Medicare managed care plan, we will evaluate whether the network provides sufficient access to covered discount card drugs at negotiated prices for discount card enrollees using the same considerations we currently use to evaluate Medicare managed care plans' other provider networks under 42 CFR 422.112.

We are not applying the standards of § 403.806(f)(3) of our regulation because these standards may be impracticable for exclusive card sponsors. Medicare managed care organizations currently do not have to follow these standards in establishing their pharmacy networks. We presume that many exclusive card sponsors will wish to use the same pharmacy networks under their endorsed program as they currently use to provide prescription drugs under any prescription drug benefit they may offer to their Medicare managed care plan members. Moreover, given the size of exclusive card sponsors' service areas relative to the statewide service areas of other sponsors, the pharmacy access standards contained in § 403.806(f)(3) of our regulation may be too restrictive. In addition, Medicare managed care organizations that use plan-owned pharmacy networks would have a difficult time meeting these access standards.

In addition to the requirements Congress specifically waived in section 1860D–31(h)(9)(B) of the Act, section 1860D–31(h)(9)(B)(iii) authorizes the Secretary to waive other endorsed sponsor requirements if those requirements are duplicative of or conflict with requirements applicable to Medicare managed care organizations under Part C (and the regulations promulgated thereunder) or section 1876 (and the regulations promulgated thereunder), as the case might be, or if waiver of the requirements would improve coordination of the benefits available under the Medicare drug discount card program and Medicare managed care plan programs. We believe the following requirements, discussed in section II.C of this document, are duplicative of, or conflict with, requirements applicable to Medicare managed care organizations under Medicare managed care plan programs, or that waiver of such requirements would improve coordination of the Medicare drug discount card program with Medicare managed care plan benefits—

(1) The covered lives requirement in § 403.806(a)(3) of the regulations;

(2) The requirement set forth in § 403.806(e)(2) of our regulations that transitional assistance be applied only toward costs incurred for covered discount card drugs obtained through the Medicare drug discount card program. Instead, we also permit transitional assistance to be used to pay for coinsurance, copayments, or other cost-sharing charged under a Medicare managed care plan drug benefit when beneficiaries purchase covered discount card drugs.

In addition, although applicants seeking to offer an exclusive card program must meet the business integrity and financial stability requirements in § 403.806(b) of our regulations, we will not require their applications to include the documentation we generally require of applicants to demonstrate compliance with this requirement, as described in section II.C.1. of this document, because such documentation would be duplicative of what these organizations already must demonstrate to us under the provisions of Part C and section 1876 of the Act.

We believe it is appropriate to waive the 1 million covered lives requirement for exclusive card programs because 1 million covered lives is more than most Medicare managed care organizations currently enroll in their Medicare managed care plans and is far higher than the minimum enrollment requirements for Medicare managed care organizations under 42 CFR 422.514 and 42 CFR 417.413(b). Moreover, the service area for exclusive card programs will be limited to the affiliated Medicare managed care plan service area, which could be as low as several thousand individuals for some plans. Therefore, the 1 million covered lives standard potentially would conflict with the minimum enrollment requirements for Medicare managed care plans and pose challenges for certain Medicare managed care organizations seeking to coordinate benefits under their Medicare managed care plans and newly created endorsed programs. Our failure to waive the 1 million covered lives requirement for exclusive card programs likely would have the effect of excluding from the Medicare drug discount card program small Medicare managed care organizations that might otherwise meet the endorsement requirements.

We believe it is appropriate to waive the transitional assistance requirements in § 403.806(e)(2) of our regulations. We believe exclusive card sponsors should be permitted to apply transitional assistance toward any copay, coinsurance, and deductible amounts incurred by transitional assistance enrollees for covered discount card drugs obtained under their Medicare managed care plan's outpatient drug benefit in order to improve coordination between the benefits provided under their endorsed programs and Medicare managed care plans. Because of differences between the cost-sharing structure under a Medicare managed care plan's outpatient prescription drug benefit and the coinsurance requirements under the Medicare drug discount card program, as required under section 1860D–31(g)(1)(B) of the Act, transitional assistance enrollees could be responsible for a larger portion of a drug's costs if obtained under the Medicare managed care plan drug benefit than under the Medicare drug discount card program. Allowing transitional assistance enrollees to apply transitional assistance toward any cost-sharing amounts incurred for covered discount card drugs obtained under their Medicare managed care plan drug benefit would address this problem while allowing for more seamless drug coverage.

Although applicants seeking to offer an exclusive card program must meet the business integrity and financial stability requirements under § 403.806(b) of our regulations, we believe the process for demonstrating compliance with this requirement, as

described in section II.C.1 of this document, is duplicative of aspects of the qualification process that already exists under Part C and section 1876 of the Act. Medicare managed care organizations are currently required, under 42 CFR 422.400 or 42 CFR 417.120 and 42 CFR 417.122, to be licensed under State law as risk-bearing entities or, alternatively, to obtain certification from a State that they meet the financial solvency and other standards that the State may require for the entity to operate as a managed care plan. Under these licensure or certification requirements, Medicare managed care organizations must demonstrate a level of business stability and integrity that generally exceeds our standards for endorsed program applicants. Because exclusive card sponsors already demonstrate business stability and integrity through alternative processes, neither they nor their subcontractors will be required to present documentation demonstrating they meet the business stability and financial stability requirement set forth in § 403.806(b) of our regulations.

In addition to the aforementioned waivers, we will allow applicants seeking to offer exclusive card programs to request in their applications for endorsement that we waive or modify additional requirements applicable to endorsed sponsors. Applicants making such requests must demonstrate that the requirements at issue are duplicative of, or conflict with, requirements applicable to Medicare managed care organizations under Part C, or that they interfere with coordination of the benefits offered under the Medicare drug discount card program with benefits provided under Part C. If we determine that waiver of any additional requirements applicable to endorsed sponsors would be appropriate with respect to exclusive card sponsors, the waivers will apply to all similarly situated exclusive card sponsors.

We are considering providing a streamlined application process for applicants seeking to offer exclusive card programs that parallel the discount cards currently offered under their Medicare managed care plans. We will provide further guidance on this issue in the solicitation.

b. Enrollment and Enrollment Fees in Exclusive Card Programs

As discussed in section II.A.3 of this document, and under section 1860D–31(c)(1)(E) of the Act, discount card eligible individuals enrolled in a Medicare managed care plan offering an exclusive card program may *only* enroll in the exclusive card program and may not enroll in another endorsed sponsor's endorsed program. Discount card eligible individuals enrolled in Medicare managed care plans that *do not* offer an exclusive card program may enroll in any endorsed program available in their service area.

As discussed above in section II.A.3 of this document and as described in § 403.814(b)(5) our regulations, we will allow Medicare managed care organizations offering exclusive card programs to group enroll their eligible Medicare managed care plan members into their exclusive card programs—defined as simultaneous enrollment of all or many members of a Medicare managed care plan into an exclusive card program. However, prior to doing so, an exclusive card sponsor must disclose to its Medicare managed care plan members its intent to group enroll them into its exclusive card program and provide them the opportunity to actively decline such enrollment.

c. Application Process

Section 403.804(a) of our regulations provides that only those applicants submitting their applications for endorsement of their prescription drug discount card programs by the deadline announced in the solicitation will be eligible for endorsement. However, in recognition of the advantages to members of Medicare managed care plans from improved coordination between the benefits available under the Medicare drug discount card program and their Medicare managed care plans, we will permit certain Medicare managed care organizations to apply for endorsement of their prescription drug card programs after the official application deadline.

As discussed above, section 1860D–31(h)(9)(B)(iii) of the Act authorizes the Secretary to waive requirements applicable to endorsed sponsors for exclusive card sponsors if such waiver would improve coordination of the benefits available under the Medicare drug discount card program and Medicare managed care plan programs. One of the major features of the Medicare discount drug card program is that it allows Part C organizations to offer members in their plans a prescription drug plan that integrates access to negotiated prices and transitional assistance available under a drug card with the unique package of benefits available in that Part C plan, including any prescription drug benefit. Beneficiaries who choose to enroll in a new Medicare managed care plan should have the same access to these coordinated discount card programs as members of existing Part C plans. Therefore, as provided under § 403.804(a)(2) of our regulations, we will permit an entity that is applying to enter into a new contract with CMS under Part C to offer a new coordinated care plan or plans, as described in section 1851(a)(2)(A) of the Act, to simultaneously apply to offer an exclusive card program. We will approve such organization's application to offer an exclusive card program provided we approve its Part C application, the Part C organization demonstrates to CMS that it meets all applicable requirements for endorsement, and the Part C organization is ready to initiate enrollment in and fully operate its exclusive card program upon approval of its Part C and endorsement applications.

H. Special Rules Concerning States

1. State Pharmacy Assistance Programs

As described above in section II.A.1. of this document, under section 1860D–31(b)(1)(A)(ii) of the Act and § 403.810(a)(2) of this regulation, beneficiaries with outpatient prescription drug coverage under Title XIX (Medicaid) or a section 1115 waiver demonstration are ineligible for the Medicare drug discount card program. Conversely, beneficiaries with outpatient prescription drug coverage under certain other sources may be eligible for the program provided they meet all other eligibility criteria. For example, many State and local governments provide outpatient prescription drug coverage to individuals through State pharmacy assistance programs (SPAP). Because these programs are operated separately from Title XIX and section 1115 waiver demonstrations and are funded in whole or in part by the State or local governments, without any Federal financial participation, individuals enrolled in these programs still may be eligible for the Medicare drug discount card program. The SPAPs have flexibility in deciding how to work in partnership with endorsed programs. For example, if a State has an SPAP operated by an entity that meets the requirements for endorsement under § 403.800 through § 403.822 of our regulations, that entity could apply to become an endorsed sponsor. However, the entity would be required to meet all requirements for endorsement, including the requirement that an endorsed sponsor offer its endorsed program to all discount card eligible individuals residing in the endorsed program's service area, which may include individuals not eligible for the

SPAP. Should this or any other requirement for endorsement conflict with the endorsed sponsor's arrangement with the State under its SPAP, the endorsed sponsor and State would have to resolve this conflict. Alternatively, a State could coordinate its SPAP with the Medicare drug discount card program by contracting with an endorsed sponsor to administer the SPAP and designing the SPAP benefits so as to wrap around the benefits offered under the Medicare drug discount card program, provided that the endorsed sponsor complies with all applicable requirements of section 1860D–31 of the Act and our regulations. Coordination between a SPAP and an endorsed program could promote their offering a seamless outpatient drug benefit to beneficiaries enrolled in both the SPAP and Medicare drug discount card program.

2. Optional State Payment of Enrollment Fee

Section 1860D–31(c)(2)(F)(i) of the Act specifies that the Secretary will establish an arrangement under which a State voluntarily may provide for payment of some or all of the enrollment fee for some or all discount card enrollees in the State who are not transitional assistance enrollees. The portion of the enrollment fee paid by the State and the category of discount card enrollees (other than transitional assistance enrollees) entitled to State payment of all or some of their enrollment fees is left to a State's discretion. Any enrollment fee paid in whole or part by a State must be paid directly to the endorsed sponsor. We want to provide States flexibility in designing these arrangements to address circumstances particular to that State. Therefore, rather than prescribe a single, specific method for States to work in partnership with endorsed sponsors to pay the enrollment fee on behalf of discount card enrollees, we simply provide at § 403.815(a)(1) of our regulations that States may enter into payment arrangements with endorsed sponsors to provide payment of some or all of the enrollment fee for discount card enrollees, provided the enrollment fee is paid directly by the State to the endorsed sponsor.

Section 1860D–31(c)(2)(F)(ii) of the Act specifies that Federal matching payments will not be available under titles XIX and XXI for State expenditures for enrollment fees under the Medicare drug discount card program. To implement this requirement, we are setting forth a new provision at § 403.815(a)(2) of our regulations that mirrors the statutory provision.

3. Optional State Payment of Coinsurance

As discussed above, under section 1860D–31(g)(1)(B) of the Act, available transitional assistance may be applied toward 90 or 95 percent of the cost of a covered discount card drug obtained under the Medicare drug discount card program, with the transitional assistance enrollees responsible for a 5 or 10 percent coinsurance amount, depending on their income, unless the pharmacy waives those coinsurance amounts. Section 1860D–31(g)(4)(B)(i) of the Act specifies that the Secretary must establish an arrangement under which a State may provide for payment of some or all of these coinsurance amounts for some or all transitional assistance enrollees residing in the State. If a State will pay all or some of these coinsurance amounts, the payment must be paid directly by the State to the pharmacy involved. We want to allow States flexibility in the design of these arrangements to address circumstances particular to that State. Therefore, rather than prescribe a single, specific method for States to work in partnership with pharmacies to pay coinsurance on behalf of transitional assistance enrollees, we are providing at § 403.815(b)(1) of our regulation that States may enter into payment arrangements with pharmacies to provide payment of some or all of the coinsurance for transitional assistance enrollees, provided the coinsurance is paid directly by the State to the pharmacy involved. We leave it to the State's discretion whether it will pay all or a portion of these coinsurance amounts, as well as the category of transitional assistance enrollees entitled to State payment of all or some of their coinsurance.

Under section 1902(a)(10)(E)(i) of the Act, States are required to pay the coinsurance obligations (as defined in section 1905(p)(3)(B) of the Act) for certain Medicare beneficiaries, with the Federal government, in turn, reimbursing States for a portion of these payment amounts. However, section 1860D–31(g)(4)(B)(ii) of the Act provides that any State expenditures for the coinsurance of transitional assistance enrollees will not be considered State expenditures for which Federal matching payments are available under titles XIX and XXI. To implement this requirement, we are setting forth a provision at § 403.815(b)(2) of our regulations that mirrors the statutory provision.

Section 1860D–31(g)(4)(B)(iii) of the Act provides that the coinsurance liability of transitional assistance enrollees is not a cost-sharing obligation set forth in section 1905(p)(3)(B) of the Act. This means that States are not required to pay the coinsurance liability incurred by transitional assistance enrollees who are also Qualified Medicare Beneficiaries (QMBs) (as defined in section 1905(p)(1) of the Act) under the Medicaid program. To implement this requirement, we are setting forth a provision at § 403.815(c) of our regulations that mirrors the statutory provision.

4. State Data

As discussed in section II.A.1. of this document, under section 1860D–31(b)(1) of the Act and § 403.810(a)(2) of our regulations, beneficiaries residing in the 50 States or the District of Columbia with outpatient prescription drug coverage under Title XIX (Medicaid) or a section 1115 waiver demonstration are ineligible for the Medicare drug discount card program. As discussed in section II.A.2 of this document, we will verify beneficiaries' eligibility for the program. To perform this function, we require data from the 50 States and the District of Columbia that will allow us to identify those Medicare beneficiaries eligible under Medicaid or a section 1115 waiver demonstration for outpatient drug coverage. Section 1860D–31(f)(3)(C)(ii) of the Act provides the 50 States and the District of Columbia must provide to us information relating to our verification process under the program, in the manner specified by us, as a condition of the provision of Federal financial participation to a State under Title XIX. Section 1935(a)(1) of the Act similarly conditions receipt of Federal financial assistance under Title XIX upon a State's provision this data. Finally, section 1902(a)(66) of the Act provides that a State plan under Title XIX must provide for making eligibility determinations under section 1935(a) of the Act, which as previously noted includes the provision of eligibility data to us. We will specify the data we require and the manner in which states should provide us the data in a future communication to the State Medicaid directors.

Section 1935(a)(3) of the Act provides that amounts expended by a State in carrying out 1935(a) of the Act, including the provision of data related to our eligibility process, are State expenditures reimbursable under the ''appropriate paragraph'' of section 1903(a) of the Act, which sets forth the Federal share of State expenditures

under a State plan under Title XIX. As States' expenditures related to the provision of this data do not fall within the activities covered under sections 1903(a)(1) through (6) of the Act, we believe the only paragraph under section 1903(a) of the Act that would capture these expenditures is section 1903(a)(7) of the Act. Section 1903(a)(7) of the Act provides for a federal share of 50 percent for State expenditures ''found necessary by the Secretary for the proper and efficient administration of the State plan'' that are not already covered under sections 1903(a)(1) through (6) of the Act. Because States are required to provide us the eligibility data under their State plan, we believe related State expenditures are necessary for the proper administration of the State plan. Section 403.815(d)(2) of our regulations therefore provides that expenditures made by a State in connection with providing us eligibility data will be treated as State expenditures for which Federal matching payments are available under section 1903(a)(7) of the Act. Accordingly, States will be reimbursed 50 percent of these expenditures.

I. Special Rules Concerning Pharmacies Serving Long Term Care Residents or Operated by the Indian Health Service, Indian Tribes and Tribal Organizations, and Urban Indian Organizations

Section 1860D–31(g)(5)(A) of the Act provides that the Secretary shall establish procedures and may waive requirements as necessary to negotiate arrangements with sponsors to provide arrangements with pharmacies that support long term care facilities in order to ensure access to transitional assistance for transitional assistance eligible individuals who reside in long term care facilities.

Further, section 1860D–31(g)(5)(B) provides that the Secretary shall establish procedures and may waive requirements to ensure that, for purposes of providing transitional assistance, Indian Health Service, Indian Tribe and Tribal Organization, and Urban Indian Organization (I/T/U) pharmacies have the opportunity to participate in the pharmacy networks of at least two endorsed discount card programs in each of the 50 States and the District of Columbia where such a pharmacy operates.

In the United States, there are approximately 16,380 Medicare and Medicaid certified skilled nursing facilities and nursing facilities (source: On-Line Survey and Certification and Reporting (OSCAR) System, August, 2003). About 1.3 million Medicare beneficiaries are residents of extended-stay skilled nursing facilities and nursing facilities (Source: 2001 Medicare Current Beneficiary Survey). Among the 1.3 million, the vast majority of these individuals (72 percent) are enrolled in both Medicare and Medicaid, and therefore will be ineligible for the Medicare endorsed discount card program if they have drug coverage through Medicaid. Of the remaining approximately 400,000 Medicare nursing home residents, some portion—perhaps as many as 200,000—may be eligible for transitional assistance under this program. Approximately 3,000 pharmacies support these facilities (source: American Society of Consultant Pharmacists, verbal communication, August 2003.).

Generally speaking, long term care pharmacies provide access to prescription drugs to residents of skilled nursing facilities and nursing facilities through medical benefits that are coordinated by the long term care facilities in cooperation with the long term care pharmacies. Further, the medications provided are often specially packaged to provide quality control. These, among other circumstances, contribute to such pharmacies not being well integrated into the private networks maintained by the pharmacy benefit management industry. The provisions of section 1860D–31(g)(5)(A) of the Act provide an opportunity for long term care pharmacies to provide prescriptions to residents of long term care facilities through the usual distribution channels established by these facilities, while offsetting the cost borne by such residents when their medical coverage either does not apply or has been exhausted.

We estimate that there are approximately 87,000 AI/ANs over the age of 65 who use the services of the Indian Health Service, and another 20,000 or so such individuals who are under the age of 65 years and eligible for Medicare by virtue of a disability (source: Indian Health Service). Of the total, about 36,000 are covered by Medicaid and we estimate that a total of about 18,000 may be eligible for transitional assistance. There are 201 I/T/U pharmacies in 27 States, with 152 operating in ambulatory settings and 49 operating in hospitals. Table 3 depicts the number of these pharmacies by State.

Generally speaking, I/T/U pharmacies provide access to prescription drugs off of the Federal Supply Schedule to AI/ANs, and these pharmacies are not well integrated into the private networks maintained by the pharmacy benefit management industry. The provisions of section 1860D–31(g)(5)(B) of the Act provide an opportunity for I/T/U pharmacies to provide prescriptions to AI/ANs at the low Federal Supply Schedule rate, whereby coverage of the cost of such drugs would in Part Come from transitional assistance funds, and in part from Indian Health Service funds.

To meet the requirements of section 1860D–31(g)(5) of the Act, we are strongly encouraging endorsed sponsors to offer a plan in their application for endorsement to include long term care and/or I/T/U pharmacies in their networks for the purpose of administering transitional assistance. As will be provided in greater detail in the solicitation, CMS intends to employ a competitive process to select for ''special endorsement,'' among interested applicants, in each of the 50 States and the District of Columbia, at least two applicants that, in accordance with § 403.816(b)(2) of our regulations, agree to contract with any willing long term care pharmacy provider in the endorsed sponsors' service areas seeking to participate in their pharmacy networks. Similarly, CMS intends to select at least two applicants for ''special endorsement'' in each of the 50 States and the District of Columbia where I/T/U pharmacies operate, in accordance with § 403.816(d)(2) of our regulations, to contract with any I/T/U pharmacy in the endorsed sponsors' service areas seeking to participate in their networks.

Selection criteria will be further discussed in the solicitation and will include understanding and accommodation of, as well as prior experience with, the unique circumstances of these special pharmacies, the percent of all long term care and/or I/T/U pharmacies within the proposed service areas to be provided contracts, the expansiveness of the proposed service area, completeness and feasibility of the plan for favorable access, and timeliness of implementation. The selected applicants, also called special endorsed sponsors, will provide for terms in these special pharmacy contracts to accommodate certain unique attributes of these pharmacies, described below, which are intended to improve access to needed prescription drugs and transitional assistance by long term care residents and AI/ANs. Also, as described below, we will work closely with interested applicants and special endorsed sponsors to provide technical assistance and other incentives.

As described above, the Secretary must ensure that transitional assistance-

eligible residents of long term care facilities have access to transitional assistance. Additionally, the Secretary must ensure that I/T/U pharmacies utilized by AI/ANs have the opportunity to participate in the pharmacy networks of at least two discount cards for the purpose of providing transitional assistance. We believe the best way to ensure that AI/ANs and residents of long term care facilities have the opportunity to receive transitional assistance is to promote a competition for ''special endorsement'' to serve these beneficiaries. We believe a competition among interested sponsors will encourage better, more thoughtful plans for access to a market generally untapped by the pharmacy benefit management industry.

As discussed previously, pharmacies supporting long term care facilities and AI/ANs are not generally included in the traditional pharmacy networks of the pharmacy benefit management industry, thus representing potentially new lines of business for some applicants, or possibly leveraging an existing niche market for some pharmacy benefit management organizations. The competition will guarantee to the special endorsed sponsors additional covered lives, an opportune business strategy to grow enrolled lives and subsequent utilization, leading to additional revenues. A ''guaranteed'' volume of new covered lives would be needed to cover the fixed costs associated with starting up the special provisions of these special pharmacy contracts. We believe that the promise of a guaranteed volume for the winning applicant will be a critical factor in whether the applicant decides to submit a plan that covers long term care and/or I/T/U pharmacies. Without the competition, we think that there is a high risk of drug discount card program applicants not offering a plan. Literally speaking, we believe the competition is necessary to assure these populations will have access to any endorsed card program. Further, the competition will provide to the special endorsed sponsors a ''special endorsement'' they can market.

An added benefit of the competition to beneficiaries is that the negotiations between these pharmacies and special endorsed sponsors to accommodate these pharmacies' special circumstances, along with technical assistance provided by CMS, can be accomplished relatively quickly compared to the process necessary if all endorsed sponsors had to accommodate these special circumstances. This will lead to a timely implementation of these special provisions, improving access to prescription drugs. In the case of long term care pharmacies, if interested pharmacy benefit management organizations with niche expertise in this area are able to meet our requirements and compete successfully for the special endorsement, then participation may also improve the timeliness of implementation and access to transitional assistance for long term care residents.

The applicants selected for special endorsement will receive assistance and support from CMS in setting up special contracting arrangements with these pharmacies as needed. We intend to hold a special break out session at the pre-application conference and, to the extent that this would be useful to interested applicants and, if feasible, CMS would arrange for the participation of the long term care pharmacy industry and the Indian Health Service, to the extent possible, provide a list of all pharmacies that support long term care facilities and I/T/U pharmacies; provide for an expedited marketing review to the extent possible; and provide special recognition for these special endorsed sponsors on the CMS Web site that describes their programs.

Additionally, as discussed in section II.C.1. of this document, endorsed sponsors must provide us with sample copies of their contracts with pharmacies participating in their network prior to commencing outreach and enrollment activities. Because the arrangements between special endorsed sponsors and long-term care and I/T/U pharmacies will present unique challenges and represent new types of arrangements for most special endorsed sponsors, special endorsed sponsors must only make a good faith effort to finalize these arrangements as soon as practicable; we will not require that these arrangements be finalized and approved by us prior to the start of the special endorsed sponsor's commencement of outreach and enrollment activities under its general endorsement, if applicable.

One of the goals of the technical assistance will be to help special endorsed sponsors understand the operations of these pharmacies which may require that special contracting provisions be included in the contracts between the special endorsed sponsors and these pharmacies. Both types of pharmacies have a number of unique characteristics that distinguish them from other retail pharmacies that will be participating in the drug discount card program. For instance, I/T/U pharmacies purchase drugs off the Federal supply schedule; generally can only serve AI/ANs; are required by law to waive copayments; and generally stock a more limited range of drugs compared to other retail pharmacies. Further, a few may not have point of sale technology.

Long term care pharmacies generally provide the drugs directly to the skilled nursing facilities and nursing facilities where the patient resides, not directly to the patient, under a medical benefit. They also engage in a significant coordination of benefits effort that would require at least some claims processed against the transitional assistance to be processed off-line, not in real time.

Thus, as cited in § 403.816 of our regulations, we may require of special endorsed sponsors certain contracting provisions. First, we will require that these sponsors contract with any willing provider of these types in their service areas (§ 403.816(b)(2) and § 403.816 (d)(2) of our regulations). Other likely special provisions in the contracts between special endorsed sponsors and these pharmacies include (§ 403.816(b)(4) and § 403.816(d)(3) of our regulations):

- For long term care: Long term care pharmacies are permitted to provide covered discount card drugs only to transitional assistance enrollees of the special endorsed sponsor's endorsed program who reside in long term care facilities served by the pharmacy; special endorsed sponsor may need to process special transaction type depending on whether the pharmacy is recognized under HIPAA as a retail pharmacy (that is, X12 versus NCPDP); and the special endorsed sponsor must agree to process ''late'' claims without penalty as payer of last resort after other insurance has been processed first.
- For I/T/U pharmacies: the pharmacy generally can only serve AI/ANs (special endorsed sponsor must structure network and educate enrollees so that non-AI/ANs understand these pharmacies generally are not available to them); and pharmacy is not required to stock all drugs.

An additional requirement, as provided in § 403.816(b)(3) of the regulation, special endorsed sponsors for long term care residents will be required to process claims from any out-of-network long term care pharmacies that supply covered discount card drugs to long term care facility residents enrolled in the drug discount card program when such beneficiaries have a transitional assistance balance remaining. As residents in skilled nursing facilities and nursing facilities are generally required by these entities to use the facility's selected long term care pharmacy, this provision will

accommodate long term care pharmacies in the event they do not decide to join the special endorsed sponsor's network.

Section 1860D–31(g)(5) of the Act grants the Secretary the authority to waive requirements of the Medicare drug discount card program as necessary to ensure that transitional assistance may be applied toward covered discount card drugs obtained from long-term care and I/T/U pharmacies. In recognition of the unique challenges facing special endorsed sponsors who agree to include these pharmacies in their pharmacy networks, we will waive application of certain requirements if doing so is necessary to: (1) Ensure that a sufficient number of applicants seek special endorsement; (2) enable the Medicare drug discount program to start within 6 months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and (3) accommodate the unique needs of long-term care and I/T/U pharmacies.

Section 403.806(e)(4) of our regulations require endorsed sponsors to ensure that their pharmacies make available to transitional assistance enrollees at the point of sale, either electronically or by telephone, the amount of transitional assistance remaining available to them. Because long-term care pharmacies may process claims off-line due to coordination of benefit issues, there may be a lag in updating the transitional assistance amount to reflect recent transactions involving transitional assistance funds. Consequently, transitional assistance enrollees could be informed that they have more transitional assistance available to them than actually available if prior claims are still pending. Because I/T/U pharmacies do not charge AI/ANs for drugs obtained by them, AI/ANs obtaining drugs from these pharmacies will not have any out-of-pocket expenditures, and therefore their drug purchasing decisions will not be influenced by the amount of transitional assistance remaining available to them. Therefore, as provided in § 403.816(c)(ii) and § 403.816(e)(ii) of our regulations, special endorsed sponsors are not required to ensure that their long-term care and I/T/U pharmacies make available to transitional assistance enrollees at the point of sale the amount of transitional assistance remaining available to them.

In addition, section 1860D–31(g)(5) requires the availability of transitional assistance to long-term care residents and those using I/T/U pharmacies, but it does not discuss negotiated prices. Therefore, under §§ 403.816(c) and 403.816 (e) of our regulations, we provide that special endorsed sponsors will not be required to provide card enrollees access to negotiated prices at long-term care and I/T/U pharmacies. Special endorsed sponsors will be required to provide AI/ANs access to negotiated prices through non-I/T/U pharmacies included in the endorsed sponsor's network. We believe that waiving this provision is consistent with the statute as provided in section 1860D–31(g)(5) of the Act, and the resultant reduction in administrative burden is necessary so that applicants will be more likely to apply to become a special endorsed sponsor.

As permitted under section 1860D–31(g)(5) of the Act, we will allow applicants seeking special endorsement to request that we waive application of one or more of the other requirements of the Medicare drug discount card program. For instance, an applicant that intends to solely contract with long term care pharmacies for the purpose of administering transitional assistance through special endorsement, but who is not interested in otherwise becoming an endorsed sponsor under the Medicare drug discount card program, might request general waivers of certain requirements pertaining to endorsement. In its application, the applicant must cite the statutory or regulatory provision(s) it wishes us to waive, and explain why: (1) Such waiver is necessary to enable the applicant to either initiate enrollment activities within six months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 or accommodate the unique needs of long-term care and/or I/T/U pharmacies; or (2) compliance with the requirement(s) in question would be impracticable or inefficient. Applicants also must provide an assessment of the impact of waiving the requirement(s) in question on long-term care residents and/or AI/ANs. If we grant the waiver, we will waive the applicable requirement(s) for all similarly situated applicants seeking special endorsement.

TABLE 3.—I/T/U PHARMACIES BY STATE

Alaska	14
Alabama	1
Arizona	21
California	11
Colorado	2
Connecticut	1
Idaho	3
Kansas	3
Maine	3
Michigan	5
Minnesota	6
Mississippi	1

TABLE 3.—I/T/U PHARMACIES BY STATE—Continued

Montana	13
North Carolina	1
North Dakota	6
Nebraska	3
New Mexico	20
Nevada	8
New York	3
Oklahoma	37
Oregon	7
South Dakota	11
Texas	1
Utah	1
Washington	11
Wisconsin	6
Wyoming	2
Total	201

J. Special Rules Concerning Territories

1. Background

As discussed above in section II.A. of this document, Medicare beneficiaries residing in the territories may be eligible for the Medicare drug discount card program, but are not eligible for transitional assistance under the program. However, as provided for under section 1860D–31(j)(2) of the Act, the territories may establish their own programs providing transitional assistance to low-income beneficiaries. This section first discusses special rules for applicants seeking to offer endorsed programs in the territories, followed by a discussion of the transitional assistance available to beneficiaries residing in the territories under programs established by the territories. As background, Table 4 provides the total number of Medicare beneficiaries in each of the U.S. Territories.

TABLE 4.—MEDICARE BENEFICIARIES BY U.S. TERRITORY

Territory	Total Medicare beneficiaries as of 07/01/2003
American Samoa	2,977
Commonwealth of the Northern Mariana Islands	1,257
Guam	9,372
Puerto Rico	573,468
Virgin Islands	11,797

Source: Medicare Enrollment Database

2. Discount Card

Medicare beneficiaries residing in the U.S. territories, which include American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and Virgin Islands, are eligible to enroll in the Medicare drug discount card program. Whereas Medicare beneficiaries residing in the 50 States or

the District of Columbia are ineligible for the program if they have outpatient prescription drug coverage under Medicaid or a section 1115 waiver demonstration, section 1860D–31(j)(1) of the Act grants the Secretary the discretion to find Medicare beneficiaries residing in the territories eligible for the program even if they receive outpatient prescription drug coverage under Medicaid or a section 1115 waiver demonstration. As provided in § 403.817(d) of our regulations, beneficiaries residing in the territories who have outpatient prescription drug coverage under these sources will be eligible for the program.

To ensure that eligible individuals residing in the territories have access to endorsed programs offering negotiated prices, we will select for special endorsement at least one applicant to provide discounts for covered drugs in the territories. In accordance with § 403.817(a) of our regulations, these applicants must agree to offer endorsed programs to residents of all the territories. Section 1860D–31(j)(1) of the Act allows us to waive the requirement for two endorsed sponsors per State in section 1860D–31(h)(2)(D) of the Act, if necessary to secure access to negotiated prices for beneficiaries in the territories. Therefore, we will elect to limit the number of special endorsed sponsors operating in each of the territories to at least one in order to assure that a sufficient number of beneficiaries will enroll in special endorsed sponsors' endorsed programs in the territories, thereby justifying from a business perspective their offering such programs. We believe these volume considerations will be a critical factor in whether an applicant seeks special endorsement in the territories.

We are concerned that in the absence of a competitive process for special endorsement in the territories, an insufficient number of applicants will seek to offer endorsed programs in the territories and we therefore will be unable to ensure that residents of the territories have access to negotiated prices.

Selection criteria for special endorsement in the territories will include understanding, as well as prior experience with, the unique challenges of providing a drug discount card in the territories, the extensiveness of an applicant's pharmacy network in the territories, the feasibility of the applicant's plan for offering an endorsed program in the territories, and timeliness of implementation of its plan. We will further discuss the selection criteria and the competitive process for special endorsement in the solicitation.

As permitted by section 1860D–31(j)(1) of the Act, we will waive certain sponsor requirements of the Medicare drug discount card program in the territories if doing so is necessary to: (1) Ensure that a sufficient number of applicants seek special endorsement in the territories; (2) enable the Medicare drug discount card program to start within six months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and (3) accommodate the unique challenges faced by special endorsed sponsors in the territories.

As provided in § 403.817(c)(2) of our regulations, special endorsed endorsed sponsors in the territories will not be required to meet the pharmacy network access standard set forth in § 403.806(f) of our regulations and as explained in section II.C.3 of this document. In addition, special endorsed sponsors are not required to maintain a service area covering an entire territory if it proves impracticable to do so, as otherwise required in § 403.806(f)(2) of our regulations. The pharmacy access standard provides that the pharmacies included in an endorsed sponsor's network may not dispense drugs solely by mail-order and must be located within certain distances of most beneficiaries. We waive the distance requirement because in some territories there are few retail pharmacies, and relative to pharmacies in the 50 States and the District of Columbia, these pharmacies generally are less inclined to participate in pharmacy networks established by pharmacy benefit managers, discount drug cards, and similar programs. Special endorsed sponsors therefore may be unable to secure the participation of a sufficient number of pharmacies in the territories to meet our pharmacy access standard. For this reason, if after a good faith effort a special endorsed sponsor in the territories is unable to secure the participation of a retail pharmacy in a particular locale, they may offer a mail-order only pharmacy in that locale. Because it may be impracticable to provide drugs by mail to residents in more remote areas within a territory, we do not require special endorsed sponsors to provide residents of these particular areas with access to mail-order pharmacies, but the special endorsed sponsor must demonstrate that a good faith effort has been made to provide residents of these remote areas with discounts through retail pharmacies, and must explain the reason why mail order is impracticable. Provided endorsed sponsors make a good faith effort to secure the participation in their networks of retail and mail-order pharmacies throughout a territory, we will deem the service area requirement set forth in § 403.806(f)(2) and the network access requirement set forth in § 403.806(f)(3) of our regulations to be met, as provided in § 403.817(c)(2) of our regulations.

In recognition of the special challenges involved in delivering mail-order drugs to residents of the territories, special endorsed sponsors will need to educate their card enrollees in the territories about any considerations they need to take into account to assure that they receive safe and timely access to their prescription drugs, such as the need to order their drugs in advance of their need for such drugs. We recognize that in some cases special packaging needs (for example, refrigeration) for particular covered discount card drugs may make it impracticable to ship specific medications to the territories. Card enrollees should be made aware of these limitations.

As provided in § 403.817(c)(1)(ii) of our regulations, special endorsed sponsors in the territories will not be required to comply with § 403.806(d)(8) of our regulations requiring that retail pharmacies inform card enrollees of any differential between the price of the drug to the card enrollee under their endorsed program and the price to the card enrollee of the lowest priced generic covered discount card drug that is therapeutically equivalent and bioequivalent under the program. In recognition that few discount drug cards currently have contractual relationships with retail pharmacies in the territories, we are waiving this requirement to reduce the administrative complexity of special endorsed sponsors' contracts with participating retail pharmacies in the territories, which we believe we will enhance applicants' willingness to apply for special endorsement in the territories. However, mail-order drugs sent to residents in the territories should include this price differential information in the same manner such information is provided to card enrollees in the 50 States and District of Columbia who obtain mail-order drugs under the program.

Because the arrangements between special sponsors and pharmacies in the territories represent new types of arrangements for most special endorsed sponsors, as with special endorsed sponsors agreeing to include long-term care and for I/T/U pharmacies in their networks, we only require that special endorsed sponsors in the territories make a good faith effort to finalize these arrangements as soon as practicable; we

will not require that these arrangements be finalized and approved by us within 6 months after the date of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

As permitted under section 1860D–31(j)(1) of the Act, we will allow applicants seeking special endorsement in the territories to request that we waive application of one or more of the other requirements of the Medicare drug discount card program. In its application the applicant must cite the statutory or regulatory provision(s) it wishes us to waive, and explain why: (1) Such waiver is necessary to enable the applicant to either initiate enrollment activities in the territories within six months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 or accommodate the unique needs of pharmacies in the territories; or (2) compliance with the requirement(s) in question would be impracticable or inefficient. Applicants also must provide an assessment of the impact of waiving the requirement(s) in question on beneficiaries residing in the territories. If we grant the waiver, we will waive the applicable requirement(s) for all similarly situated applicants seeking special endorsement.

We will provide technical assistance to applicants seeking to offer endorsed programs in the territories, including holding a special break-out session at the pre-application conference. In addition, as additional incentives to encourage applicants to offer endorsed programs in the territories, we will, to the extent possible, provide expedited marketing review of special endorsed sponsors' information and outreach materials, and provide special recognition for these sponsors on the Medicare drug discount card Web site.

Applicants should note that special endorsed sponsors in the territories will not be asked to administer transitional assistance on behalf of CMS; rather, transitional assistance provided to residents in the territories will be a separate program independently operated by each territory, as described below.

3. Transitional Assistance

Section 1860D–31(j)(2)(A) of the Act provides that a territory may provide transitional assistance to some or all individuals residing in the territory who are entitled to benefits under part A or enrolled under part B with incomes no more than 135 percent of the poverty line for their family size, regardless of whether the individual receives an outpatient drug benefit under Medicaid or any other coverage sources (such as FEHBP, Tricare, or employer-sponsored health insurance). In accordance with section 1860D–31(j)(2)(B) of the Act, a territory wishing to provide transitional assistance to eligible beneficiaries must submit to CMS for our approval a plan describing its proposed transitional assistance program, including:

- The territory's criteria and process for determining beneficiaries' eligibility for transitional assistance (including its definition of income and family size) for individuals who reside in the territories, who are entitled to benefits under Medicare Part A or enrolled under Medicare Part B, and who have income at or below 135 percent of the poverty line for the contiguous United States; and
- The process for ensuring that allotment provided to the territory under section 1860D–31(j)(2) of the Act will be used only to provided covered discount card drugs to those individuals determined eligible for transitional assistance; and
- The territory's assurance that it will operate its transitional assistance plan as approved.

Section 1860D–31(j)(2)(C) of the Act provides that territories with approved transitional assistance plans will receive in the aggregate $35 million for the duration of the Medicare drug discount card program, which will be allocated among such territories in the manner described below. Territories must submit their plans to CMS within 90 days of the publication of this rule so as to allow us adequate time to review and approve their plans and determine each territory's allocated share of the $35 million.

CMS may request reports or information to substantiate that the territories have administered the program consistent with the territory's approved transitional assistance plan.

Section 1860D–31(j)(2)(D) of the Act provides that the Secretary shall calculate the portion of the $35 million allocated to a territory with an approved plan for transitional assistance by multiplying $35,000,000 by the ratio of—

(1) The number of individuals who are entitled to benefits under part A or enrolled under part B and who reside in the territory (as determined by the Secretary as of July 1, 2003), to

(2) The sum of such number for all territories with an approved plan under this program.

Section 1860D–31(j)(2)(D) provides that amounts made available to a territory for transitional assistance which are not used to provide transitional assistance will be added to the amount available to that territory for purposes of carrying out the Medicare Part D drug benefit.

K. Special Rules and Part B Premium and Appropriations

1860D–31(k)(2)(B) states that amounts payable from the Transitional Assistance Account shall not be taken into account in computing the actuarial rates or premium amounts under section 1839 of the Act. Similarly, section 105(a) amends section 1839(g) of the Act by ensuring that any estimations used to calculate the Part B monthly premium rate shall exclude estimates attributable to the Medicare prescription drug discount card and transitional assistance program under section 1860D–31 of the Act. We have accordingly made changes to the regulations in 42 CFR 408.20 to reflect these statutory provisions.

IV. Regulatory Impact Analysis and Regulatory Flexibility Act Analysis

A. Overall Impact

We have examined the impacts of this rule under Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). While the ultimate impact of this program will depend upon the final designs of endorsed discount card sponsors' programs, our estimate is that this rule is economically significant as measured by the $100 million standard. The savings to beneficiaries from discount card activities, including negotiated prices on prescription drugs and education about generic substitution by endorsed sponsors, will represent an economic impact ranging from $1.4 billion to $1.8 billion in the last nine months of 2004 (assuming for the purposes of this impact analysis implementation beginning second quarter 2004), $2.0 billion to $2.7 billion in 2005, and $0.4 billion to $0.6 billion in the first four and one-half months of 2006. This impact would not affect the

Federal budget, but would be a transfer of money due to a decrease in the revenues of entities providing the supply of drugs to consumers. This represents at most 1.18 percent of projected total retail prescription drug spending during the respective periods of 2004 ($153.5 billion for the last nine months of the year), 2005 ($228.6 billion), and 2006 ($95.3 billion for the first four and one-half months of the year), based on the most recent published National Health Expenditures projections (released in February 2003).

In addition to savings from discount card activities, a subset of discount card enrollees—those who qualify for transitional assistance—are projected to save an additional $2.4 billion in 2004, $2.6 billion in 2005, and up to $0.1 billion in 2006 due to the annual $600 transitional assistance. Beneficiary savings from transitional assistance are funded through the Federal budget, so these savings are a transfer from budget revenue to beneficiaries.

This rule also generates costs and benefits for drug sponsors in the new market created by the Medicare-endorsed drug discount card programs. Net benefits in this new market are generally projected to be positive but small relative to the savings generated for beneficiaries. The net present value benefits range from near zero to approximately $10 million.

This rule is a major rule as defined in Title 5, United States Code, section 804(2). Accordingly, we have prepared an impact analysis for this rule.

B. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The UMRA stipulates that this is a requirement before an agency promulgates a notice of proposed rulemaking or promulgates a final rule for which a notice of proposed rulemaking had previously been issued. Since Congress specifically authorized us to dispense with a notice of proposed rulemaking, we believe that the UMRA requirements do not apply to this rule. Regardless, we do not anticipate that this rule would impose costs approaching the $110 million UMRA threshold.

While this rule does include a data reporting requirement for States, the State costs associated with this activity are expected to be relatively small. As discussed in this document, States will be required to provide data to CMS that will allow us to identify those beneficiaries who would be ineligible for the Medicare prescription drug discount card program due to the receipt of drug coverage through Medicaid or a section 1115 waiver demonstration. Aggregate State costs associated with this data reporting, including expenses related to data transmissions, quality assurance, and any needed systems changes, are expected to be substantially less than the $110 million UMRA threshold. Furthermore, as discussed in this document, States will receive Federal reimbursement for a share of these expenditures at the Federal matching rate for administrative expenses under 1903(a)(7).

In terms of territories and tribal governments, this rule imposes no mandatory requirements for these entities, while offering them an additional source of funding that they can elect to take advantage of. As discussed in this document, funds are available for a territory to provide prescription drug assistance to eligible low-income beneficiaries in the territory, if they elect to do so and submit a plan to CMS about how they intend to do it. For tribal governments (specifically pharmacies operated by Indian Tribes and Tribal Organizations, and Urban Indian Organizations (as defined in section 4 of the Indian Health Care Improvement Act)), the rule makes special provisions for these pharmacies to have the opportunity to participate in the networks of at least two endorsed programs in each of the 50 States and the District of Columbia where such pharmacies operate.

In addition, we have determined that this rule would not be an unfunded mandate related to the private sector as defined by the UMRA. In particular, section 101 of the UMRA only requires estimation of direct costs to comply with the definition of a private sector unfunded mandate. While the rule will have an impact on the private sector, we do not expect that this will require direct costs or outlays approaching UMRA's $110 million threshold.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As noted earlier in this document, a State may choose, on a voluntary basis, to partner with private drug card sponsors to coordinate its State Pharmacy Assistance Program with the Medicare prescription drug discount card program. States also have the option of paying for some or all of the enrollment fee for some or all non-transitional assistance eligible beneficiaries and the option of paying for some or all of the beneficiary coinsurance liability for some or all transitional assistance enrollees in a State. In addition, some States may decide to educate beneficiaries, particularly dual eligibles who would qualify for transitional assistance (that is, QMBs, SLMBs, & QIs without Medicaid drug coverage) and beneficiaries in State Pharmacy Assistance Programs, about benefits available through the Medicare prescription drug discount card program. All of these are voluntary opportunities for States, and have no Federalism implications. In addition, States with State Pharmacy Assistance Programs may realize savings related to the Medicare prescription drug discount card program to the extent that they provide for coordination of their program with the new Medicare program.

We have also determined that this rule would not impose substantial direct requirement costs on State and local governments. As discussed above, States would likely incur some costs related to data submission activities, but these costs are expected to be small and substantially less than the $110 million UMRA threshold. Furthermore, CMS has taken a number of steps to minimize the costs related to this program for States. CMS has consulted with State Medicaid Directors on the data submissions process and what mechanisms would be least burdensome and costly to States. In addition, CMS has already held and plans to hold additional information sessions for State officials to help them anticipate and prepare for implementation of this program. Further, we are taking measures to ensure that States are provided with training materials and beneficiary resources so that States can have ready access to materials that they can use if they receive questions from beneficiaries about the program.

D. Limitations of Our Analyses

The following analyses present projected effects of this rule on Medicare beneficiaries, the Medicare program, total national retail prescription drug spending, small entities, and endorsed sponsors. This section discusses limitations of the analyses conducted in especially sections E and I of this regulatory impact analysis.

Because this will be the first year of the Medicare prescription drug discount card program, we do not have the benefit of the experience of prior years. Therefore, we present a range rather than a single estimate for the amount of beneficiary savings resulting from negotiated prices obtained by endorsed sponsors. Another limitation of this particular analysis is that our most recent available data on beneficiary use of prescription drugs come from self-reported survey data from the 2000 Medicare Current Beneficiary Survey (MCBS). The MCBS is a continuous multipurpose survey of a representative sample of the Medicare population. We have adjusted the data for projected growth in drug spending and for under reporting.

Another limitation of our analysis is that we make no adjustments to the savings estimates to take into account that some beneficiaries who enroll in this program already receive sizable discounts on drugs, and thus the savings potential from this program may be overstated for these individuals. For example, estimated savings from discount card activities may be overstated for beneficiaries enrolled in Medicare managed care organizations and beneficiaries participating in manufacturer discount card programs, since both are likely to already receive significant discounts.

As we discuss later in this document, other limitations to our analysis include that we have made no adjustments to take into account: possible effects of the program on beneficiary drug utilization and possible changes in the type of outlets through which beneficiaries purchase prescription drugs. We did not believe that we had adequate data to inform assumptions concerning these issues.

Additional limitations of the analysis relate to our estimate of the number of beneficiaries who enroll in the Medicare prescription drug discount card program. First, our estimate of the number of beneficiaries with standardized Medigap drug coverage who will enroll in the Medicare prescription drug discount card program may be somewhat imprecise. As discussed in more detail later in the analysis, we believe some beneficiaries who have drug coverage through standardized Medigap policies are likely to enroll in the Medicare prescription drug discount card program. The MCBS provides data on the number of beneficiaries with ''individually purchased'' insurance policies, which includes but is not limited to the standardized Medigap policies. Using data on beneficiaries who have drug coverage through individually purchased insurance policies, we developed a rough estimate of the number of beneficiaries with Medigap standardized drug coverage by excluding from this group individuals who appeared unlikely to have standardized Medigap drug coverage. In particular, we excluded individuals whose out-of-pocket drug spending was less than $250 and whose individually purchased insurance plan covered some drug costs, since this is inconsistent with the benefit structure of the standardized Medigap plans. However, some beneficiaries with individually purchased policies that are not the standardized Medigap drug coverage policies are still likely to be included in our estimates. In addition, some beneficiaries have multiple sources of coverage, for example, some beneficiaries are enrolled in Medicare+Choice (M+C) but also report having individually purchased supplemental insurance. Therefore, we also excluded from the estimate of the number of beneficiaries with Medigap drug coverage anyone who was also enrolled in M+C during at least one month of the year since we believe that the drug coverage was more likely to come from a M+C plan than from a Medigap plan.

Second, our enrollment estimates do not factor in the possibility that some Medicare managed care plans that are exclusive card sponsors may decide to group enroll all of their members into an endorsed discount card program that they are sponsoring. If this occurs, overall enrollment in the Medicare prescription drug discount card program may be somewhat higher than we have estimated. However, given that we are uncertain about the frequency with which this might occur, we have taken a conservative approach and used the same assumptions concerning enrollment rates for beneficiaries in M+C and Medicare Fee-For-Service. Savings estimates from discount card activities are unlikely to be affected by group enrollment since beneficiaries who might be recipients of group enrollment into an endorsed discount card program by a Medicare managed care organization are likely to have already been obtaining discounts on prescription drugs through their plan, so this would not represent new savings for these beneficiaries. However, it is possible that estimated savings from the $600 transitional assistance may be slightly understated due to this issue.

Third, while we are able to exclude most beneficiaries who have drug coverage through Medicaid from our enrollment estimates (since these beneficiaries are ineligible for the drug card), difficulties with identifying those beneficiaries who have drug coverage through Medicaid via 1115 Pharmacy Plus Waivers means that some of these beneficiaries may not have been excluded from our enrollment estimates. Similarly, difficulties with precisely identifying in the data the source of a beneficiary's drug coverage, particularly TRICARE and employer-sponsored individually purchased Medigap coverage, means that some beneficiaries not eligible for transitional assistance (that is, those with TRICARE drug coverage) may not have been fully excluded from transitional assistance enrollment estimates, while some beneficiaries eligible for transitional assistance (that is, those with employer-sponsored individually purchased Medigap drug coverage) may not have been fully incorporated into the transitional assistance enrollment estimates.

Finally, as discussed later in this document, we did not make any differential assumptions concerning program uptake for beneficiaries currently enrolled in manufacturer discount card programs—that is, we assumed beneficiaries currently participating in manufacturer card programs will enroll in the Medicare prescription drug discount card program at the same rate as other beneficiaries. It is difficult to predict how both manufacturer card programs and beneficiaries currently enrolled in those programs will behave in terms of participation in the Medicare prescription drug discount card program. Consequently, it is possible that our enrollment estimates for this group of beneficiaries could be overstated or understated. Furthermore, as noted previously in this document, for beneficiaries currently enrolled in manufacturer card programs there are not likely to be significant additional savings beyond what they currently obtain; thus we may be overstating savings on their behalf to some extent. However, it should be noted that the manufacturer card programs generally cover a limited set of drugs, and the Medicare prescription drug discount card program may offer these beneficiaries discounts on a wider set of drugs.

E. Anticipated Effects on Medicare Beneficiaries

1. Enrollment Assumptions

Although the Medicare prescription drug discount card program will be available to all Medicare beneficiaries except for those with drug coverage

through Medicaid, we anticipate that the discount card will have the highest uptake among those eligible for transitional assistance. As discussed in this document, beneficiaries are eligible for transitional assistance if their income does not exceed 135 percent of the official poverty line and they do not have drug coverage through Medicaid, employer sponsored insurance (except for employer purchased coverage under a Part C plan or employer purchased individual Medigap policies), the U.S. Office of Personnel Management, or TRICARE. Based on data on drug coverage and income from the MCBS and the Current Population Survey, we estimates that there will be about 7.2 million beneficiaries eligible for transitional assistance in 2004. Of the 7.2 million, we assume that 65 percent, or 4.7 million, would enroll in an endorsed discount card program in 2004. This uptake assumption was developed considering a variety of factors including: uptake rates in similar means-tested programs, the nature and duration of this program, and the eligibility and enrollment processes involved in this program.

Among those beneficiaries not eligible for transitional assistance, we anticipate that those most likely to benefit from the program will be those without drug coverage. There are projected to be about 6.1 million beneficiaries with incomes greater than 135 percent of the official poverty line and without drug coverage in 2004. We anticipate that the rate at which these beneficiaries enroll in the Medicare prescription drug discount card program will vary by their level of drug spending. In addition, we expect that the maximum $30 annual enrollment fee and the interim nature of this program (with implementation of a Medicare drug benefit scheduled to occur in less than 2 years) will factor into these beneficiaries' enrollment decision.

In Table 5, we show the specific assumptions regarding the percentage of these beneficiaries enrolling in an endorsed discount card program. We assume that beneficiaries without drug coverage who have relatively higher drug spending will be more likely to enroll than those with generally very low or no spending. For example, we assume a 5 percent enrollment rate among beneficiaries with spending not exceeding $200—the point at which the maximum $30 annual enrollment fee could be recouped assuming 15 percent savings. For beneficiaries with the highest levels of drug spending—more than $600—we assume a 50 percent enrollment rate. Based on the assumptions in Table 5 and the distribution of drug spending among these beneficiaries without drug coverage, we estimate that about 35 percent of them will enroll in the Medicare prescription drug discount card program.

Another group of beneficiaries likely to benefit from the Medicare prescription drug discount card program will be those with Medigap drug coverage. The standardized Medigap plans that offer prescription drug coverage (standardized plans H, I, and J) are designed with a cap on the amount of drug spending covered by the plan. The drug benefit in standardized plans has a $250 deductible, 50 percent coinsurance, and a benefit cap of $1,250 (plans H and I) or $3,000 (plan J). Because many Medigap plans do not actively negotiate discounts for enrollees, we believe that Medicare beneficiaries with standardized Medigap drug coverage will benefit from a discount card program, particularly for spending above the benefit cap.

We project that there will be about 2.1 million beneficiaries who have incomes greater than 135 percent of the official poverty line and have drug coverage from a Medigap policy in 2004. Table 6 shows the assumptions regarding the percentage of these beneficiaries enrolling in an endorsed discount card program. Similar to the enrollment assumptions for beneficiaries without drug coverage, we assume that the enrollment rate for these beneficiaries with Medigap drug coverage varies by the level of drug spending. For beneficiaries with the highest levels of drug spending, we assumed a slightly higher uptake rate (60 percent) among those with Medigap drug coverage than among those without drug coverage (50 percent). We believe that beneficiaries with Medigap coverage for prescription drugs will be more risk averse than the average beneficiary and will therefore have a somewhat higher propensity to enroll.

We assume that beneficiaries with Medigap drug coverage would use the drug card for spending exceeding the Medigap benefit cap. Thus, the table shows enrollment rate assumptions by the level of drug spending involved in the Medicare prescription drug discount card program (not by the level of total drug spending). Based on the assumptions in Table 6 and the distribution of drug spending for these beneficiaries, we estimate that about 24 percent of these beneficiaries will enroll in the Medicare prescription drug discount card program. The 24 percent average enrollment rate stems from the fact that most beneficiaries with Medigap drug coverage have low levels of spending above the Medigap benefit cap, and thus we assume a low uptake rate for these individuals for this time limited program with an annual enrollment fee of up to $30.

These estimates of Medicare beneficiary enrollment in the Medicare prescription drug discount card program are one of the elements in our estimates of the impact of the program.

TABLE 5—ESTIMATED ENROLLMENT RATE OF MEDICARE BENEFICIARIES WITH NO DRUG COVERAGE AND WITH INCOME GREATER THAN 135 PERCENT OF THE OFFICIAL POVERTY LINE 2004 TO 2005

Annual drug spending	Percent enrolling
0–200.00	5
200.01–300.00	10
300.01–400.00	20
400.01–500.00	30
500.01–600.00	40
600.01+	50

TABLE 6—ESTIMATED ENROLLMENT RATE OF MEDICARE BENEFICIARIES WITH MEDIGAP DRUG COVERAGE AND WITH INCOME GREATER THAN 135 PERCENT OF THE OFFICIAL POVERTY LINE 2004 TO 2005

Annual drug spending subject to the Medicare drug discount card	Percent enrolling
$0–200.00	5
200.01–300.00	10
300.01–400.00	20
400.01–500.00	30
500.01–600.00	40
600.01–700.00	50
700.01+	60

As discussed previously in this document, we assume the same uptake rate in the Medicare prescription drug discount card program for beneficiaries currently participating in manufacturer discount card programs as for other beneficiaries. During the first half of 2002, several drug manufacturers established drug card programs that offer low-income Medicare beneficiaries without drug coverage significant discounts or low copayments on drugs they manufacture. Eli Lilly, Novartis, and Pfizer have each established co-pay cards. Eight drug manufacturers (Abbott Laboratories, AstraZeneca, Aventis, Bristol-Myers Squibb Company, GlaxoSmithKline, Janssen Pharmaceutical Products, L.P., Novartis, and Ortho-McNeil Pharmaceutical, Inc.) have established Together Rx, a discount card. In addition,

GlaxoSmithKline—one of the participants in Together Rx—also operates a separate discount card program. The income limits of the manufacturer cards vary, ranging from $18,000 to $30,000 for individuals and from $24,000 to $40,000 for couples. In terms of enrollment, Together Rx is the largest of these programs, reporting more than 1 million enrollees (as of September 2003). Enrollment for the other manufacturer card programs is reported to be more than 355,000 in the Pfizer card (as of May 2003), about 100,000 in the Eli Lilly card (as of October 2002), about 100,000 in the GlaxoSmithKline card (as of November 2002), and about 15,000 in the Novartis card (as of April 2002).

Many beneficiaries who might benefit from the Medicare prescription drug discount card program may currently be enrolled in or eligible for manufacturer card programs. We use the same uptake assumptions for these beneficiaries as for the general beneficiary population, since it is difficult to predict how both manufacturer card programs and beneficiaries currently enrolled in those programs will behave in terms of participation in the Medicare prescription drug discount card program. For example, it is unknown whether the manufacturer card programs will seek Medicare endorsement. If these programs do seek and obtain Medicare endorsement, their enrollees will be included in the enrollment count for the Medicare prescription drug discount card program. On the other hand, if manufacturer card programs do not seek Medicare endorsement, some beneficiaries may opt to enroll in both the manufacturer cards and a Medicare endorsed discount card program. For example, we would expect that many low-income beneficiaries currently enrolled in manufacturer card programs would likely also enroll in an endorsed discount card program to take advantage of the $600 transitional assistance. In addition, since the manufacturer cards provide savings only on specific drugs and endorsed programs have a low annual enrollment fee, we believe that some beneficiaries, depending on the mix of prescription drugs they use and their income levels, may find it beneficial to enroll in both types of programs as well.

While we expect there will be a phase-in of beneficiary enrollment in the Medicare prescription drug discount card program, we believe that because of the recognition and acceptance of the Medicare name, the educational efforts undertaken, and the proration policy for the $600 transitional assistance discussed in this document, beneficiaries wishing to enroll will do so over a relatively short period of time. For the purposes of this impact analysis, we assume that the program is implemented beginning second quarter (April) 2004 and that all beneficiaries expected to enroll in 2004 do so at the program outset. For beneficiaries who become eligible for Medicare between April 2004 and December 2005, we assume enrollment at the time they become Medicare eligible.

2. Beneficiary Savings Assumptions

The Medicare prescription drug discount card program will generate two types of savings from the perspective of beneficiaries. First, beneficiaries enrolled in an endorsed discount card program will derive savings from discount card activities undertaken by endorsed sponsors, such as negotiating lower prices on prescription drugs and educating beneficiaries about generic equivalents. Second, for the subset of Medicare prescription drug discount card enrollees who qualify for the transitional assistance, they will also derive savings from the government funded $600 transitional assistance. For ease of reference in the remainder of the regulatory impact analysis, we will refer to these two different types of savings as ''savings from discount card activities'' and ''savings from transitional assistance,'' respectively.

a. Savings From Discount Card Activities

An April 2000 study prepared by HHS entitled, ''A Report to the President: Prescription Drug Coverage, Spending, Utilization and Prices,'' indicated a significant price differential between individuals paying cash for prescriptions at a retail pharmacy versus individuals with insurance. This was true for both the Medicare and non-Medicare populations. According to the study, in 1999 the price paid by cash customers was nearly 15 percent more than the total price paid under prescription drug insurance, including the enrollee cost sharing. For 25 percent of the most commonly prescribed drugs, this price difference was higher—over 20 percent. Thus, in today's market, individual Medicare beneficiaries without drug coverage and the related market purchasing leverage, not only face having to pay the full cost for medications from their own pockets, but ironically are also charged the highest prices. Furthermore, the HHS study did not include the effect of rebates on total prices paid. It did, however, note industry experts as indicating that insurers and employers typically receive 70 to 90 percent of the rebates negotiated for their enrollees. While currently, rebates in insured products may not necessarily reduce prices paid at the retail point of sale, the rebates do lower the per-prescription cost for plan sponsors, and thus tend to lower premiums or program costs for insured beneficiaries.

A March 2003 study by the Brandeis University Schneider Institute for Health Policy, entitled ''PBM-Administered Prescription Drug Discount Cards: Savings for Uninsured Seniors,'' examined administrative data on eight national drug discount card programs operated by 3 PBMs to analyze the level of discounts available through these types of discount programs. Looking at drugs most commonly used among individuals age 65 and over, the study found that on average the card programs provided discounts (over and above any other discounts uninsured individuals received at retail pharmacies) of 14 percent for brand drugs, 26 percent for generic drugs, and 15 percent overall.

We anticipate that the estimated savings for Medicare beneficiaries from discount card activities, such as negotiated prices and education about generic substitution, under the Medicare drug discount card program will be a first step toward the savings that could be achieved under an insurance product. Based on information on savings from insurance products and information on the current discount card market, we assumed that beneficiaries enrolling in the endorsed programs will save as a result of discount card activities, on average, between 10 and 15 percent of their total drug costs compared to their spending in the absence of this program. While savings of 10 to 15 percent are anticipated on total drug expenditures, the discounts on individual drugs will vary and may be substantially higher for certain products, particularly generics, due to their lower prices. If endorsed discount card programs rely heavily on the use of formularies, we expect that manufacturer rebates or discounts will be greater in response.

The beneficiary savings from discount card activities will be attributable to the combination of lower prices paid at the point of sale as a result of manufacturer and pharmacy discounts, as well as the effects of beneficiary education leading to greater use of generic drugs and more effective management of prescription drug expenses by beneficiaries. Because pharmacy discounts are increasingly available to beneficiaries through existing voluntary card programs, we expect that manufacturer rebates or

discounts and savings from a better understanding of generic alternatives and managing prescription drug expenses will be important sources of savings in this program. For purposes of estimating beneficiary savings from discount card activities, we assume average overall savings of 15 percent off of drug spending. These estimates do not take into account the possible increased use of prescription drugs by Medicare beneficiaries resulting from paying reduced out-of-pocket amounts due to savings from discount card activities. They also do not take into account the likelihood that use of prescription drugs will increase somewhat in response to the $600 transitional assistance.

In a December 2001 report from the General Accounting Office (GAO) entitled ''Prescription Drugs: Prices Available Through Discount Cards and From Other Sources,'' the GAO collected specific price data on 12 brand name and 5 generic commonly used prescription drugs from one regional and four large discount card programs, as well as pharmacies' prices for the same prescription drugs in four selected geographic areas. In September 2003, GAO issued another report entitled ''Prescription Drug Discount Cards: Savings Depend on Pharmacy and Type of Card Used.'' For 9 drugs (7 brand and 2 generic) commonly used by Medicare beneficiaries, the report provided the median price for each drug across five PBM-administered discount card programs and comparison data on the median retail pharmacy price for each drug in 3 geographic areas. In these studies, pharmacy prices were inclusive of senior discounts for those pharmacies that offered them. The GAO simply reported prices on each drug; they did not calculate average discount card savings. The average discounts that could be calculated from the GAO reported data are difficult to compare to our estimate of roughly 10 to 15 percent savings off total beneficiary drug spending for several reasons.

First, savings for the program are not estimated on a per-prescription basis. For certain drugs for which manufacturer rebates or discounts are secured, we expect to see, under this program, drug-specific discounts comparable to insured products, which are often 25 to 30 percent, or sometimes more, per prescription.

Second, the price data collected by the GAO do not include all drugs or indicate the relative market share that each drug represents; that is, they are not weighted. Savings estimates calculated by simply averaging selected drug prices do not account for the differences in utilization, and thus, market share.

Finally, the Medicare prescription drug discount card program requires that endorsed discount card sponsors obtain manufacturer rebates or discounts and pass a share of the rebates or discounts through to beneficiaries in the form of lower prices. We believe that this differs from the practices of some of the discount card programs in the GAO studies. Two of the five programs in the 2003 GAO study reported that the pharmacy is not paid for any of the difference between the pharmacies' usual price and the price the cardholder pays.

Because the endorsed discount card programs will be modeled after insured products in terms of enrollment and the use of formularies, combined with the competitive model and the requirement of manufacturer rebates or discounts, we expect that the endorsed programs will achieve new beneficiary savings from manufacturer rebates or discounts. The share of savings will vary depending on the drug, but savings from manufacturers are expected to be substantially greater than those available through existing voluntary cards. According to the HHS study, industry experts report that private insurance plans garner rebates on individual brand name drugs ranging from 2 to 35 percent. To the extent that endorsed discount card sponsors design formularies to mimic those of insured products, the ability to garner manufacturer rebates or discounts will increase.

For purposes of estimating beneficiary savings, it is necessary to make some assumptions concerning the portion of spending that will be affected by discount card activities by endorsed sponsors such as negotiating lower prices and promoting generic substitution. The requirements for endorsement include provision of a discount on one brand name or generic drug in each therapeutic grouping commonly used by Medicare beneficiaries. However, we expect that endorsed programs probably will provide discounts on more than one drug per grouping and be highly likely to provide discounts on commonly used drugs.

We have estimated the percent of total drug spending accounted for by the most commonly used drugs among Medicare beneficiaries based on analysis of the top drugs in terms of both utilization and spending using the 2000 MCBS data (including a special analysis related to disabled beneficiaries). As of 2000, the drugs most commonly used or having the greatest spending by Medicare beneficiaries accounted for approximately 72 percent of total drug spending for beneficiaries without drug coverage.

The drug classification listing in Table 2, for which endorsed sponsors must include at least one drug, is more extensive than the specific top drug list that was used to estimate 72 percent. In addition, we assume that many endorsed sponsors will choose to include more than one drug for the required drug grouping. Consequently, we set our lower bound estimate of the share of drug card enrollees' total drug spending that will be affected by the program at 75 percent.

We also assume that it is possible that endorsed programs will include a discount on all drugs. To calculate this upper bound, we assume that all beneficiary drug expenditures will be affected by the Medicare prescription drug discount card program. We note, however, that we have made no adjustment to take into account that some beneficiaries currently receive discounts and that some of the savings to beneficiaries will come from generic substitution and not just price reductions.

b. Savings From Transitional Assistance

Those drug card enrollees who qualify for transitional savings will realize savings from the annual $600 transitional assistance. The aggregate amount of savings from the transitional assistance depends in part on the level of drug spending among these beneficiaries. Many of these beneficiaries will exhaust the $600 transitional assistance each year; however, those who do not will be allowed to roll over any unspent funds from one year to the next. While those beneficiaries with transitional assistance dollars remaining at the end of 2005 will be able to roll over the funds through the first four and one-half months of 2006 or up to the point that they enroll in Medicare Part D (whichever is earlier), it is likely that a small portion will not exhaust the transitional assistance dollars fully by the end of the program. Our estimates of total transitional assistance savings in each year take into account both this roll-over phenomenon and the likelihood that a small portion of beneficiaries will not exhaust the full transitional assistance by the end of the program. In estimating savings from the transitional assistance, we also factor in the proration policy and the tiered coinsurance.

3. Projection Assumptions

Since our data on Medicare beneficiary prescription drug spending are based on 2000 MCBS data, it is necessary to make several adjustments in order to prepare 2004 estimates. In order to trend 2000 spending to 2004 dollars, we use prescription drug spending projections based on per capita drug expenditure growth from the National Health Expenditure (NHE) Projections 2002 to 2012. These projections can be found on our Web site at: *http://www.cms.hhs.gov/statistics/nhe/projections-2002/t11.asp.*

MCBS data on prescription drug utilization are self-reported by beneficiaries, and consequently are subject to under reporting. We are studying this under reporting in order to develop adjustment factors to be used for estimating purposes. For purposes of the estimates in this rule, the spending data from the MCBS has been increased by 20.5 percent to adjust for under reporting that has been identified through our research thus far. It is also necessary to adjust for future growth in the Medicare beneficiary population. The adjustments are made based on the assumptions about growth in the overall Medicare population from the 2003 Medicare Trustees Reports and assumptions about growth in the dual eligible population (that is, the group of beneficiaries not eligible for the program).

These assumptions are detailed in Table 7, which shows the projected increase in Medicare enrollment and per capita drug expenditures from 2000 to 2004, and annually from 2004 to 2006, using 2000 as the base year for the projections. As discussed in more detail in later sections of the impact analysis, the table also shows projections for total national aggregate retail drug expenditures, drug expenditures involved in the program, beneficiary savings from discount card activities (both upper bound and lower bound estimates), the impact of beneficiary savings from discount card activities as a percent of total national aggregate retail drug sales, and estimated total beneficiary savings resulting from the transitional assistance.

To estimate the impact of the program on national retail prescription drug sales, we use the Office of the Actuary's National Health Expenditures projections of retail prescription drug sales, which are part of the National Health Accounts. To prepare the estimates, OACT obtains data on prescription drug sales from a variety of sources, including the National Prescription Audit conducted by IMS Health. OACT has data on retail prescription drug spending through 2001, and prepares 10-year projections. OACT adjusts the data from the National Prescription Audit to take into account a number of factors. The major factors involved in these adjustments include: benchmarking to the Economic Census, subtracting prescription drug sales to nursing homes (which are accounted for in nursing home spending), and adjusting the data to subtract an estimate of manufacturer rebates provided to health insurers related to insurance coverage for prescription drugs. Thus, in some respects, the National Health Accounts estimate of prescription drug spending reflects a sales level that is somewhat lower than the revenue actually received by pharmacies, drug stores, and other retail business outlets selling prescription drugs.

Consequently, when National Health Accounts figures are used as the denominator in calculating the percentage impact on revenues (as we do later in this impact analysis), the result is somewhat larger than is actually the case. Nevertheless, we believe that these projections for prescription drug spending are the most appropriate to use for analysis of the impact of this program on prescription drug revenues. These estimates are specific to the prescription drug market, and the National Health Accounts are recognized as a public source of data on health care spending.

TABLE 7.—ESTIMATED IMPACT

	2000 (Baseline)	2004 (Apr–Dec)	2005 (Jan–May)	2006 (Jan–Dec)
Increase in Medicare Enrollment		4.6%*	1.4%	1.3%
Increase in Per Capita Drug Expenditures		62.7%*	10.8%	10.2%
Total National Aggregate Retail Drug Expenditures ($ billions)	$121.5	$153.5	$228.6	$95.3
Discount Card Enrollees Who Qualify for Transitional Assistance				
Projected Number of Enrollees (millions)		4.7	4.7	4.7
Projected Prescription Drug Spending Under the Drug Discount Card Programs (billions)	6.2	8.0	11.9	2.5
Lower & Upper Bound Beneficiary Savings from Discount Card Activities (billions)		0.9–1.2	1.3–1.8	0.3–0.4
Estimated Beneficiary Savings From Transitional Assistance (billions)		2.4	2.6	0.1
Discount Card Enrollees Who Do Not Qualify for Transitional Assistance				
Projected Number of Enrollees (millions)		2.6	2.7	2.7
Projected Prescription Drug Spending Under the Drug Discount Card Programs (billions)	3.2	4.1	6.1	1.3
Lower & Upper Bound Beneficiary Savings from Discount Card Activities (billions)**		0.5–0.6	0.7–0.9	0.1–0.2
Total—All Discount Card Enrollees				
Projected Number of Enrollees (millions)		7.3	7.4	7.4
Projected Prescription Drug Spending Under the Drug Discount Card Programs (billions)	9.4	12.0	18.0	3.7
Lower & Upper Bound Estimated Beneficiary Savings from Discount Card Activities (not including savings from $600 transitional assistance) (billions)**		1.4–1.8	2.0–2.7	0.4–0.6

TABLE 7.—ESTIMATED IMPACT—Continued

	2000 (Baseline)	2004 (Apr–Dec)	2005 (Jan–May)	2006 (Jan–Dec)
Lower & Upper Bound Impact of Beneficiary Savings from Discount Card Activities as a Percent of National Aggregate Retail Drug Expenditures		0.88%–1.18%	0.89%–1.18%	0.44%–0.59%

*For 2004, the increase in Medicare enrollment and per capita drug expenditures shown in the table reflect the percent change between 2000 and 2004.

**These savings estimates do not take into account the costs associated with beneficiary enrollment fees. Beneficiary savings may be up to $0.08 billion lower in 2004 and 2005 due to the maximum annual enrollment fees of $30 that card sponsors may charge enrollees in those years who do not qualify for transitional assistance.

Note: Numbers may not sum due to rounding.

4. Impact Estimates

We estimate that 7.3 million Medicare beneficiaries will be enrolled in endorsed discount card programs in the last nine months of 2004 and 7.4 million in 2005. In addition, depending on when beneficiaries choose to enroll in Medicare Part D, it is possible that up to 7.4 million beneficiaries may be enrolled in endorsed discount card programs during at least some portion of the first four and one-half months of 2006. For 2006, we assume that enrollees remain in the Medicare prescription drug discount card program on average for two and one-quarter months in 2006. Of the 7.3 million beneficiaries estimated to enroll in the Medicare prescription drug discount card program, an estimated 4.7 million would qualify for transitional assistance (as well as discount card savings) while an estimated 2.6 million would receive standard discount card services only.

As discussed previously, we assume that Medicare beneficiaries enrolled in an endorsed discount card program will save between 10 and 15 percent of their total drug costs as a result of savings from discount card activities (with 15 percent savings being assumed in the impact estimates). However, this will vary by the mix of drugs beneficiaries use, and as noted previously, may be even higher depending on the ultimate program design used by endorsed sponsors. It is also possible, as discussed previously in this document, that savings from discount card activities could be lower for some beneficiaries. For example, beneficiaries who currently may receive a sizeable discounts under manufacturer discount card programs may not experience additional discounts for those same drugs under the Medicare prescription drug discount card program.

As shown in Table 7, for the estimated 7.3 million beneficiaries who will be enrolled in an endorsed discount card program in the last nine months of 2004 and the 7.4 million who are estimated to be enrolled in 2005 and the first part of 2006, the base for total drug expenditures involved in the Medicare prescription drug discount card program is projected to be $12.0 billion in the last nine months of 2004, $18.0 billion in 2005, and $3.7 billion in the transition period in 2006 before the savings achieved through the program. Total estimated savings for these beneficiaries from discount card activities range from $1.4 billion to $1.8 billion in the last nine months of 2004, $2.0 billion to $2.7 billion in 2005, and $0.4 billion to $0.6 billion in the transition period in 2006. Furthermore, the subset of enrolled beneficiaries (an estimated 4.7 million) who qualify for transitional assistance are estimated to save an additional $2.4 billion in 2004 (last nine months), $2.6 billion in 2005, and $0.1 billion in 2006 (first four and one-half months) from the annual $600 transitional assistance. Savings from transitional assistance in 2006 are very small because they only reflect carryover spending for beneficiaries with low drug spending who do not exhaust the full transitional assistance during 2005.

Beneficiaries may be required to pay an annual enrollment fee of up to $30 to join an endorsed discount card program. The Federal government pays the enrollment fee for beneficiaries who qualify for transitional assistance. If all of the non-transitional assistance eligible Medicare beneficiaries who are projected to enroll in the Medicare prescription drug discount card program (2.6 million beneficiaries in 2004 and 2.7 million in 2005) pay the maximum $30 annual enrollment fee, the total beneficiary savings overall and specifically for this group of beneficiaries will be reduced by roughly $78 million in 2004 and $81 million in 2005.

Regardless of whether or not endorsed sponsors charge the full $30 enrollment fee, this is a voluntary program. Beneficiaries have a choice of which program to enroll in, or not to join a program at all. Therefore, beneficiaries will only join a program if their expected gain is greater than the enrollment fee. In addition, those who choose to enroll in an endorsed program will still be free to buy a drug at any price outside of the program, so they can only be helped by the estimated savings and educational efforts from the program.

F. Anticipated Effects on the Medicare Program

Beneficiary savings from transitional assistance are funded through the Federal budget, while beneficiary savings from discount activities do not affect the Federal budget. We estimate that Medicare program spending will increase by $2.5 billion in calendar year (CY) 2004, $2.7 billion in CY 2005, and $0.1 billion in CY 2006, due to the transitional assistance. The vast majority of this spending is for the $600 transitional assistance ($2.4 billion in 2004, $2.6 billion in 2005, and 0.1 billion in 2006), with the remaining spending, $0.14 billion in 2004 and 2005, for payment of the enrollment fee for transitional assistance eligible beneficiaries. In addition, we estimate that CMS' administrative expenses to implement this program will be $134 million.

We also expect that the Medicare prescription drug discount card program will have several positive effects on the Medicare program. While not quantifiable, a positive impact of the rebate and discount reporting requirements of the program will be to provide us with experience in understanding issues in the pharmaceutical industry before implementation of a Medicare drug benefit. We will increase our knowledge concerning pricing and payment issues, information technology requirements, and increasing the effectiveness of pharmacy quality improvement programs. The pharmaceutical industry will also gain more experience in working with the Medicare population before implementation of a drug benefit. We expect that this experience will make the transition to a Medicare

prescription drug benefit faster and more efficient.

G. Anticipated Effects on National Retail Prescription Drug Spending

Total national retail spending (spending for the total population, not just Medicare beneficiaries) on prescription drugs is projected to be $153.5 billion in 2004 (last nine months), $228.6 billion in 2005, and $95.3 billion in 2006 (first four-and-one-half months). *(http://www.cms.hhs.gov/statistics/nhe/projections-2002/t11.asp).*

In the last nine months of 2004, the total economic impact of savings from discount card activities under the Medicare prescription drug discount card program is estimated to range from $1.4 billion to $1.8 billion, representing 0.88 percent to 1.18 percent of total national aggregate retail prescription drug expenditures during that period. In 2005, the total impact is estimated to range from $2.0 billion to $2.7 billion, or 0.89 percent to 1.18 percent of total national aggregate retail expenditures for prescription drugs. In the first four-and-one-half months of 2006, we estimate the total impact to range from $0.4 to $0.6 billion, or 0.44 percent to 0.59 percent of total national aggregate retail drug expenditures during that period. Thus, the economic impact is estimated to be at most 1.18 percent of total retail prescription drug spending.

One of the factors underlying these estimates of economic impact is our assumptions concerning enrollment in this program. While we believe that our uptake assumptions are reasonable estimates of the likely level of enrollment in this program, we have conducted an additional analysis to provide a sense of how these impact estimates would change if actual program uptake differed somewhat from the assumed levels. In the first 9 months of 2004, if program uptake was anywhere between 15 percent below to 15 percent above the assumed levels, estimated savings from discount card activities would range from $1.2 billion to $2.1 billion (assuming capita spending among enrollees remained unchanged), with these savings representing between 0.75 percent to 1.35 percent of national retail prescription drug sales in 2004.

We expect that the various sectors involved in the prescription drug industry will adjust to the impact of this program without significant disruption, just as the industry adjusted to discounts being extended to the privately insured population during the 1990s. The 1990s saw a significant increase in reliance on pharmacy benefit management and the tools commonly used to manage pharmaceutical benefit costs.

For example, evidence of market adjustment can be seen in the changes in pharmacies' acquisition costs during the 1990s. In the August 2001 HHS Office of Inspector General (OIG) Report entitled ''Medicaid Pharmacy—Actual Acquisition Cost of Brand Name Prescription Drug Products,'' the OIG reports on changes in pharmacy acquisition costs for both single source and multi-source brand name drugs. The OIG uses the common industry pricing metric of average wholesale price (AWP). The findings from the OIG study indicate that the acquisition prices pharmacies face for a broad spectrum of brand name drugs have been declining as a percentage of AWP during the period 1994 to 1999. Based on 1994 pricing data, the OIG estimates that pharmacies acquired brand name drugs (both single source and multi-source) at a discount of 18.30 percent below AWP. For 1999 pricing data, the OIG estimates a discount of 21.84 below AWP. The OIG reports that this represents an increase of 19.3 percent in the average discount below AWP for which pharmacies were able to purchase a mixture of single source and multi-source brand name drugs. The OIG conducted a similar analysis on the pharmacy acquisition costs related to generic drugs. The OIG March 2002 report ''Medicaid Pharmacy—Actual Acquisition Cost of Generic Prescription Drug Products'' reported that for generic drugs there was an increase of over 55 percent in the average discount below AWP from 1994 to 1999 at which pharmacies were able to acquire generic drugs (from 42.45 percent below AWP in 1994 to 65.93 percent below AWP in 1999). Thus, during the 1990s, as more customers secured discounts on the purchase of prescription drugs, pharmacies acquired drugs at larger discounts from AWP.

The acquisition costs reported by the OIG are similar to those reported in the PricewaterhouseCoopers (PWC) study conducted for us entitled ''A Study of Pharmaceutical Benefit Management,'' June 2001. That study reported that pharmacies generally now acquire brand name drugs at AWP minus 20 to 25 percent. According to the PWC report, absent a discount arrangement (such as a pharmacy-sponsored senior discount), pharmacies, on average, sell to the uninsured population at full retail price, roughly AWP plus a dispensing fee (generally $2 to $3).

We also believe that the Medicare prescription drug discount card program will accelerate the use of generic drugs. The HHS study reports that, generally, pharmacies earn higher margins on generic drugs. In addition, PWC found that generic manufacturers sometimes provide pricing incentives to pharmacies based on generic volume or market share. These are other examples of adjustments that take place related to the market place in pharmaceuticals.

It is also possible that the requirements of price publication and the establishment of a large number of competing discount cards will lead to greater manufacturer discounts. We expect that access to modern competitive tools will assist in controlling prescription drug costs and improving the quality and efficiency of prescription drug services. We also expect that this program will somewhat level the playing field between the insured and uninsured, and the current differential in pricing between populations with drug coverage and Medicare beneficiaries without drug coverage will be ameliorated.

Further, we do not expect that this program will have any impact on the number of Medicare beneficiaries with drug coverage through employer-sponsored health insurance. Since this program is short-term and it provides $600 transitional assistance only to a subset of beneficiaries (those with incomes that do not exceed 135 percent of the official poverty line), we do not anticipate that employers will alter their drug coverage in response to this program.

H. Analysis of Effects on Small Entities

The Regulatory Flexibility Act (RFA) requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If a rule is expected to have a significant economic impact on a substantial number of small entities, the RFA requires that a regulatory flexibility analysis be performed. However, the RFA stipulates that these requirements are applicable to a notice of proposed rulemaking or a rule for which an agency has published a notice of proposed rulemaking. Since Congress specifically authorized us to dispense with a notice of proposed rulemaking, we believe that a regulatory flexibility analysis is not required for this rule. Nevertheless, a regulatory flexibility analysis follows.

The Medicare prescription drug discount card program may involve some impact on a substantial number of small businesses. The current market for delivery of pharmaceutical products, by its nature involves small businesses, similar to other professional health care services such as physician services. The current health insurance market

demonstrates that insurance companies, pharmaceutical benefit managers, and others such as health maintenance organizations (HMOs) have been able to enter into arrangements similar to those in this program involving the participation of large and small pharmacy and drug store firms. These arrangements have resulted in lower prescription drug prices being made available to consumers who have insurance coverage for prescription drugs. There is evidence that both large and small pharmacies and drug stores participate in these arrangements with pharmaceutical benefit managers, and that pharmaceutical benefit managers are able to offer (employer) clients pharmacy networks containing the majority of retail pharmacy outlets. In addition, many pharmacies, including small pharmacies, offer senior discounts, and doing so in the context of this Medicare program may not be significantly different than current practice for some pharmacies.

The role of individual pharmacies, including small pharmacies, in this program is a critical one: they will be an integral part of the pharmacy networks of endorsed discount card programs, serving Medicare beneficiaries at the point of retail sale. The objectives of the program and the related design requirements will preclude an individual pharmacy or drug store from operating the full scale of contemplated activities that will be necessary to obtain an endorsement. Individual pharmacies could participate in the program by voluntarily entering into a drug card program's network with other pharmacies. Individual pharmacies are not in a market position to meet the requirements for endorsement, including the ability to serve a large number of enrollees and to garner manufacturer rebates. Retail pharmacy chains could possibly be organized to meet the requirements of Medicare endorsement explained elsewhere in this rule because of their size, type of experience and infrastructure.

Convenient access to retail pharmacies, regardless of size or ownership, by Medicare beneficiaries will be an important feature of the program. As discussed elsewhere in this rule, a discount card sponsor will have to have a contracted pharmacy network of sufficient size to demonstrate that at least 90 percent of Medicare beneficiaries in urban areas served by the program live within 2 miles of a contracted pharmacy (90/2), at least 90 percent of Medicare beneficiaries in suburban areas served by the program live within 5 miles of a contracted pharmacy (90/5), and at least 70 percent of Medicare beneficiaries in rural areas served by the program live within 15 miles of a contracted pharmacy (70/15). These access ratio requirements, which are based on the Department of Defense TRICARE Retail Pharmacy (TRRx) program, are similar to the access standards in many commercial insured products and we believe they will require endorsed sponsors to support an extremely broad network of retail pharmacies.

Given the access ratio requirements and the provision that endorsed programs will not be allowed to offer a mail order only option, we believe that most pharmacies and drug stores (both chain and independent) will be invited and encouraged to participate in endorsed programs' networks, particularly small pharmacies in rural areas. This is generally the case in the current insured market and the TRRx program, and we do not anticipate significantly narrower networks in the endorsed programs. There are over 55,000 retail pharmacies in the United States. According to a report prepared for us by PricewaterhouseCoopers (PWC) (''Study of the Pharmaceutical Benefit Management Industry,'' June 2001), pharmacy benefit managers (PBMs) offer, as a general practice, standard national pharmacy networks, with 42,000 pharmacies in the typical network. Similarly, the Department of Defense reports that the TRRx program has more than 40,000 pharmacies in its network (as of June 2003). Furthermore, the PWC study reports that one leading PBM has 50,000 pharmacies in its more restricted network. Also, according to PWC, two large national PBMs have 98 percent of all pharmacies in the United States in their standard networks.

The inclusive access standard required for Medicare endorsement, coupled with the industry norm for broad pharmacy networks, lead us to believe that a very large number of small pharmacies and drug stores will be included in the networks of endorsed discount card programs. Further, we believe that small entities in rural areas especially will be included in order to meet the rural 70/15 standard for endorsement.

1. Estimated Impact on Small Entities

HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. To assess whether the Medicare prescription drug discount card program meets these HHS criteria, we estimated the number of small entities affected and the average percentage impact on revenues. We also conducted a sensitivity analysis to estimate the impact on revenues for pharmacies with a higher than average rate of customer participation in the Medicare prescription drug discount card program. These analyses found that while the program is expected to have some impact on a substantial number of small entities, it is not expected to have a significant economic impact. Based on these analyses, we certify that the Medicare prescription drug discount card program does not have a significant economic impact on a substantial number of small entities.

As a result, even if the RFA applied to this rule (which as discussed previously, we believe it does not) we would still not be required to perform a regulatory flexibility analysis. Nevertheless, due to the possibility that concerns may be voiced by some about the potential effects of the rule on small businesses, we have included in this section or in other sections of this document the various issues that are to be included in a regulatory flexibility analysis. To avoid repetition, we have not duplicated each of them here. In preceding sections of this document, we have included a description of the program and its objectives. In this and subsequent sections of this document, we include an estimate of the number of small entities affected; an estimate of the economic impact on small pharmacies including a sensitivity analysis assessing the potential for differential distributional effects on small pharmacies; a discussion of reporting, recordkeeping, and other compliance requirements; and a description of the alternatives considered to minimize the economic impact on small pharmacies.

2. Number of Small Entities Affected

For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The Small Business Administration (SBA), on its Web site (*http://www.sba.gov/size/naicstb2-ret.html*), provides a size standard for pharmacies and drug stores (NAICS code 446110 or SIC code 5912) of revenues of $6 million or less annually for the purpose of determining whether entities are small businesses. The revenue standard for small pharmacies and drug stores was recently increased from $5 million to $6 million in February 2002 to account for inflation.

To assess the number of small entities affected by this program, and the amount of revenue involved for these

entities, we analyzed data from several sources. We examined data from the U.S. Census Bureau's 1997 Economic Census (Table 4 on Retail Trade—Subject Series), which provides data on the number of pharmacies and drug stores by level of revenue. To identify small pharmacies and drug stores, we looked at firms with less than $5 million in revenues. Although SBA's revenue standard for small pharmacies and drug stores was increased to $6 million in 2002 to account for inflation, we use $5 million as the standard in our analysis because we are working with 1997 data so an inflation adjustment is not needed. According to the Census Bureau data, there were a total of 20,815 business firms that were pharmacies and drug stores that operated for the entire year in 1997. Those 20,815 firms operated 41,228 establishments (some entities selling prescription drug products are not included in this count, including supermarkets and mass merchants). Of the total firms, 20,126 (or 96.7 percent) were firms that had sales of less than $5 million, and these same firms operated 21,226 establishments or 51.5 percent of the pharmacies and drug store class of trade in the Census Bureau data.

In addition to traditional pharmacies and drug stores, prescription drugs are sold through supermarkets and mass merchants. The National Association of Chain Drug Stores (NACDS) offers data that include these outlets, so we examined this data source as well. The NACDS analyzes industry data from a variety of sources, including IMS Health, the National Council of Prescription Drug Programs, and American Business Information, and reports industry statistics on their Web site (*http://www.nacds.org*). For 1997, NACDS reports a total of 51,170 community retail pharmacy outlets, of which 20,844 were independent and 19,119 were chain drug stores (for a total of 39,963)—a number very similar to the Census Bureau's 1997 count of 41,228 pharmacy and drug store establishments. We assume that there is a great deal of overlap between the 21,226 establishments that the Census Bureau identifies as those with sales of less than $5 million and the NACDS report of 20,844 independent pharmacies in 1997. For 2002, NACDS reports 55,200 community retail pharmacy outlets, of which 19,749 are identified as independent drug stores.

In addition to the number of outlets, we examined revenues. The Census Bureau data indicate that, in 1997, total pharmacy and drug store sales for firms operating the entire year were $97.47 billion, of which firms with $5 million or less in sales accounted for 25.5 percent ($24.82 billion). However, these sales include more than just prescription drugs, as most pharmacies and drug stores sell other products. Since firms may differ in the proportion of revenues obtained from prescription drugs, we think that the analysis should focus, to the extent possible, on revenues from prescription drugs, rather than the broader set of sales occurring through pharmacies and drug stores, so we also examined IMS' National Prescription Audit data obtained by our Office of the Actuary (OACT). It is important to note that focusing only on prescription drug sales, rather than all sales through this class of trade, yields an estimated impact that is larger than the actual impact on total sales.

From the data obtained by OACT, it is possible to estimate the portion of sales occurring through independent and chain pharmacies. The data do not permit analysis by firm size. However, these data are specific to prescription drug sales for a more recent time period. Furthermore, we believe that there is a great deal of overlap between the firms identified as independent pharmacies and the small pharmacy and drug store firms identified in the Census data. Consequently, we think that the data from the Prescription Drug Audit are an appropriate source for analysis.

For 1997, those data indicate that 29.2 percent of sales were through independent drug stores—a figure slightly higher than the share (25.5 percent) indicated by the Census data. For 2002, the data indicate that 23.5 percent of sales were through independent pharmacies. For purposes of calculating the share of revenues from prescription drug sales through small firms, we think it is reasonable to use the more recent estimate of prescription drug sales through independent pharmacies obtained from analysis of the Prescription Drug Audit for 2002.

The Census Bureau data contain information on supermarkets (NAICS code 445110) and mass merchants (discount or mass merchandising department stores—NAICS code 4521102, and warehouse clubs and superstores—NAICS code 45291). We assume that for both supermarkets and the mass merchants, prescription drug sales comprise a small share of sales, and consequently have not included them in this small business analysis. This assumption is supported by data from the Census Bureau, Prescription Drug Audit, and NACDS Web site. The 1997 Census data indicate that total supermarket product sales were $351.4 billion. Analysis of 1997 data from the Prescription Drug Audit indicates that $8.8 billion in prescription drug sales occurred through food stores, or 2.5 percent of total product sales. Similarly, the 1997 Census data indicate that total product sales for the two categories of mass merchants, as defined by NAICS, were $208 billion. Since data from the Prescription Drug Audit include mass merchants with other chain stores, we used prescription drug sales data from the NACDS Web site. The NACDS Web site indicates that prescription drug sales through the mass merchant category were $9.6 billion in 1997, or 4.6 percent of total product sales. Furthermore, the fact that businesses are identified as supermarkets and mass merchandisers seems to indicate that prescription drugs are not their major line of trade.

3. Average Estimated Economic Impact on Small Pharmacies

As indicated previously, HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. To develop an estimate of the impact of the program on prescription drug retail sales associated with small pharmacies and drug stores, we take our national estimates in Table 7 and make assumptions about the percent of total retail prescription drug sales through small pharmacies. In addition, we make assumptions about the distribution across large and small pharmacies and drug stores of prescription drug sales to endorsed discount card program enrollees.

Assuming that 23.5 percent of total retail pharmacy sales are through small pharmacies (based on analysis of data from IMS' Prescription Drug Audit on the share of total retail sales through independent pharmacies in 2002), the share of total national prescription drug sales through small pharmacies and drug stores will be $36.1 billion in the last nine months of 2004, $53.7 billion in 2005, and $22.4 billion in the first four and one-half months of 2006. If we assume that the population most likely to enroll in the Medicare prescription drug discount card program splits its purchases between large and small pharmacies in the same proportion as the total population, then the estimated sales involved in the Medicare prescription drug discount card program through small pharmacies and drug stores will be $2.8 billion in the last nine months of 2004, $4.2 billion in 2005, and $0.9 billion in the first four and one-half months of 2006, accounting for less than 8 percent of prescription drug sales through small pharmacies. Consequently, the portion of the estimated beneficiary savings

from discount card activities occurring through sales in small pharmacies and drug stores ranges from: $0.32 to $0.42 billion in 2004 (last nine months), $0.48 to $0.64 billion in 2005, and from $0.10 billion to $0.13 billion in 2006 (first four and one-half months). These amounts, as a share of the national retail prescription drug sales occurring through small pharmacies and drug stores, represent a range of 0.88 percent to 1.18 percent in 2004, from 0.89 to 1.18 percent in 2005, and from 0.44 to 0.59 percent in 2006.

This is likely to be an overestimate of the economic impact on small pharmacies and drug stores, as this economic impact will not be borne entirely by pharmacies. Endorsed sponsors will be required to obtain manufacturer rebates or discounts that will defray the cost to pharmacies of providing discounts on retail drug prices. In addition, to the extent that the endorsed programs achieve larger savings from drug manufacturers than are reflected in our estimate, the additional beneficiary savings could come from drug manufacturers and not local pharmacies. In addition, because of the educational aspects of the program, some of the savings to beneficiaries will come as a result of increased use of generic drugs.

Other caveats to consider are the following: Our spending estimates assume no effects of the Medicare prescription drug discount card program on beneficiary drug use. It is likely that the transitional assistance will lead to somewhat greater use of prescription drugs, resulting in a smaller impact on pharmacy revenues. In addition, it is possible that lower drug prices may lead to greater use of prescription drugs, possibly further reducing the impact on pharmacy revenues. On the other hand, it is possible that pharmacy services associated with the card will lead to some drug substitution, simplification of drug regimens, or avoidance of complications that require further drug therapy, leading to a somewhat greater impact on pharmacy revenues.

4. Sensitivity Analysis

In order to assess the potential for differing distributional impacts among pharmacies, we conducted a sensitivity analysis. We estimate that the total prescription drug spending involved in the Medicare prescription drug discount card program will comprise, on average, less than 8 percent of revenues, with the economic impact of the discount card activities on total revenues related to prescription drugs estimated to be at most 1.18 percent. For purposes of a sensitivity analysis, we estimate that in order to reach the HHS measure of significant economic impact of 3 to 5 percent of revenues, it will be necessary to have prescription drug revenues resulting from the program account for at least 20 percent of a business's revenues. In the sensitivity analysis, we developed a hypothetical geographic locality skewed to contain a large Medicare beneficiary population with a large share of the beneficiary population having characteristics making them likely to enroll in this program. Under this highly skewed assumption, we estimated a maximum share of 15.7 percent of a business's total prescription drug revenues would be associated with the Medicare prescription drug discount card program, with the program having an economic impact of 2.36 percent of prescription drug sales.

As noted previously, this economic impact will not be borne entirely by pharmacies, because endorsed sponsors will be required to obtain manufacturer rebates or discounts that will defray the cost of pharmacies providing discounts on retail drug prices. In addition, part of the savings to beneficiaries also comes from increased use of generic drugs. Nevertheless, the sensitivity analysis still yielded an impact level below the 3 to 5 percent of revenues used by HHS to measure significant economic impact. The following discussion describes the assumptions and supporting data used in the sensitivity analysis.

In order to prepare the sensitivity analysis, we identified key variables that could change the market share of revenues accounted for by enrollees in this program and the consequent impact resulting from the Medicare prescription drug discount card program. One key variable is the Medicare population as a portion of a pharmacy's geographic locality customer base. We assume that a pharmacy's customer base is derived in large part from the population in close geographic proximity to its business location. Therefore, we examined the variation in the geographic distribution of the Medicare population. On average nationally, Medicare beneficiaries were 13.8 percent of the total population as of July 2000. Using several States with the highest Medicare population rates, we examined, at the county level, the percent of the population over age 65 based on Census Bureau data. For counties with high elderly population compositions, we obtained the actual counts of Medicare enrollment (aged and disabled) and calculated Medicare enrollment as a percentage of the counties' populations. Based on this analysis at the county level, we estimate in a high-end scenario that Medicare beneficiaries could potentially comprise up to approximately 36 percent of a geographic area's population.

A second key variable that we assume could alter the revenues being impacted is the percent of the Medicare population in an area that may enroll in Medicare prescription drug discount card programs. As discussed previously, we think that the beneficiaries most likely to enroll in the program will be those beneficiaries with income less than or equal to 135 percent of the official poverty line who are eligible for the $600 transitional assistance, beneficiaries not eligible for transitional assistance who do not have insurance coverage for prescription drugs (including those with supplemental insurance coverage that does not include prescription drugs), and beneficiaries not eligible for transitional assistance who have Medigap drug coverage. To develop upper bound estimates for the percent of Medicare beneficiaries in an area who might fall into one of these three groups of potential enrollees, we use the prevalence rates of beneficiaries with these characteristics in non-metropolitan areas. Based on analysis of MCBS data for non-metropolitan areas, we assume that 21 percent of beneficiaries in the hypothetical geographic area were eligible for the $600 transitional assistance (compared with 18 percent nationally). We also assume that among beneficiaries in the hypothetical area, 20 percent had no drug coverage and were ineligible for the transitional assistance (compared with 15 percent nationally), while another 8 percent had Medigap drug coverage and were ineligible for the transitional assistance (compared with 5 percent nationally).

Nationally, we estimate that more than 7 million Medicare beneficiaries will enroll in Medicare prescription drug discount card programs in 2004, accounting for an estimated 2.5 percent of the total U.S. population. Adjusting the data, using the population and drug coverage weighting factors for the sensitivity analysis and using the overall uptake assumptions (65 percent uptake among transitional assistance eligible beneficiaries, 35 percent uptake among beneficiaries not eligible for transitional assistance who do not have drug coverage, and 24 percent uptake among beneficiaries not eligible for transitional assistance who have Medigap drug coverage), results in the hypothetical area having approximately 8.15 percent of its total population participating in the Medicare prescription drug discount card program. Therefore, about 91.85 percent

of the total hypothetical area's population will not participate in the program, including both Medicare beneficiaries and non-Medicare beneficiaries.

To estimate the impact of the program on prescription drug revenues in the hypothetical locality, we estimated the per capita drug spending for program participants and non-participants in the hypothetical area. We estimated per capita drug spending to be $2187 for participants and $1039 for non-participants in the hypothetical locality in 2004. These figures differ from per capita estimates for participants and non-participants at the national level due to the skewed demographic composition of the hypothetical area (which would have a large Medicare population and have beneficiaries with Medigap drug coverage comprising a slightly greater share of drug discount card program participants than at the national level). The per capita spending estimates for both participants and non-participants include individuals without drug expenditures.

For participants in the Medicare prescription drug discount card program, the per capita value consists of the estimated total spending for enrolled transitional assistance eligible beneficiaries, plus estimated total spending for enrolled beneficiaries not eligible for transitional assistance who do not have drug coverage, plus the share of spending for the Medigap enrollees that is purchased through the program, divided by the total number of participants.

For purposes of calculating the per capita spending for non-participants in the Medicare prescription drug discount card program, we used prescription drug spending data from the National Health Accounts and estimates from the MCBS to develop per capita drug spending estimates for the non-Medicare population and for the Medicare population not participating in the program. These two per capita values for non-participants were then weighted relative to the population distribution they represented in the hypothetical area's non-participant population to create a per capita drug spending estimate for non-card participants.

We then adjusted per capita drug spending for non-participants to include participants' drug spending that was not purchased through the Medicare prescription drug discount card program (that is, the portion of drug spending covered by Medigap plans) to yield an estimate of total drug spending outside of the program. Consequently, this inclusion of the Medigap covered drug spending means that the per capita drug spending figure for non-participants is this adjusted per capita (including the Medigap related spending) for the hypothetical area rather than the actual per capita for the non-participant population in the hypothetical area. For purposes of the sensitivity analysis calculation of the impact of the program, we used the upper bound figure of all drug spending being effected by the program as a high-end assumption.

The results of the sensitivity analysis are shown in Table 8. For the hypothetical area that is skewed to have a large Medicare beneficiary population with a large share of that beneficiary population having characteristics making them likely to enroll in this program, the negative impact on prescription drug revenues reached 2.36 percent, still below the HHS measure for significant economic impact of 3 to 5 percent of revenues. Furthermore, as noted above, not all of the 2.36 percent will be borne by the pharmacy, since discount card sponsors will be required to obtain manufacturer rebates or discounts and pass those through to beneficiaries and pharmacies in order to receive Medicare endorsement. In addition, part of the savings also comes as a result of beneficiary use of lower cost generic drugs. Similar to the additional analyses performed earlier in this document looking at how varying the uptake assumptions by 15 percent would affect the impact on national retail prescription drug spending, we performed additional analyses here further skewing enrollment in this hypothetical area to assume 15 percent higher uptake rates among beneficiaries. Even under those assumptions, the economic impact on prescription drug revenues in the hypothetical area would still be below the HHS standard for significant impact of 3 to 5 percent of revenues.

We recognize that reliance of the sensitivity analysis on nationally calculated per capita averages weighted for different demographic compositions has limitations, and pharmacies may have customer populations with per capita drug spending levels that differ from the population specific averages calculated at a national level. However, lacking such pharmacy level data, this sensitivity analysis represents our best estimate of the maximum potential effect of the program on small pharmacies and drug stores in a hypothetical area with substantially higher than average program enrollment.

TABLE 8.—NATIONAL AVERAGE VERSUS SENSITIVITY ANALYSIS—HYPOTHETICAL EXAMPLE

2004	Discount card participants (percent)	Discount card Non-participants (percent)	Total population (percent)
National Average for Comparison Purposes:			
Percent of Total Population	2.49	97.51	100.00
Percent of Total Prescription Drug Sales	7.84	92.16	100.00
Estimated Beneficiary Savings From Discount Card Activities as a Percent of Drug Sales	15.00	0.00	1.18
Hypothetical Example:			
Percent of Total Population	8.15	91.85	100.00
Percent of Total Prescription Drug Sales	15.73	84.27	100.00
Estimated Beneficiary Savings From Discount Card Activities as a Percent of Drug Sales	15.00	0.00	2.36

5. Reporting, Recordkeeping, and Other Compliance Requirements for Small Pharmacies

Requirements related to reporting, recordkeeping, and other compliance activities for small pharmacies under this program are minimal. There are only two requirements of this type for pharmacies that participate in an endorsed discount card sponsor's network. Pharmacies are required to notify the beneficiary at the point of sale of the differential between the price of the drug to the beneficiary and the lowest priced generic covered drug under the program that is therapeutically equivalent and bioequivalent and available at the

pharmacy. While it is possible that this requirement could represent some burden, we anticipate that the burden would be at most marginal. The pharmacy community routinely indicates that it is common practice for pharmacies to promote the use of generic drugs. Thus, this requirement is unlikely to represent a change in current practice for most pharmacies. The costs of the systems infrastructure required to furnish this pricing information will be borne by endorsed sponsors. The only cost to pharmacies would be the time involved in conveying the information to the beneficiary, which we anticipated would be small.

Pharmacies are also required upon request from the beneficiary to determine—either electronically or by telephone—how much of the beneficiary's transitional assistance dollars remain. The costs associated with this activity for pharmacies are expected to be small for several reasons. First, we anticipate that the costs associated with the development of the infrastructure for providing the balance of the transitional assistance dollars at the point of sale will be borne by endorsed sponsors, not network pharmacies. Second, we expect that the time involved in pharmacies determining the balance either electronically or by phone will be small. Finally, providing to beneficiaries the transitional assistance balance is not required to occur at the point of every sale, only at the beneficiary's request. Beneficiaries will have other options for accessing their card balances outside of the retail pharmacy, including through the endorsed sponsor's toll free line, which is likely to lessen the extent to which beneficiaries request balance determinations by pharmacies.

6. Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not affect small rural hospitals since the program will be directed at outpatient prescription drugs, not drugs provided during a hospital stay. Prescription drugs provided during hospital stays are covered under Medicare as part of Medicare payments to hospitals. Therefore, we are not providing an analysis.

7. Alternatives Considered for, Especially, Small Pharmacies

In developing this program, we recognized that the statute already provided for a number of major program features that act to mitigate the potential effects of this program on retail pharmacies, including small pharmacies. First, we interpret the statute as reflecting Congressional intent that endorsed sponsors obtain manufacturer rebates, discounts, or other price concessions on some covered discount card drugs and that endorsed sponsors pass through some of these price concessions to enrollees in the form of lower prices. In addition, as discussed elsewhere in this rule, prices under this program will not be taken into account for the purposes of establishing ''best price.'' Together, these program features relieve pressure from pharmacies, by ensuring that manufacturer rebates and discounts will be an important component of savings in this program and that endorsed sponsors will not rely solely on pharmacy discounts to compete for customers.

Second, the statute prohibits a mail order-only option. Mail order programs have some popularity and may be a convenient option for some beneficiaries. However, the prohibition of mail order only programs ensures that strong access to retail pharmacies will be an important feature of this program.

Finally, the program includes broad network access requirements that ensure that convenient access to retail pharmacies, including small pharmacies, will be a critical component of this program. Endorsed sponsors are required to have a pharmacy network of sufficient size to demonstrate that at least 90 percent of beneficiaries in urban areas served by the program live within 2 miles of a network pharmacy, at least 90 percent of beneficiaries in suburban areas served by the program live within 5 miles of a network pharmacy, and at least 70 percent of beneficiaries in rural areas served by the program live within 15 miles of a network pharmacy. Given these network access requirements, coupled with the industry norm for broad pharmacy networks, and the prohibition of a mail order only option, we anticipate that a very large number of small pharmacies and drug stores will be included in the networks of endorsed sponsors.

In addition to these statutory-related features of the program that mitigate its potential effects on pharmacies, we considered whether or not to require that endorsed sponsors negotiate discounts on all drugs. We decided to only require that endorsed sponsors offer a discount on at least one drug in the therapeutic categories representing the drugs most commonly needed by beneficiaries. Since endorsed sponsors are less likely to negotiate manufacturer discounts on every drug dispensed, we believe our decision not to require discounts on every drug relieves pressure on pharmacies to provide discounts.

I. Estimated Administrative Costs and Anticipated Revenues of Endorsed Card Sponsors

1. Introduction

The statutory requirement that this program be provided by private, endorsed card sponsors places program success in providing savings and transitional assistance to Medicare beneficiaries on the participation of potential card sponsors. In light of this, we estimated the administrative costs and revenues faced by potential card sponsors to assess the willingness of private organizations to participate in the Medicare prescription drug discount card program. There are several incentives for organizations with pharmacy benefit management experience to choose to participate as endorsed card sponsors. We know that Medicare beneficiaries trust the Medicare name and are more confident about product offerings when they are Medicare approved or backed by the Medicare name. Receiving a Medicare endorsement will give potential card sponsors credibility with Medicare beneficiaries. In light of this, we believe that Medicare's endorsement of a discount program, and especially the availability of transitional assistance, will result in much greater enrollment with these organizations than the same entities might achieve if they decided to offer a discount program on their own. Greater enrollment means revenue from enrollment fees and more lives with which to negotiate manufacturer rebates. In addition, participation in the Medicare prescription drug discount card program may offer organizations the opportunity to gain experience working with Medicare beneficiaries and contracting with CMS prior to implementation of Medicare Part D.

The following cost and benefit analysis reflects the estimated major administrative costs and benefits incurred by an endorsed sponsor to implement the Medicare prescription drug discount card program. The administrative costs include start-up and program implementation activities, the production and distribution of

information and outreach materials, eligibility determination and enrollment processing of beneficiaries, processing claims for retail and mail-order prescriptions, operation of a customer service call center, account maintenance, and logging and responding to beneficiary complaints and grievances. This analysis provides a range for each cost component, from low to high, that reflect possible endorsed sponsor differences in the level of technical efficiency and business investment decisions for offering the discussed initiative. For purposes of this analysis, estimated benefits are limited to the legislated enrollment fee, a maximum of $30 per year in 2004 and 2005. This analysis demonstrates that a maximum annual enrollment fee of $30 can cover all or almost all administrative costs over the life of the program. Finally, we believe that the low costs estimated in this analysis maybe more accurate because CMS received many applications from potential card sponsors during our previous attempts to enact a fairly comparable program, suggesting that these organizations believed expected returns to be positive.

2. Sources of Administrative Cost Estimates

We used several sources in estimating administrative costs for this analysis. First, CMS has extensive experience pricing and contracting for some of the activities we require of endorsed sponsors, specifically call center operations for the Medicare population and producing and mailing printed information and outreach materials. We thoroughly explored internal sources to estimate costs for information and outreach, and for call center and customer service activities.

Early this year, 2003, as the President's plan for Medicare reform was being considered by Congress, CMS contracted for research of discount drug card call center operations to better inform our understanding of endorsed sponsor customer service and possible impacts on 1–800 Medicare.[5]

Other administrative costs of this program, such as account management and claims processing costs for pharmacy benefit management services, are not publicly available in a standardized format. In part, this is due to a general lack of transparency in the financial reporting of the pharmacy benefit management industry. Administrative cost information is considered proprietary by the industry and is not clearly itemized in financial reports.

Of the information that is available, most is not standardized, and therefore, not readily compared across discount card programs. A pharmacy benefit management firm's administrative costs are unique to its business structure. The structure of pharmacy benefit management contracts also reduces the standardization of cost information. When bidding on a Request for Proposal by an employer or health insurer to provide pharmacy benefit management services, pharmacy benefit management firms typically offer a package of administrative costs, negotiated pricing for reimbursing drug costs, and rebate-sharing arrangements. The package approach often includes a comprehensive administrative fee that covers many bundled services, the content of which vary by organization and proposal. The multifarious rebate-sharing arrangements unique to each pharmacy benefit management firm and other revenue flows mask the cost of some activities, contributing even more to reduced comparability. In short, payments for costs taken from multiple pharmacy benefit manager contracts cannot be readily compared. For example, a recent investor report by Credit Suisse First Boston demonstrates the impact of rebate-sharing arrangements on administrative costs. The authors cite variation in per claim processing costs paid by purchasers of $0.0 to $0.70.[6]

In order to best estimate these administrative costs, CMS contracted with an independent, management-consulting firm to provide technical support in developing estimates of administrative costs.[7] For each of the major activities required to implement the Medicare prescription drug discount card program, we identified seven categories of economic costs that potential endorsed sponsors might incur in implementing this program. These costs are discussed in detail later in this analysis and presented in Table 9.

The consulting firm's analysis is based on interviews with officials representing State senior discount card programs and commercial organizations representing various categories of firms that provide drug card program administration, throughout the United States. These organizations include pharmacy benefit management firms (independent and owned by managed care organizations) and other commercial discount card program operators. In addition to conducting interviews, the consulting firm also consulted industry experts on purchasing pharmacy benefit management services.

The consulting firm interpolated costs from more generalized cost information gathered in interviews about required labor and resources, in some instances, in order to estimate specific, comparable costs for all activities. This was necessary, in part, because commercial organizations were cautious about sharing costs and uncertain about the programmatic requirements of this regulation, which were not publicly available at the time that these interviews were conducted. Also, States and other purchasers did not always have the specific costs of components included in bundled administrative fees.

3. General Assumptions, Limitations, and Scope

This program has two full operational years beginning in April 2004 and ending mid-May 2006. Although the program does not start in January, we estimate costs for each calendar year of operation because calendar years correspond to the source of revenue, the annual enrollment fee, and to the coordination of the enrollment process with the Annual Coordinated Election Period for Medicare. We refer to the first nine months of 2004 as Year One, to 2005 as Year Two, and to the first four and one-half months of 2006 as the Transition Period. For Year One estimates, we adjust the costs associated with ongoing program operations, including claims processing, account maintenance, and responding to discount card enrollee complaints and grievances, to reflect the nine-month operating period.

The four and one-half month transition period is a carryover period during the initial open enrollment period for the new Medicare Part D prescription drug benefit. During this period, no new enrollment is allowed in the Medicare prescription drug discount card program, no new transitional assistance is available, and endorsed sponsors may not charge an annual enrollment fee. Current discount card enrollees retain access to negotiated prices and transitional assistance enrollees may, in most instances, use the balance of transitional assistance funds not expended in Year Two to

[5] The Health Strategies Consultancy LLC. Call Center Parameters and Regulatory Authority for Drug Discount Cards. May 20, 2003.

[6] Berg, Kevin and Noah Yosha. July 14, 2003. *Pharmacy Benefit Managers and Specialty Pharmacies.* Credit Suisse Equity Research for First Boston: 5.

[7] Booze, Allen, and Hamilton. December 2003. *Discount Card Administrative Costs to Support the Medicare Drug Discount Card Program.* CMS contract number 500–97–0437, Task Order 2006.

assist with covering the costs of their covered discount card drugs obtained during the transition period. Therefore the costs reflected for this period include claims processing, account maintenance, customer service and call center operations, and responding to discount card enrollee complaints and grievances. We adjust all costs incurred in this period for an average enrollment length of two and one-quarter months, which is the same assumption made earlier in the beneficiary impact estimates to reflect declining enrollment in the Medicare prescription drug discount card program as individuals move to Part D.

We assume that all endorsed sponsors, or at least one of their contractors, are experienced in pharmacy benefit management and have the infrastructure in place to implement this program. The applicant, or one of its subcontractors, at the time of application for endorsement must have three years experience in adjudicating and processing claims at the point of sale, negotiating with prescription drug manufacturers and others for rebates and discounts on prescriptions drugs, and administering an individual enrollee health care subsidy or benefit in real time. Further, the applicant, or at least one of its subcontractors, must serve at least 1 million covered lives. For this reason, some requirements of this program are part of standard business practices for administering a prescription drug benefit or assistance program and are associated with negligible additional costs.

Activities already conducted as standard business practice include creating typical reports on discounts, pricing, and utilization for the client, providing counseling on generic substitution, establishing a pharmacy network, reimbursing network pharmacies for drugs covered by transitional assistance, drug utilization review, formulary management, and negotiating manufacturer and retail rebates. We assume marginal cost incurred for these activities, if any, will be captured in our estimates for account maintenance. Further, we believe that endorsed sponsors will be compliant with HIPAA because their other lines of business require such compliance. Regarding the HIPAA security rule, which is not enforceable until 2005, based on our discussions with potential endorsed sponsors, we assume they are already in compliance with these provisions under the privacy rule and are preparing to complete compliance with the security rule 2005 deadline for their other lines of business.

We assume that total program enrollment is equal to 100 percent of the number of beneficiaries that the impact analysis estimates will be enrolled in each year of operation: 7.3 million in Year One, and 7.4 million in Year Two and the Transition Period. We used a growth estimate of 1.4 percent to estimate enrollment in Year Two, which is the estimate for growth in Medicare Part B enrollment. Part E of this section discusses estimated program enrollment in greater detail. For some of our enrollment application, and information and outreach estimates, we assume that new enrollment in Year Two consists of those individuals the impact analysis anticipates enrolling in the program in Year Two and those individuals switching card programs. With regard to the latter, we assume that roughly 10 percent of enrollees will disenroll during Year One. As a simplifying assumption, we also assume that this same number re-enrolls in a different card in Year Two. We chose 10 percent as a modification of the 2001 Medicare managed care disenrollment rate of 13 percent because the rate reflects a continuous open enrollment policy. Our regulations limit enrollment to one endorsed program each year, with the option to elect another endorsed programs during the Annual Coordinated Election Period.

Exclusive card sponsors are Medicare managed care organizations that limit their card program membership to their health plan membership. We have chosen not to present separate cost estimates for exclusive card sponsors for two reasons. First, we assume that we will largely be endorsing existing card programs already in operation by these organizations for their Medicare enrollees. Second, we believe that the costs for exclusive card sponsors will be lower than those incurred by other endorsed sponsors. Exclusive card sponsors can group enroll their Medicare managed care organization enrollees, a known population. They also will have lower costs for information and outreach since they already engage in marketing activities for their plan and can achieve efficiencies by including their discount card information with other outreach efforts. Since the costs of enrollment, and information and outreach are some of the highest cost components in Year One, we expect exclusive endorsed sponsors will have costs substantially lower than the maximum $30 enrollment fee.

We estimate that 812,637 individuals will be enrolled in a discount drug card offered by an exclusive card sponsor in 2004, and 824,201 individuals will be enrolled in an exclusive card program in Year 2005 and the Transition Period. We derived this estimate by applying the proportion of individuals enrolled in a Medicare managed care plan (that is, Section 1876 cost plans, M+C plans, and preferred provider and most other managed care demonstrations) in the Medicare population, 12 percent, to the number of individuals estimated to enroll in this initiative who are not enrolled in Medigap, 6.8 million in 2004 and 6.9 million in 2005. Because we are not estimating costs for endorsed sponsors that are also managed care organizations, we removed these individuals from all enrollment assumptions made in this analysis.

Throughout the discussion of individual costs, we present estimated costs for the whole program, by discount card enrollee, and for the average fee-for-service (FFS) endorsed sponsor (meaning a endorsed sponsor whose enrollment is made up mostly of beneficiaries in the original Medicare program) whose average enrollment is based on the total enrollment level calculated above divided by the number of FFS programs we expect will apply and meet the requirements for endorsement, as described below. In part, this is because our research on administrative costs suggests that experienced administrators of prescription drug benefits have comparable per discount card enrollee and per prescription variable costs for programs of different sizes that meet minimum endorsement requirements. However, endorsed sponsors have the option of proposing a program for a service area as small as a State.

The remainder of this analysis examines the impact on endorsed sponsors that must comply with all components of this regulation and serve primarily beneficiaries in fee-for-service. This includes the few organizations that we expect may choose to offer a card for all Medicare beneficiaries rather than limit enrollment to their health plan membership. Only the latter are exclusive endorsed sponsors. Having removed individuals in exclusive card programs, we estimate per endorsed sponsor costs based on an average endorsed sponsor enrollment of 431,865 in Year One and 438,010 in Year Two and the Transition Period. We derived these numbers by dividing estimated enrollment less our estimates for exclusive card program enrollment by 15, or 6,477,973 divided by 15 in Year One, and 6,570,150 divided by 15 in Year Two. In 2001, we received 28 applications, with approximately one-half appearing to meet all of the

endorsement criteria to operate a discount card program.[8]

This analysis estimates a range of high and low annual costs per discount card enrollee, per endorsed sponsor, and for the whole program, for each type of administrative cost incurred to implement this program. The ranges serve to illustrate the sensitivity of differences in possible administrative costs that are the result of various levels of industry experience and technological efficiency, and of business decisions about the level of investment for discretionary activities, such as information and outreach. For example, efficient pharmacy benefit management organizations with modern information systems that are currently operating a card program and that selectively target their marketing efforts are anticipated to have much lower costs than organizations that must program older mainframe systems, have less experience with direct enrollment, and make greater investments in information and outreach materials. Further, some organizations other than pharmacy benefit management firms that could qualify to be endorsed sponsors may have less experience in some areas of pharmacy management or may choose to outsource or partner with another organization for some activities, resulting in alternative, and possibly higher, cost structures.

The following estimates were made in 2003 dollars and have been updated by 1.041 percent in Year One to reflect 2004 dollars, 1.085 percent in Year Two to reflect 2005 dollars, and 1.132 percent to reflect 2006 dollars during the transition period. All dollar figures discussed in greater detail in the next section and presented in Table 9 reflect the inflated rate for that identified year. Inflation estimates are based on those for labor in the general population from table III.A.1 of the 2003 Annual Report of the Board of Trustees, *see http://www.cms.hhs.gov/publications/trusteesreport/2003/.*

TABLE 9.—ADMINISTRATIVE COSTS AND BENEFITS BY PERIOD

[Year one (nine months) administrative costs in 2004 dollars]

	Costs per endorsed sponsor (431,865 enrolled)		Dollars per discount card enrollee	
	Low	High	Low	High
Program Implementatioon	$1,561,500	$3,123,000	$3.62	$7.23
Information and Outreach	1,807,771	4,300,194	4.19	9.96
Eligibility Determination and Enrollment Processing	2,261,793	2,945,591	5.24	6.82
Customer Service Operations	2,899,735	4,366,461	6.71	10.11
Claims Processing and Claims Adjudication	541,677	1,764,862	1.25	4.09
Account Maintenance	1,294,765	1,348,714	3.00	3.12
Logging and Responding to Grievances	30,346	40,461	0.07	0.09
Total Administrative Costs	10,397,588	17,889,284	24.08	41.42
Maximum Revenue Stream from Enrollment Fee	12,955,945	12,955,945	30.00	30.00
Net Benefits	2,558,357	(4,933,339)	5.92	(11.42)

[Year two administrative costs in 2005 dollars]

	Costs per endorsed sponsor (438,010 enrolled)		Dollars per discount card enrollee	
	Low	High	Low	High
Program Implementation	$0	$0	$0.00	$0.00
Information and Outreach	858,543	1,513,041	1.96	3.45
Eligibility Determination and Enrollment Processing	302,577	393,446	0.69	0.90
Customer Service Operations	574,370	864,894	1.31	1.97
Claims Processing and Claims Adjudication	763,474	2,173,771	1.74	4.96
Account Maintenance	1,824,925	1,900,963	4.17	4.34
Logging and Responding to Grievances	42,772	57,029	0.10	0.13
Total Administrative Costs	4,366,661	6,903,144	9.97	15.76
Maximum Revenue Stream from Enrollment Fee	13,140,301	13,140,301	30.00	30.00
Net Benefits	8,773,640	6,237,156	20.03	14.24

[8] On November 5, 2001, the Federal Court for the District of Columbia preliminarily enjoined CMS from proceeding with the administration's proposal for a Medicare-Endorsed Prescription Drug Discount Card program. In accordance with the court order, we withdrew the solicitation, all work on the initiative ceased. CMS did not make any Medicare endorsements on the basis of applications received. However, we had, at that time, completed our review of all applications and knew how many proposed programs would have been endorsed.

[Transition period (five and one-half months) administrative costs in 2006 dollars*]

	Costs per endorsed sponsor (438,010 enrolled)		Dollars per discount card enrollee	
	Low	High	Low	High
Program Implementation	$0	$0	$0.00	$0.00
Information and Outreach	0	0	0.00	0.00
Eligibility Determination and Enrollment Processing	0	0	0.00	0.00
Customer Service Operations	107,694	162,168	0.25	0.37
Claims Processing and Claims Adjudication	149,352	305,325	0.34	0.70
Account Maintenance	356,996	371,871	0.82	0.85
Logging and Responding to Grievances	8,367	11,156	0.02	0.03
Total Administrative Costs	622,410	850,519	1.42	1.94
Maximum Revenue Stream from Enrollment Fee	0	0	0.00	0.00
Net Benefits	(622,410)	(850,519)	(1.42)	(1.94)

* Costs assume an average of 2.25 months enrollment to match assumptions in section on beneficiary impact analysis.

4. Specific Assumptions For Administrative Cost Estimates

In the following paragraphs, we discuss our assumptions for the estimates provided in Table 9 for the 7 major types of administrative costs anticipated for this program.

(a) Start-up, program implementation costs for infrastructure enhancements, including software and hardware upgrades, programming for many operations, and systems integration;

(b) Information and outreach activities, for example the production and distribution of pre-enrollment application materials and a post-enrollment welcome kit with a discount card;

(c) Eligibility determination and enrollment processing;

(d) Call center and customer service operations, including handling calls asking for information and outreach materials and enrolling, where applicable;

(e) Claims processing for administrating and adjudicating claims transactions;

(f) Account maintenance, including staff time to run the program and updates to various systems, to provide typical industry data reports, including providing data to support the price comparison Web site; and

(g) Logging and responding to beneficiary complaints and grievances for reasons other than eligibility.

a. Program Implementation

Program implementation costs are those associated with setting up the necessary infrastructure, mostly information systems, to run the Medicare prescription drug discount card program.

We do not believe that endorsed sponsors will need to purchase entirely new hardware or software. We believe that those organizations, with their subcontractors, that will be eligible for the endorsement already maintain the information system infrastructure, including hardware and software, necessary to house the information systems needed for this program. This infrastructure includes enrollment databases, claims processing and adjudication, third-party reimbursement, and call center operations. One exception is our requirement that endorsed sponsors pay to install CMS software and test connect with CMS data systems for exchanging eligibility and enrollment information. However, CMS will pay for the program sponsor T1 connection and provide the ''connection software''. For this software, we estimate installation costs of no more than $1,500 per endorsed sponsor, or less than $0.01 per discount card enrollee, in 2003 dollars.

Endorsed sponsors will incur program implementation costs for programming or enhancing current software systems and conducting the systems integration necessary to accommodate the specific parameters of this program. Impacted software systems include current enrollment systems, drug price database, formulary management, pharmacy network database, call center software, accounting systems to track expenditures by beneficiary for the transitional assistance program, updates to claims processing to provide rebates at the point-of-sale, and setting up other data files associated with CMS reporting requirements.

One representative of the pharmacy benefit management industry interviewed for CMS, anticipated information system enhancement costs, including upgrading and programming call center software, for a Medicare prescription discount card program, to between $4 million and $6 million for a program of 500,000 enrollees. Using our estimates of 431,865 enrolled per endorsed sponsor, these fixed costs become an estimated per discount card enrollee annual cost between $9.26 and $13.89 dollars. These estimates reflect costs known to this organization as well as additional dollars to account for the uncertainty of making estimates without programmatic specifics.

Interviews with other State and commercial discount card programs, provided estimates of labor type and time required to program software systems. Using the information, the consulting firm estimated start-up program implementation costs for information systems between $54.5 and $250 thousand in 2003 dollars. As an annual per discount card enrollee cost for the average endorsed sponsor, this program implementation estimate is negligible, ranging from $0.13 to $0.58. This program has unique aspects whose costs are not fully known. So as to accommodate for this and the limited experience that some types of firms may have with programming specific software systems and new programming, such as tracking beneficiary expenditure of transitional assistance, CMS has chosen to estimate program implementation costs that are a compromise of the higher cost estimates for program implementation anticipated by one organization and the lower costs estimated by the consulting firm. Specifically, we have chosen a per endorsed sponsor range between 1.5 million and $3 million dollars for program implementation for Year One in 2003 dollars. We reduced the lowest industry number of $2 million by a rough $500 thousand for upgrading call center software, as the estimates for that

cost per call is reflected in section (d). We estimate that the aggregate program implementation cost across all endorsed sponsors in Year One is between $23 million and $47 million in 2004 dollars, with a per endorsed sponsor cost between $1.6 million and $3.1 million. This translates into a per discount card enrollee cost between $3.62 and $7.23. There are no program implementation costs for Year Two or the Transition Period.

b. Information and Outreach

Under this initiative, there will be costs associated with information and outreach materials for each new discount card enrollee in Year One and costs associated with distribution of program materials to current discount card enrollees as well as to a small percentage of new discount card enrollees and disenrollees choosing to reenroll in Year Two. There are no information and outreach costs for the Transition Period as no new enrollment is allowed after December 31, 2005. We assume that individuals will be notified that the Medicare prescription drug discount card program will end in 2006 through the annual notice of change mailed at the end of 2005.

We develop a range of estimates that reflect the production and mailing of five types of information and outreach materials: a pre-enrollment application kit with the standard enrollment form, a post-enrollment welcome kit with the drug card, an annual notice of change, an eligibility determination, and mailing back incomplete applications that cannot be processed. These estimates do not include costs for information and outreach through mass media as this is not a requirement for endorsement.

Information and outreach is an area where endorsed sponsors can choose to spend an extensive amount of money, depending on their long-term business interests and plans. In their interviews with potential endorsed sponsors and comparable State programs, the consulting firm found large differences in information and outreach expenditures. For example, expenditure for mass media advertising quickly increases costs beyond those discussed here. The decision to invest in mass media advertising is ultimately that of the endorsed sponsor.

CMS intends to assist endorsed sponsor information and outreach efforts by launching an education campaign about the new Medicare prescription drug discount card program. We plan on both television and print advertising. Further, we expect 1–800 MEDICARE to serve as the first source of information about the program. 1–800 MEDICARE provides interested individuals with decision support, helping them identify the programs that they are eligible to join. 1–800 MEDICARE also will mail interested individuals a booklet describing the Medicare prescription drug discount card program, transitional assistance, and how to enroll. For these reasons, we expect that at least some of the financial burden of generating awareness and educating Medicare beneficiaries about the program will not fall on endorsed sponsors, reducing costs for information and outreach.

For low estimates, we used production costs based on prices from Federal contractors available through the General Services Administration and in-house mail estimates. We priced simple, low-end, serviceable materials with some color and limited design. For the high estimates, we substituted the costs quoted for application kits (overview materials and standard enrollment form) and welcome kits (member handbook and drug card) by organizations interviewed for CMS, for our in-house estimates. We assume these materials to be higher-end commercial products. Both low and high estimates include postage and use our in-house estimates for producing and mailing the other information and outreach materials: mailing eligibility determination notices, mailing back incomplete applications, and an annual notice of program changes for each year.

Low and high estimates for producing and mailing a welcome kit to a new member were $1.20, the Government's estimate, and $2.00, which was based on costs reported by organizations interviewed for CMS. Organization estimates for providing a welcome kit ranged from $0.12 to $2.70 in 2003 dollars. However, most reported costs hovered between $1.00 and $1.50. The $2.70 cost was for a kit compiled on demand with few economies of scale, an approach we do not expect nor require endorsed sponsors to take. We chose an estimate of $2.00 because it was higher than most reported commercial costs but low enough to reflect the expected requirements of this program. We also believe that we have reduced the time endorsed sponsors may need to spend drafting marketing materials by providing model information and outreach materials with the solicitation.

We used the same approach in our low and high estimates of application kits. Our government sources reported a cost of $0.65 to produce and mail an application kit to interested individuals. Commercial and State estimates for providing an application kit to interested individuals ranged from a low of $0.45 to $2.12. We chose a high estimate for the application kit of $2.00.

We have assumed that the total number of pre-enrollment application kits mailed by endorsed sponsors will be three and one-half times the number of new beneficiaries enrolling in the program each year. This estimate is based on the midpoint of estimates gathered during interviews by the consulting firm. The firm found that card programs mailed applications to between two and five times the number of individuals enrolled in their program. For Year Two, this number is three and one-half times the number of individuals who are newly eligible for Medicare and the individuals reenrolling in Year Two after disenrolling in Year One.

Because the standard enrollment form in the application kit has several required elements and because the Medicare population has lower literacy levels and greater cognitive difficulties than some populations, individuals may not properly complete the form for their first submission. The regulation requires endorsed sponsors to ensure the completeness of submitted applications. We have assumed information and outreach costs also include an estimate for mailing back 30 percent of applications.

We assume that 100 percent of beneficiaries who would actually enroll in each year will receive a post-enrollment welcome kit. And, we assume that 100 percent of enrolled beneficiaries will receive an annual notice of change prior to the Annual Coordinated Election Period in each year. In 2005, this notice will inform discount card enrollees that the program is ending and direct them to information on Part D.

We assume that 30 percent of all individuals will request an eligibility determination for transitional assistance and will not immediately enroll in an endorsed card program because they are not determined eligible for transitional assistance. This regulation requires that endorsed card sponsors not immediately enroll individuals who request transitional assistance at the time of enrollment if they are not determined eligible for such assistance. We chose 30 percent to capture a proportion of individuals ultimately choosing to enroll in the discount card after finding that they are not eligible for transitional assistance and a proportion of those never enrolling in the program who request transitional assistance, but are determined ineligible. In Year Two, we estimate that 30 percent of new discount card enrollees will request an eligibility determination, and we estimate an

additional five percent of those currently enrolled and not receiving transitional assistance will request an eligibility determination because their financial circumstances have changed during the year. For this 30 percent of individuals, this regulation requires endorsed sponsors to mail them a negative eligibility determination, and to inform them of access to the reconsideration process.

We estimate a total information and outreach cost in Year One between $27 million and $65 million. We estimate a per endorsed program cost between $1.8 million and $4.3 million, and we estimate a per discount card enrollee cost between $4.19 and $9.96. These cost ranges are comparable to those estimated by the consulting firm for all marketing activities except mass media, between $0.84 and $7.02 per new member.

We estimate a total Year Two cost for information and outreach between $12.9 and $22.7 million. We estimate a cost per endorsed sponsor between $0.86 million and $1.5 million, and a per discount card enrollee cost between $1.96 and $3.45. Reduced costs for information and outreach in Year Two reflect information and outreach to a more limited pool of individuals, those changing plans or becoming eligible for the Medicare program, spread across the entire enrollment of the endorsed program. Information and outreach activities are not required during the Transition Period.

c. Eligibility Determination and Enrollment Processing

Endorsed discount endorsed sponsors will incur costs in administering the eligibility determination and enrollment processes as outlined in this regulation, but CMS has significantly reduced their potential role by assuming much of the burden of these activities. Specifically, we will develop an on-line enrollment and eligibility system against which endorsed sponsors can check the eligibility of individuals and enroll them in their endorsed programs. We also will handle any grievances about eligibility determinations and address requests for reconsideration of eligibility.

As our own eligibility determination process for transitional assistance is means-tested, we believe that means-tested State senior discount card programs are the best source of information about the costs of conducting eligibility determination activities. The interviews of several State programs and their contracted pharmacy benefit management firms gathered actual cost information and/or labor time to estimate costs of eligibility and enrollment.

To assess the sensitivity of our estimates, the consulting firm interviewed State programs that differed in the amount of documentation they required for an eligibility determination and in the level of verification activity required. Enrollment and eligibility activities for means-tested programs generally require some manual entry of information from an application or manual correction of scanned enrollment forms. Verification occurs either electronically or through manual review of multiple sources of income, family size, State residence, and health insurance. Some States require multiple forms of income documentation and manual review, while others accept the applicant's verbal certification that they meet income requirements. Sometimes States conduct these activities, and sometimes this activity is delegated to a private contractor providing pharmacy benefit management services.

Endorsed sponsor responsibilities will include reviewing applications, ensuring that applications are complete, screening initial applications for transitional assistance, entering eligibility information into a database, electronically requesting a determination on eligibility and enrollment for an individual through CMS systems, maintaining an enrollment database, and issuing eligibility determination notices that refer individuals to the reconsideration process as appropriate. We assume that endorsed sponsors will ensure that submitted applications are complete, either by recontacting individuals submitting incomplete applications, or by mailing incomplete applications back to the applicant. We have accounted for these mailing and telephone costs under estimates for information and outreach, and for customer service.

For those individuals applying for transitional assistance, we will require endorsed sponsors to first review applications for an individual's prescription drug coverage and the income level that the individual has certified as accurate, and identify individuals that need to be checked against CMS' eligibility and enrollment databases. The endorsed sponsor then will submit batch jobs of eligibility and enrollment requests through a telecommunications data connection with CMS, update their enrollment database with the results, and issue notices of eligibility determination and enrollment. The costs of mailing these notices are included in marketing estimates.

We assume that endorsed sponsors will process a total of 8.34 million applications in Year One. This application pool reflects 100 percent of program enrollment (6.4 million), plus an estimated additional 30 percent of enrollment to capture costs for processing reapplications to enroll in the discount card after receiving a negative eligibility determination for transitional assistance. We use the same 30 percent assumption when we estimate the number of eligibility determination notices that endorsed sponsors will mail. We chose 30 percent to capture a proportion of individuals ultimately choosing to enroll in the discount card program after finding that they are not eligible for transitional assistance and a proportion of those never enrolling in the program who request transitional assistance, but are determined ineligible. We assume that endorsed sponsors will process a total 1.6 million applications in Year Two. This application pool consists of 100 percent of individuals choosing to disenroll in Year One and all newly eligible enrollees in Year Two, plus an additional 30 percent of this total for reapplications and individuals choosing not to enroll. We also assume an additional 5 percent of discount card enrollees who are not receiving transitional assistance will request an eligibility determination because their financial status changed during the previous year.

From their interviews with State programs, the independent consulting firm estimates the cost of eligibility processing costs for a new application ranges from $3.87 to $16.68 in 2003 dollars. The low cost is from a State program that has self-certification of income and age, does not require review of any documentation for eligibility, and requires reporting of limited data elements on its enrollment form. The high cost is from a program that has a very complex eligibility process including requiring a breakdown of income and assets into categories, prospective adjustment of income for the coming year, and review of multiple documents demonstrating income, residency, health insurance, and age.

We chose to use $3.87 as our low estimate of conducting eligibility determination and processing enrollment for a new application, because the process CMS has created does not require labor-intensive processes such as review of documents verifying income or family size or prospective adjustment of income, however, it is not a simple attestation process. We chose $5.04 as our high estimate because our requirements on

endorsed sponsors are significantly less burdensome than the manual processing implied by the $16.68 estimate and because the estimate of $5.04 reflects the proportion of the high cost that accounts for data entry and eligibility determination activities that CMS would require of endorsed card sponsors.

We use the same cost estimate to approximate processing eligibility and enrollment requests for individuals applying for transitional assistance and those only applying to enroll in an endorsed program. We believe the amount of effort required to process applications for both populations is fairly comparable. If anything, we have slightly overestimated the cost of processing enrollment for individuals not applying for transitional assistance.

Combining our assumptions about the number of applications in each year with our estimates of the costs to process a new application, we estimate an aggregate eligibility determination and enrollment processing cost across all sponsors for Year One between $34 million and $44 million. We estimate a per endorsed sponsor cost for Year One between $2.3 million and $3 million. This translates to a per discount card enrollee cost between $5.24 and $6.82. In Year Two, we estimate an aggregate program eligibility cost between $4.6 million and $5.9 million, with a per endorsed sponsor cost between $303 thousand and $393 thousand. This translates to a per discount card enrollee cost between $0.69 and $0.90. As with other cost elements, Year Two costs are less because the cost to enroll the limited number of new discount card enrollees is spread across total program enrollees. We assume that there are no costs for eligibility determination and enrollment in the Transition Period.

d. Customer Service Call Center

The following estimates reflect costs for both an interactive voice-response system and access to live customer service representatives by telephone. To accurately represent an endorsed sponsor's call center costs, we rely on interviews conducted for CMS by the independent consulting firm as well as the research on discount drug card call center operations that CMS sponsored earlier this year. We also rely on literature reflecting call volume within similar program offerings.

We expect that Medicare beneficiaries will call an endorsed sponsor's customer service center for a variety of reasons. First, we believe that the majority of Medicare beneficiaries will call to gather additional information about the program and with questions about completing the enrollment form, especially those applying for transitional assistance. Our research on discount drug card call center operations also suggest that a small proportion of discount card enrollees call for more mundane reasons, including locating a network pharmacy, ordering a replacement card, and asking how to use the card when purchasing drugs. In addition to these reasons, we also expect that discount card enrollees will call to check drug prices, to disenroll, to file a grievance, and for those receiving transitional assistance, to check the balance of remaining funds.

With regard to call volume, we assume that endorsed sponsors will receive calls equal to 1.5 times new enrollment in Year One. We believe that the majority of call volume will be the result of initial enrollment activities. Our research indicates that endorsed sponsors expect Medicare beneficiaries who are considering enrolling in a card to call around for price information prior to enrolling. The recent report on the Pfizer Share Card program indicates call volume of roughly 6 times total enrollment during the first year of operation. Although this call volume includes income eligibility pre-screening for all applicants.[9] Further, both the independent consulting firm, Pfizer, and our own experience with 1–800 Medicare indicate that call volume increases after publicity and after information and outreach activities. We assume that endorsed sponsors will have call volume greater than enrollment but less than that documented by Pfizer for the following reasons.

First, we assume that CMS' education efforts and the availability of 1–800 Medicare and *http://www.Medicare.gov* will help reduce call volume to endorsed sponsors. Specifically, we believe that the availability of pre-screening tools through *http://www.Medicare.gov* and through 1–800 Medicare will attract calls requesting pre-screening for information and eligibility that might otherwise be addressed to individual endorsed sponsors. We also believe CMS' provision of a price comparison Web site will reduce call volume to endorsed sponsors because it will help individuals to check prices before they choose a card and, after they are enrolled, to check for changes in discounted prices.

We also assume that endorsed sponsors will take proactive measures to manage inquiries by discount card enrollees and others through communication channels other than the telephone. Our research on discount card call center operations suggests that endorsed sponsors can take several steps to preempt calls, including repetitive messaging, newsletters, Web sites, direct mail, and extensive FAQs (frequently asked questions) in information and outreach materials.

In Year Two, we assume call volume will be 1.5 times new enrollment. We also assume that 30 percent of those receiving transitional assistance will call for reasons other than enrollment and that 20 percent of those enrolled only in the discount card will call for reasons other than enrollment. Research on drug card call centers conducted for CMS indicate much lower call volume, less than 10 percent of membership, from individuals enrolled in a discount drug card than call volume in a funded benefit, roughly 30 percent of membership.

We assume that the endorsed sponsor's 1–800 customer service line will include an interactive voice-response system (IVR). An IVR system achieves call-savings by providing standard information without using the more expensive resources of a live customer service representative. If properly utilized, an IVR connected to various back office systems for immediate automated information retrieval, may help reduce significant call center costs to the sponsor. This allows for a good customer service tool, by giving callers responses to simple questions and easy access to various information. Many of the questions received by drug discount cards are questions that can be handled in the IVR, including requesting basic information about the program and enrollment, services, ordering replacement cards, checking for a network pharmacy, checking the discounted price of a specific drug, and checking account balances. We believe that the IVR will not be able to handle complex eligibility questions, questions regarding the balance of transitional assistance, and a range of other questions, such as a request for disenrollment.

We assume that an endorsed sponsor's IVR system can handle 50 percent of all incoming calls. We base this assumption on several sources. First, it has been CMS experience with 1–800 MEDICARE that traditionally 32 percent of all calls are handled in the IVR. Because 1–800 Medicare handles a range of questions about the Medicare program, these calls are more likely, on average, to be time consuming as 1–800 MEDICARE customer service

[9] Pfizer U.S. Pharmaceuticals. *Report to America.* September 2003.

representatives support beneficiaries in understanding their options among endorsed cards and other pharmacy assistance alternatives. In addition, the research conducted for CMS on discount drug card call centers provides some information on the percentage of calls moving from the IVR to a customer service representative. Two large call centers reported that 30 and 60 percent of calls were handled in their IVR respectively.[10] We believe 50 percent of calls reflects the simplicity of calls, other than those related to eligibility and transitional assistance, that endorsed sponsors will receive. We assume 50 percent of calls are handled in the IVR for both years.

We estimate the cost of a completed call in the IVR to range between $0.10 and $.35 cents. These estimates reflect a range of differences in IVR structure and time.[11] The independent consulting firm also estimated completed calls in the IVR to cost between $0.22 and $0.30. These estimates are fully loaded and reflect the marginal cost of each additional call, as we assume that each endorsed sponsor or its subcontractor will already have the basic call center infrastructure for IVR in place.

Using call volume assumptions and IVR cost information, we estimate aggregate interactive voice-response system costs to range between $1 million to 3.5 million dollars, with a per endorsed sponsor cost of $67 thousand to $236 thousand dollars. The estimated per new discount card enrollee cost is between $0.16 and $0.55 dollars.

For Year Two, we estimate aggregate interactive voice-response system costs range between $200 thousand and $701 thousand dollars, with a per endorsed sponsor cost of $13 thousand to $47 thousand dollars. The estimated per discount card enrollee cost is between $0.03 and $0.11 dollars.

We assume that calls to a customer service representative will average seven minutes in length. Interviews conducted by the independent consulting firm suggests that average talk-time for the senior population ranges from six to eight minutes. Our own internal experience with 1–800 Medicare confirms this analysis. Based on our assumptions about calls handled in the IVR, above, we assume that 50 percent of all calls are passed through. In Year One, this represents a total of approximately 4.9 million calls, across all card programs. In Year Two, applying 50 percent to our total call volume estimates suggests that 924 thousand calls will be passed through to a customer service representative. As mentioned earlier, we assume that most of the first calls made by individuals will come into the Medicare 1–800, thereby reducing the call volume and thus costs to the endorsed sponsors.

We estimate the fully loaded cost of a call to a live customer service agent per minute to range between $1.20 and $1.75. These estimates reflect a range of differences in IVR structure and time as well as CMS' experience contracting with call centers.[12] These costs include the costs of overhead and labor for conducting call center operations. We assume these costs also include start-up costs, such as programming call center software, increasing seat licenses, computers, phones, phone lines and training customer service representatives. To avoid double counting, we do not include costs for setting up call-center operations in our estimates of program implementation.

The estimated Year One customer service representative costs across all endorsed sponsors is between $42 million to $62 million dollars with a per endorsed sponsor cost of $2.8 million to $4.1 million dollars. This translates to a per discount card enrollee cost of $6.56 to $9.56 dollars. The estimated Year Two cost across all sponsors will be $8.4 million to $12.3 million dollars, with a per endorsed sponsor cost of $561 thousand to $818 thousand dollars. This translates to per discount card enrollee costs between $1.28 and $1.87 dollars.

The total IVR and customer representative service costs for Year One are between $44 million and $66 million across all sponsors, $2.9 million to $4.4 million per endorsed sponsor, and $6.71 to $10.11 per discount card enrollee. This range of costs is slightly higher than the per member estimates captured by the consulting firm in their interviews with comparable drug card programs. They estimated between $1.44 and $8.04 per member. The total IVR and customer representative service costs for Year Two are between $8.6 million and $13 million across all endorsed sponsors, $574 to $865 thousand, and $1.31 to $1.97 per discount card enrollee. For the Transition Period, the total IVR and customer representative service costs are estimated between $1.6 million and $2.4 million across all endorsed sponsors, $108 thousand to $162 thousand per endorsed sponsor, and $0.25 to $0.37 per discount card enrollee.

e. Claims Processing

The following estimates reflect costs for claims processing by the endorsed sponsors. Claims processing is the process performed by an endorsed sponsor to adjudicate a claim. It includes checking an eligibility database for program information, such as balance of transitional assistance; verifying prices; and conducting Drug Utilization Review (DUR). Consumer purchasing at a retail pharmacy is almost always an automated process, with adjudication happening at the point of sale. We anticipate that endorsed sponsors will use their computerized management information systems to perform claims processing. For purposes of this analysis, we assume that claims-processing costs apply to processing all transactions, whether providing a discount or processing an actual claim against transitional assistance. Although processing a discount is generally less burdensome because it does not require financial reimbursement and associated reconciliation against third party payor funds, we have not reduced our transaction estimates to account for this difference. Research conducted for us concluded that the cost difference between these two types of claims would be negligible.

Costs for processing claims in the literature range from $0.00 to $.70.[13] But, as already noted, these costs are not the true economic cost of processing claims because they include the cost of other services, such as account maintenance, and rebate-sharing arrangements. Estimates of the cost of claims processing obtained through the interviews conducted for CMS revealed true costs ranging from $0.05 to $0.14 for electronic processing of a prescription in 2003 dollars. We used this same range for our estimates of processing electronic claims. Lastly, endorsed sponsors may choose to promote mail prescription services for their enrollees. Some mail prescription fulfillments may be as high as a 90-day supply and thus utilize one prescription. This results in one prescription processing cost, instead of three claims being processed, at a 30-day supply each, thereby substantially reducing the overall cost component on the endorsed sponsor's expense

[10] The Health Strategies Consultancy LLC. Call Center Parameters and Regulatory Authority for Drug Discount Cards. May 20, 2003.

[11] Personal communication with Elizabeth Herrell, Vice President, Customer Experience, Forrester Research. October 29, 2003.

[12] Personal communication with Elizabeth Herrell, Vice President, Customer Experience, Forrester Research. October 29, 2003.

[13] Berg, Kevin and Noah Yosha. July 14, 2003. *Pharmacy Benefit Managers and Specialty Pharmacies.* Credit Suisse Equity Research for First Boston.

structure. We do not figure this into pricing the claims processing cost described here.

Some claims may be submitted on paper. Approximately one percent of all claims processed for a funded benefit are paper claims.[14] In our estimates, we assume that any one endorsed sponsor will have to process one percent of their claims manually for their endorsed program. To process a paper claim, the endorsed sponsor must manually enter the information into the claims processing system. Cost estimates for processing paper claims range from $1.00 to $1.50 per claim.[15] We used this same range of costs for our estimates of processing paper claims.

Section 1860D–31(g)(5) of the Act requires that transitional assistance through the endorsed sponsor be made available to beneficiaries who qualify for transitional assistance and reside in skilled nursing facilities and nursing facilities. These claims will be more difficult to process than electronic claims because they are likely to be submitted by pharmacies that are not in the endorsed sponsor's pharmacy network and with whom the endorsed sponsor may not have a formal relationship or electronic data exchange. We make this assumption because we believe that pharmacies in long-term care and skilled nursing facilities may not participate in an endorsed discount card program; institution-based pharmacies have less incentive than those in the community to join a discount card network.

To address the specific structure of the long-term care pharmacy market, this regulation provides for CMS to award a ''special endorsement'' to endorsed sponsors competing for the opportunity to process claims from long-term care pharmacies. This competition limits the processing of claims from pharmacies serving long-term care and skilled nursing facilities to a few endorsed sponsors who have experience processing such claims and who can garner economies of scale. We expect that endorsed sponsors receiving a special endorsement will have some pharmacies serving long-term care and skilled nursing facilities in their pharmacy network. For purposes of this analysis, we assume that two of the anticipated fifteen endorsed sponsors receive a special endorsement from CMS. For each of these two ''special endorsed sponsors,'' we assume that they continue to enroll the average number of enrollees in a card program: 431,865 in Year One, and 438,010 in Year Two and Transition Period, but that a sizable proportion of those enrollees is institutionalized.

We estimate that roughly 200 thousand institutionalized individuals will qualify for transitional assistance and use that transitional assistance at the pharmacy in their facility. This estimate is derived from the Medicare Current Beneficiary Survey (MCBS) and is used earlier in this document. We also estimate that this enrollment is split across the two special endorsed sponsors, thereby allocating 100 thousand enrollees to each special endorsed sponsor. This means that, roughly, one-quarter of the 430 thousand enrollees in a special card program are institutionalized. With regard to cost, we estimate that each of the special endorsed sponsors will receive about one-third of their claims for the institutionalized from long-term care pharmacies in their networks and that the cost per claim will be the same as processing any electronic in-network claim. Also, we assume that each card sponsor will achieve efficiencies in processing out-of-network claims from long-term care pharmacies. Without better estimates of the burden of processing out-of-network claims, we assume that the cost of processing such claims is similar to that for processing paper claims, between $1.00 to $1.50 per claim. In light of our assumption about available economies of scale, we assume a cost estimate of $1.00 for processing claims from out-of-network long-term care pharmacies.

We make a base assumption that beneficiaries using a discount card will fill 27 prescriptions a year. We base this assumption on findings from CMS Office of the Actuary, which obtains data on prescription drug sales and prescription utilization from a variety of sources, including the National Prescription Audit conducted by IMS Health. These are the same numbers used in the Impact Analysis. In light of the nine-month operating period for Year One, we assume that discount card enrollees will fill an average of 20 prescriptions using their discount card in Year One. We assume they will fill all 27 prescriptions during Year Two and fill 5 prescriptions during the Transition Period.

For the purpose of claims submitted against transitional assistance for beneficiaries in skilled nursing facilities and nursing facilities, we estimate that institutionalized individuals will fill an average of nine prescriptions for Year One and eight prescriptions for Year Two. This assumes that their long-term care pharmacy will only process claims against the balance of available transitional assistance. When the balance of transitional assistance becomes depleted for the year, we assume claims processing through the card program will cease. We derived nine and eight prescriptions by dividing $600 by an average prescription cost of $66 and $72, which is an average total prescription price of $46.99 (derived from self-reported beneficiary expenditures in MCBS 2000), adjusted to 2004 and 2005 dollars. We assume that institutionalized enrollees will not use their card during the Transition Period because they will have expended all of their transitional assistance in Year Two.

Twenty prescriptions for each non-institutionalized enrollee and nine prescriptions for each institutionalized care enrollee translates to a total of 129 million prescriptions in Year One, with each of the 13 endorsed sponsors processing 8.7 million prescriptions and each of the two special endorsed sponsors processing 7.6 million prescriptions. In Year Two, twenty-seven prescriptions per non-institutionalized enrollee and eight for institutionalized enrollees means a total of 174 million prescription across all beneficiaries, with each of the 13 endorsed sponsors processing 11.8 million prescriptions and each of the two special endorsed sponsors processing 10 million prescriptions. Five prescriptions for non-institutionalized enrollees in the Transition Period means a total of 32 million prescriptions for all enrollees will be processed, with each of the 13 endorsed sponsors processing 2.2 million prescriptions and each of the two special endorsed sponsors processing 1.7 million prescriptions.

We used the cost and prescription utilization estimates listed above to estimate costs for each of the 13 endorsed sponsors not processing claims from long-term care pharmacies. We assume that these endorsed sponsors only process in-network claims, both paper and electronic. For Year One, we estimate a per endorsed sponsor cost between $542 thousand and $1.4 million and a per enrollee cost between $1.25 and $3.24. For Year Two, we estimate a per endorsed sponsor cost between $763 thousand and $2 million and a per enrollee cost between $1.74 and $4.50. For the Transition Period, we estimate a per endorsed sponsor cost between $149 thousand and $386 thousand and a per enrollee cost between $0.34 and $0.88.

We used the costs and prescription utilization estimates discussed above to

[14] Price Waterhouse Coopers. June 2001. *Study of Pharmaceutical Benefit Management,* CMS contract number 500–97–0399 Task Order 0097: 76.

[15] Ibid.

estimate costs for each of the two special endorsed sponsors. We assume that these special endorsed sponsors process in-network claims, both paper and electronic, and process out-of-network claims for two-thirds of their institutionalized enrollees. For Year One, we estimate a per endorsed sponsor cost between $1 million and $1.8 million and a per enrollee cost between $2.48 and $4.09. For Year Two, we estimate a per endorsed sponsor cost between $1.2 million and $2.2 million and a per enrollee cost between $2.75 and $4.96. For the Transition Period, we estimate a per endorsed sponsor cost between $120 thousand and $305 thousand and a per enrollee cost between $0.28 and $0.70.

To accurately represent the full range of possible costs faced by an endorsed sponsor, for our final estimates of claims processing, we use the lowest per sponsor cost estimate, the low costs faced by each of the 13 endorsed sponsors, as our low estimate. Similarly, we used the highest per endorsed sponsor cost estimate, the high costs faced by each of the two special endorsed sponsors, as our high estimate of claims processing costs.

We estimate the total claims processing costs, including claims from pharmacies in long-term care facilities and paper claims, across all sponsors for Year One to be between $8 million and $22 million dollars, with a per endorsed sponsor cost between $542 thousand and $1.8 million dollars. This translates to a per discount card enrollee cost between $1.25 and $4.09 dollars. For Year Two, the total program cost is between $11.5 million and $30 million dollars, with a per endorsed sponsor cost between $763 thousand and $2.2 million dollars. This translates to a per discount card enrollee cost between $1.74 and $4.96 dollars. For the Transition Period, we estimate the total cost across all sponsors to be between $2.2 million and $5.6 million dollars, with a per endorsed sponsor cost between $149 thousand and $305 thousand dollars. This translates to a per discount card enrollee cost between $0.34 and $0.70 dollars.

f. Account Maintenance

Endorsed programs generally require ongoing account maintenance to maintain and update eligibility databases, input changes to the formulary database, provide technology support, provide typical industry data reports, and manage customer service for the purchaser. Account maintenance does not include call center or information and outreach activities. The cost of account maintenance is fairly minimal and is often rolled into other costs, such as a claims-processing fee. This clarifies, in part, the higher observed claims processing costs observed in the literature than we are using in this analysis.

The independent consulting firm gathered estimates of current account maintenance costs across commercial and State programs ranging from $2.28 per discount card enrollee per year to $3.84 per discount card enrollee per year in 2003 dollars. One firm that the consulting firm interviewed believed account maintenance costs for this program would be closer to $4.00 per discount card enrollee per year in 2003 dollars. For purposes of these estimates, we used $3.84 per discount card enrollee for our low estimate and $4.00 per discount card enrollee as our high estimate.

We believe these estimates capture the costs of producing data files for price comparison and the type of reporting that CMS requires to support monitoring. Further, the consulting firm found that most data related reports provided by sponsors to their clients, based on their clients' business needs, are negligible in cost. An example provided by the consulting firm includes a data file of all claims for a week long period. They Stated that the cost of such a report would be between $100 to $200 and would include the retail purchase price actually paid, the coded name and address of the store, and the name of the drug. The consulting firm indicated that some of the types of reporting likely to be required by CMS under the Medicare prescription drug discount card program would, in the private sector, be treated as a revenue generating product offering by sponsors. As such, sponsors would typically charge their clients according to the value, not cost that this data provides. In cases where the owner/producer of the data is providing the data reports as a subcontractor to a client of CMS, then whether the subcontractor chooses to charge the sponsor, at cost or profit, is a business and contract decision for these two entities, where, for example, the subcontractor is competing among other possible subcontractors for the volume of business that the name of the front organization may provide.

Adjusting account maintenance for the nine-month operating period in Year One and for inflation, we estimate a per discount card enrollee cost for Year One ranging from $3.00 to $3.12. This translates to a total cost between $19.4 million and $20.2 million dollars for all endorsed sponsors in Year One, with a per endorsed sponsor cost between $1.3 million and $1.4 million. In Year Two, an aggregate account maintenance cost is between $27 million and $29 million dollars with a per endorsed sponsor cost between $1.8 million and $1.9 million dollars. This translates to a per discount card enrollee cost between $4.17 and $4.34 for Year Two. For the Transition Period, we estimate a total program cost between $5.4 million and 5.6 million dollars, with a per endorsed sponsor cost between $357 thousand and $372 thousand dollars and a per discount card enrollee cost between $0.82 and $0.85 dollars.

g. Grievances

We anticipate that endorsed sponsors will incur minimal costs providing an internal grievance mechanism to document and address discount card enrollee complaints. Our endorsement criteria require that endorsed sponsors maintain a grievance process dedicated to complaints by discount card enrollees only about program operations, not about requests for reconsideration of a negative eligibility determination. Within a traditional benefit, medical-related grievances are usually related to prior approval, medical necessity, or a previous complaint. In means-tested prescription assistance programs, appeals for negative eligibility determinations are also a common source of complaints.

For this discount card program, discount drug endorsed sponsors will not need to address the traditional appeals of a funded benefit, those related to medical necessity determinations, or to address appeals for means-tested programs, those of eligibility determination. We expect grievances to be limited to programmatic issues such as pharmacy participation and the size of discounts. These issues are not complex and are straightforward to address.

The consulting firm gathered estimates of grievance processing in State programs and reports and estimated that costs were less than $0.01 per discount card enrollee per month. In light of this information, we estimate a low of $0.09 and a high of $0.12 per discount card enrollee per year in 2003 dollars.

For the nine-month operating period in Year One, we estimate a range of total program costs between $455 thousand and $606 thousand dollars. We estimate a per endorsed sponsor cost for grievances in Year One between $30 thousand and $40 thousand and a per discount card enrollee cost between $0.07 and $0.09. In Year Two, we estimate a total costs between $642 thousand and $855 thousand, a per

endorsed sponsor costs between $43 thousand and $57 thousand, and a per discount card enrollee cost between $0.10 and $0.13. For the Transition Period, we estimate a total cost between $126 thousand and $167 thousand, a per endorsed sponsor cost between $8 and $11 thousand, and a per discount card enrollee cost between $0.02 and $0.03.

TABLE 10.—NET PRESENT VALUE ANALYSIS BY AVERAGE ENDORSED SPONSOR

	Net present value	Year 1	Year 2	Transition period
Low.				
Net Benefits from Table 9 in 2003 dollars	NA	$2,457,596	$8,086,304	($549,832)
Discounted by 3%	9,790,107	2,457,596	7,850,781	(518,269)
Discounted by 7%	9,534,645	2,457,596	7,557,293	(480,244)
High.				
Net Benefits from Table 9 in 2003 dollars	NA	(4,739,038)	5,748,531	(751,342)
Discounted by 3%	133,848	(4,739,038)	5,581,098	(708,212)
Discounted by 7%	(22,830)	(4,739,038)	5,372,459	(656,251)

TABLE 11.—COST BENEFIT RATIOS BY ENDORSED SPONSOR

	Year 1	Year 2	Transition period
Benefits.			
From Table 9 in 2003 Dollars	$12,445,673	$12,110,876	$0
Discounted by 3%	$12,445,673	$11,758,132	$0
Discounted by 7%	$12,445,673	$11,318,576	$0
Costs.			
Low.			
Cost Stream from Table 9 in 2003 Dollars	9,988,077	4,024,572	549,832
Discounted by 3%	9,988,077	3,907,352	518,269
Discounted by 7%	9,988,077	3,761,282	480,244
High.			
Cost Stream from Table 9 in 2003 Dollars	17,184,711	6,362,345	751,342
Discounted by 3%	17,184,711	6,177,034	708,212
Discounted by 7%	17,184,711	5,946,117	656,251
Present Value Benefit/Cost Ratios.			
Low—3%	1.68	.....	.....
Low—7%	1.67	.....	.....
High—3%	1.01	.....	.....
High—7%	1.00	.....	.....

Table 9, which appears earlier in this document at the beginning of the discussion about individual administrative cost categories, presents cost estimates for endorsed sponsors for each cost component in nominal dollars, at both the program and per discount card enrollee levels, relative to the maximum annual enrollment fee of $30. The total low cost range represents the costs to a card sponsor incurring all low administrative costs, and the total high cost range represents the costs to a card sponsor incurring the highest administrative costs, including those associated with claims processing for special endorsed sponsors. We use the maximum annual enrollment fee as the only source of revenue for endorsed sponsors in this analysis to demonstrate that endorsed sponsors can cover their administrative costs with enrollment fee revenue. These estimates do not account for any costs of producing services that are not required for endorsement, but which could be offered to distinguish a drug card offering, such as disease-specific counseling or using mass media for information and outreach.

In Year One, we estimate that endorsed sponsors with low costs can easily cover their costs if they charge the maximum annual enrollment fee of $30. An average endorsed sponsor with 431,865 beneficiaries enrolling and participating for nine-months, and low administrative costs could collect revenue of $12,955,945 and incur costs of $10,397,588 resulting in a profit of $2,558,357. We estimate that endorsed sponsors with high administrative costs and an average of 431,865 beneficiaries enrolling and participating for nine-months could collect revenue of $12,955,945 and incur administrative costs of $17,889,284, resulting in a net loss of $4,933,339. Costs are higher than revenue for these endorsed sponsors because the costs associated with information and outreach, enrollment, and program implementation activities are loaded into Year One.

In Year Two, we estimate that all endorsed sponsors will cover their administrative costs. We estimate that endorsed sponsors with low costs and an average of 438,010 enrolled could earn revenue of $13,140,301, if they charge the maximum annual enrollment fee, and will incur administrative costs of $4,336,661. This results in net revenue of $8,773,640. For the same year, we estimate that endorsed sponsors with high costs and an average of 438,010 enrolled could earn revenue of $13,140,301, if they charge the maximum annual enrollment fee, and will incur administrative expenses of $6,903,144. This results in net revenue of $6,237,156. For the Transition Period, we estimate that endorsed sponsors with low costs and 438,010 enrolled for an average of 2.25 months will lose $622,410 and that endorsed sponsors with high costs and 438,010 enrolled for an average of 2.25 months will lose $850,519. Endorsed sponsors cannot charge an annual enrollment fee during the Transition Period.

A present value calculation is appropriate when costs and benefits are realized in different years in order to standardize costs and benefits for the time-value of money. Table 2 calculates the net present value (NPV) of these streams of net benefits (provided in Table 9), over the life of the program. In

their circular A–4, the Office of Management and Budget requires all benefit-cost analyses to use a 7 percent discount rate (r), which is the rate used to adjust cost and benefit streams for the time-value of money.[16] We also calculated net benefits using a 3 percent discount rate. The Office of Management and Budget has indicated that a 3 percent discount rate better approximates the individual rate of time preference.

As noted in the introduction to this analysis, we believe that potential card sponsors will find it profitable to participate in this program. The cost of capital to a private firm choosing to implement this program is the interest rate of a corporate bond. Lehman Brothers estimate that AAA and A average corporate bond yields to maturity are 2.89 percent and 3.93 percent respectively.[17] These low rates also reflect the return on capital for such a short investment. The program will last roughly 24 months. In order to avoid the influence of inflation on nominal interest rates, in Tables 10 and 11 we have removed all inflation adjustments from cost estimates, adjusted the nominal benefit stream of enrollment fee revenue for inflation in 2004 and 2005, and calculated present values in 2003 dollars. Net present value in Table 10 is calculated:

$$NPV = Year1Net + [Year2Net/(1+r)] + [Transition\ PeriodNet/(1+r)^2]$$

As shown in Table 10, a positive net present value exists for both the low and high cost estimates when discounted by 3 percent. A positive net present value exists for the low cost estimate when discounted by 7 percent, and a slightly negative net present value exists for the high cost estimate when discounted by 7 percent. Endorsed sponsors with modern information systems and experience administering pharmacy benefits, who also selectively target their information and outreach efforts will realize a large economic profit if they choose to charge the maximum enrollment fee of $30. We estimate that these endorsed sponsors could, in total, realize a net present value of approximately $9.5 million to $9.8 million over the life of the program. At a endorsed sponsor's option, to distinguish its endorsed program's offering, these profits could be channeled to deeper discounts on drugs or to additional drug-related products and services to benefit discount card enrollees.

Endorsed sponsors using older mainframe systems, or who have less experience with direct enrollment, and who make greater investments in information and outreach materials, and who have chosen to be a special endorsed sponsor, can cover all or almost all of their costs if they choose to charge the maximum annual enrollment fee of $30. We stated earlier that we believe 3 percent to be an appropriate discount rate for this program. Using a 3 percent discount rate, we estimate that endorsed sponsors with the highest administrative costs could realize a net present value of $134 thousand with an annual enrollment fee of $30. However, using the higher discount rate of 7 percent results in a slight loss for endorsed card sponsors with the highest costs. Such a finding does not preclude these potential card sponsors from participating because they can choose to cover their administrative costs by passing less rebate and other price concession revenues on to their discount card enrollees in the form of higher negotiated prices.

The highest cost estimates are for sponsors who receive a special endorsement to process claims for long-term care pharmacies. Sponsors with high administrative costs, excluding the effect of claims processing for LTC pharmacies, and dealing only with non-institutionalized enrollees could easily cover their costs, realizing a net present value of $442 thousand to $601 thousand with an annual enrollment fee of $30. We also believe that endorsed sponsors stand to further benefit from the amortization of certain cost components, thereby yielding a more attractive net present value in both the low and high ranges.

Calculating Benefit-Cost ratios is another means of assessing the profitability of a program. In Table 11 we estimate present value benefit-cost ratios. These are calculated by discounting costs and benefits for each year, summing over the years of the program and setting total present value benefits over total present value costs. As with the net present value calculations, we removed the effect of inflation from these estimates and calculate benefit-cost ratios in 2003 dollars. For endorsed sponsors with low administrative costs, we estimate a benefit-cost ratio of approximately 1.68 for the 3 percent discount rate and 1.67 for the 7 percent discount rate, and for endorsed sponsors with high administrative costs, we estimate a benefit-cost ratio of 1.01 and 1.00 respectively. In both instances, the benefit-cost ratio equals or exceeds one, demonstrating the feasibility of programs offered by each type of endorsed sponsor relative to anticipated revenue.

We have estimated costs for an average endorsed sponsor of 430 thousand enrolled individuals. Realistically, enrollment may not be evenly distributed when this program is implemented. We expect that some national endorsed programs will garner a large proportion of discount card enrollees, and that their participation will fulfill the geographic requirement that discount card eligible individuals have access to at least 2 programs. We also expect that other endorsed programs will enroll the remainder. The benefit-cost ratio for high estimated costs at 430 thousand enrolled equals or exceeds one, indicating that profitability for a endorsed sponsor with very high administrative costs will depend on enrolling all anticipated enrollment. There is very little room to absorb the impact of reduced enrollment through enrollment fees alone. This is not because fixed costs are large, the endorsement criteria require endorsed sponsors to already have most of the infrastructure needed to offer a drug discount card. Rather it is because very high variable costs leave little room to spread these minimal fixed costs across a reduced level of enrollment.

On the other hand, the benefit-cost ratios for low estimated costs, 1.67 and 1.68, clearly demonstrates enough room to absorb the costs of reduced enrollment. We believe that efficient endorsed sponsors can easily reach profitability with a moderate level of enrollment. Efficiencies are not necessarily due to economies of scale and can be achieved through new technology and smarter business practices. Finally, if, for some reason, endorsed sponsors enroll fewer individuals than anticipated, costs could be recouped through rebate and other price concessions.

This analysis has demonstrated that the maximum enrollment fee of $30 in Years One and Two gives endorsed sponsors with very different operating environments, levels of commitment, technological efficiency, and business investment strategies the flexibility to recoup their costs through enrollment revenue. Endorsed sponsors with the highest administrative costs can collect sufficient enrollment revenue to cover all or almost all of their expenditures. Card sponsors experiencing any minimal net loss can cover these costs with earnings from rebate dollars. Endorsed sponsors with lower administrative costs can easily collect sufficient enrollment revenue to cover

[16] Office of Management and Budget, Circular A–4, September 17, 2003.

[17] Lehman Brothers Credit Index, Yield by Quality, September 30, 2003.

their administrative expenses and may be able to charge a lower enrollment fee or pass greater savings onto their discount card enrollees.

J. Conclusion to Impact Analysis

In summary, more than 7 million Medicare beneficiaries are projected to enroll in the Medicare prescription drug discount card program. Savings to these beneficiaries from discount card activities are estimated to range from $1.4 billion to $1.8 billion in the last nine months of 2004, $2.0 billion to $2.7 billion in 2005, and $0.4 billion to $0.6 billion in the transition period in 2006. About 4.7 million of these beneficiaries are also expected to be enrolled in the transitional assistance program, with savings realized by these beneficiaries from transitional assistance estimated to be about $2.4 billion in 2004, $2.6 billion in 2005, and $0.1 billion in the transition period in 2006.

The Medicare prescription drug discount card program is not expected to have a significant economic impact on a substantial number of small pharmacies and drug stores. On average, estimated savings from discount card activities represent at most 1.18 percent of retail prescription drug revenues. Results from the sensitivity analysis found that even in a hypothetical geographic area with a larger than average proportion of residents likely to enroll in the Medicare prescription drug discount card program, savings from discount card activities represented less than 3 percent (2.36 percent) of total retail prescription drug sales.

Furthermore, this economic impact will not be borne entirely by pharmacies, because endorsed sponsors will be required to obtain manufacturer rebates or discounts that will defray the cost of pharmacies providing discounts on retail drug prices.

Finally, the analysis of administrative costs and revenue demonstrated that endorsed discount card sponsors with varied levels of administrative costs, ranging from low to high, would be able to recoup all or almost all of their costs through enrollment revenue (a maximum $30 enrollment fee in Years One and Two) alone. Furthermore, this analysis found that endorsed sponsors with lower administrative costs can easily collect sufficient enrollment revenue to cover their administrative expenses, and as a result may be able to charge a lower enrollment fee or pass greater savings onto their enrollees.

K. Alternatives Considered

Most of the provisions related to the Medicare prescription drug discount card program are statutorily specified; however, there were a few policy areas where the Secretary was provided discretion and we considered alternatives to the proposed features. A number of the areas where we considered alternatives relate to applicant qualifications. The statute specifies that the Secretary may determine the types of non-governmental entities that are appropriate to act as endorsed sponsors, and these entities may include pharmacy benefit management companies, wholesale or retail pharmacy delivery systems, insurers (including insurers offering Medicare supplemental policies), and Part C plans. Although we have the authority to limit the types of entities that may act as endorsed sponsors, the only specific structural requirement for a sponsor is that it be a non-governmental, single legal entity doing business in the United States. We chose not to impose other structural requirements at this time because we believe our other conditions for endorsement ensure that applicants, either individually or through subcontracts, will have the necessary experience and integrity to act as endorsed sponsors. We did this to provide flexibility for a wider variety of applicants using combined capabilities to become card sponsors than are specifically identified in the statute.

Another provision of the statute related to applicant qualifications is that an applicant is eligible for endorsement under the Medicare prescription drug discount card program if the applicant by itself, or together with subcontractors, demonstrates experience and expertise in operating a drug discount card or similar program and meets certain requirements related to business stability and integrity. We considered alternatives for how to interpret this provision. As discussed earlier in this document, we decided to interpret this provision to mean that applicants, together with their subcontractors, must have certain qualifications. First, is the qualification of demonstrating 3 years of private sector experience in pharmacy benefit management, including adjudication and processing of claims at the point of sale, negotiating with prescription drug manufacturers and others for rebates and discounts on prescription drugs, and administration and tracking of an individual subsidy or benefit in real time. All of these administrative functions are features that must be performed as part of this program. We did consider both shorter and longer periods of experience. We believe, however, that the 3 years prior experience strikes an appropriate balance to ensure that endorsed sponsors are able to quickly establish their endorsed programs, thereby promoting the statutory mandate to implement the Medicare drug discount card program within 6 months of enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In addition, the 3 years prior experience requirement ensures that endorsed sponsors have the necessary experience and capacity to offer card enrollees quality discounts and customer service. Moreover, given the relative newness of the drug card industry and high market turnover, we believe requiring less than 3 years experience would create an untenable risk of having the Medicare name associated with less than stable and reputable organizations. Alternatively, requiring more than 3 years experience might be too limiting in terms of an applicant pool.

In addition to requiring 3 years of relevant experience, we decided to require that a single entity which is either the applicant or a subcontractor operate a pharmacy benefit program, a drug discount card, a low-income drug assistance program, or a similar program that serves at least 1 million covered lives. We decided not to link the 1 million covered lives requirement with the 3-year experience requirement in order to provide entities the flexibility to combine their capabilities. For example, an entity with the requisite experience may not have the enrollment capacity, but may acquire this capacity by contracting with another entity for purposes of administering the endorsed program. As discussed previously in this document, given the potential level of enrollment in this program, we believe it is necessary that endorsed sponsors have the capacity to accept a large volume of enrollees. Furthermore, our 6-month statutorily mandated implementation timeline necessitates that endorsed sponsors be able to quickly accommodate a potentially large influx of enrollees over a relatively short period of time. Current levels of covered lives provides evidence of an applicant's immediate capacity to do so. In examining our data on the number of covered lives served by a variety of organizations, we found that a standard of 1 million lives strikes a balance between ensuring a competitive marketplace with a number of different endorsed programs available to Medicare beneficiaries and ensuring that endorsed sponsors have the capacity to handle a large influx of card enrollees.

Another area where we considered alternatives relates to proration of the $600 transitional assistance. Section 1860D–31(g)(2)(A) of the Act provides that transitional assistance beneficiaries may receive up to $600 each year in transitional assistance. However, section 1860D–31(g)(2)(B) of the Act permits us to prorate the amount of transitional assistance available to beneficiaries applying for transitional assistance. We considered whether or not to exercise this authority. We decided not to prorate transitional assistance amounts in 2004 in recognition that it may take time for our education campaign to reach all beneficiaries and that beneficiaries need sufficient opportunity to learn about the Medicare prescription drug discount card program without penalty. We did, however, decide to prorate the transitional assistance available to eligible enrollees applying for transitional assistance in 2005. We decided to prorate transitional assistance in 2005 because we believe that, by 2005, beneficiaries will have had ample time to learn about the Medicare prescription drug discount card program. In addition, prorating transitional assistance encourages transitional assistance eligible beneficiaries to enroll in the Medicare prescription drug discount card program as early as possible in order to maximize their transitional assistance amount, which in turn will increase the volume of covered discount card drugs obtained under an endorsed program and enhance an endorsed sponsor's ability to negotiate deeper discounts for discount card enrollees.

We also considered alternatives related to the requirements for the Secretary to establish procedures and negotiate arrangements with sponsors regarding pharmacies that support long term care facilities and I/T/U pharmacies. We considered whether to require all card sponsors to integrate pharmacies that support long term care facilities and, for sponsors serving the relevant states, I/T/U pharmacies into their networks. As discussed in greater detail previously in this document, we decided the best way to ensure that AI/ANs and residents of long term care facilities have the opportunity to receive transitional assistance is to promote a competition for ''special endorsement'' to serve these beneficiaries and to select at least two of the best plans for including each type of pharmacy, one type associated with long term care facilities, and the other being I/T/U pharmacies. We believe a competition among interested sponsors will encourage better, more thoughtful plans for access to a market generally untapped by the pharmacy benefit management industry. Pharmacies supporting long term care facilities and AI/ANs are not generally included in the traditional pharmacy networks of the pharmacy benefit management industry. To require that all sponsors provide for their inclusion would represent a significant new burden and could undermine the business case for participation by some potential applicants considering participation in the broader program. A similar set of considerations also applied to how to deal with the territories and our decision to limit the number of special endorsed sponsors operating in each of the territories to at least one in order to assure that a sufficient number of beneficiaries will enroll in special endorsed sponsors' endorsed programs in the territories. We were concerned that in the absence of this decision, an insufficient number of applicants would seek to offer endorsed programs in the territories and we therefore would be unable to ensure that residents of the territories have access to negotiated prices.

List of Subjects

42 CFR Part 403

Grant programs-health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 408

Medicare.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, as follows:

PART 403—SPECIAL PROGRAMS AND PROJECTS

■ 1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Subpart H is revised to read as follows:

Subpart H—Medicare Prescription Drug Discount Card and Transitional Assistance Program

Sec.

403.800 Basis and scope.
403.802 Definitions.
403.804 General rules for solicitation, application and Medicare endorsement period.
403.806 Sponsor requirements for eligibility for endorsement.
403.808 Use of transitional assistance funds.
403.810 Eligibility and reconsiderations.
403.811 Enrollment, disenrollment, and associated endorsed sponsor requirements.
403.812 HIPAA privacy, security, administrative data standards, and national identifiers.
403.813 Marketing limitations and record retention requirements.
403.814 Special rules concerning Part C organizations and Medicare cost plans and their enrollees.
403.815 Special rules concerning States.
403.816 Special rules concerning long-term care and I/T/U pharmacies.
403.817 Special rules concerning the territories.
403.820 Sanctions, penalties, and termination.
403.822 Reimbursement of transitional assistance and associated sponsor requirements.

Subpart H—Medicare Prescription Drug Discount Card and Transitional Assistance Program

§ 403.800 Basis and scope.

(a) *Basis.* This subpart is based on section 1860D–31 of the Social Security Act (the Act).

(b) *Scope.* This subpart sets forth the standards and procedures CMS uses to implement the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

§ 403.802 Definitions.

For purposes of this subpart, the following definitions apply:

Annual coordinated election period means the period beginning on November 15, 2004 and ending on December 31, 2004, during which a discount card enrollee may elect to disenroll from their current endorsed discount card program and elect enrollment in another endorsed discount card program effective January 1, 2005.

Applicant means the non-governmental, single legal organization or entity doing business in the United States that is applying for Medicare endorsement of its prescription drug discount card program, as described in its application, to be operated by itself or in coordination with subcontractors.

Application means the document submitted to CMS by an applicant that seeks to demonstrate the applicant's compliance with the requirements specified in this subpart in order to obtain Medicare endorsement of the applicant's prescription drug discount card program.

Authorized representative means a person with legal authority to act on behalf of an individual in making decisions related to the individual's health care or the individual's

enrollment in, disenrollment from, and access to negotiated prices and transitional assistance under the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

Covered discount card drug means any of the following: a drug that may be dispensed only upon a prescription and that is described in sections 1927(k)(2)(A)(i) through (iii) of the Act; a biological product described in sections 1927(k)(2)(B)(i) through (iii) of the Act; insulin described in section 1927(k)(2)(C) of the Act; the following medical supplies associated with the injection of insulin: syringes, needles, alcohol swabs, and gauze; a vaccine licensed under section 351 of the Public Health Service Act; or any use of a covered discount card drug for a medically accepted indication (as defined in section 1927(k)(6) of the Act). The definition of covered discount card drug excludes the following: agents when used for anorexia, weight loss, or weight gain; agents when used to promote fertility; agents when used for cosmetic purposes or hair growth; agents when used for the symptomatic relief of cough and colds; prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations; nonprescription drugs; outpatient drugs for which the manufacturer seeks to require that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee as a condition of sale; barbiturates; and benzodiazepines.

Discount card enrollee or enrollee or card enrollee means an individual described in § 403.810(a) who elects to enroll in a Medicare-endorsed prescription drug discount card program.

Effective date means the date on which an enrollment or disenrollment transaction becomes effective.

Enrollment period means the period beginning on the initial enrollment date and ending on December 31, 2005.

Exclusive card program means an endorsed discount card program that is offered by an exclusive card sponsor.

Exclusive card sponsor means an endorsed sponsor that also operates one or more Medicare managed care plans and limits enrollment in its endorsed discount card program to individuals described in § 403.810(a) who are enrollees in one of the Medicare managed care plans it offers.

Family size means one for individuals who are single, and two for individuals who are married.

Federal Employee's Health Benefits Program plan means a plan under chapter 89 of title 5 of the United States Code including the Retired Federal Employee's Health Benefits Program.

Formulary means the list of specific drugs from among covered discount card drugs for which an endorsed sponsor offers negotiated prices to Medicare beneficiaries enrolled in its Medicare-endorsed prescription drug discount card program.

Group enrollment means simultaneous enrollment of all or some of the individuals described in sectioin 403.810(a) who are members of a Medicare managed care plan into the exclusive card program offered by the Medicare managed care organization.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d and section 264 of Public Law 104–191.

Income means the components of an individual's adjusted gross income (AGI), as defined under 26 U.S.C. section 62, and, to the extent not included in the components of AGI, retirement and disability benefits, or, if he or she is married, the sum of such income for the individual and his or her spouse.

Initial enrollment date means the date established by the Secretary on which endorsed sponsors may begin accepting beneficiaries' standard enrollment forms.

Initial enrollment year means the period beginning on the initial enrollment date and ending on December 31, 2004.

I/T/U pharmacy means a pharmacy operated by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization, all of which are defined in section 4 of the Indian Health Care Improvement Act, 25 U.S.C. 1603.

Long-term care facility means a skilled nursing facility, as defined in section 1819(a) of the Act, or nursing facility, as defined in section 1919(a) of the Act.

Long-term care pharmacy means a pharmacy owned by or under contract with a long-term care facility to provide prescription drugs to the facility's residents.

Medicare cost plan means an organization that offers enrollment under a reasonable cost reimbursement contract under section 1876(h) of the Act.

Medicare managed care organization means a Part C organization offering a Part C plan described in section 1851(a)(2)(A) of the Act or a Medicare cost plan.

Medicare managed care plan means a plan described in section 1851(a)(2)(A) of the Act offered by a Part C organization or a Medicare cost plan.

Medicare Prescription Drug Discount Card and Transitional Assistance Program or Medicare Drug Discount Card Program means the program established under section 1860D–31 of the Act.

Medicare-endorsed prescription drug discount card program, or endorsed program, or endorsed discount card program means any prescription drug discount card program that has received Medicare endorsement and whose endorsed sponsor has entered into a contract with CMS.

Medicare-endorsed prescription drug discount card sponsor, or endorsed sponsor, or endorsed discount card sponsor means any applicant that has received endorsement from Medicare and entered into a contract with CMS to operate an approved Medicare-endorsed discount card program.

Negotiated price means the discounted price for a covered discount card drug offered by an endorsed sponsor, including any dispensing fee, which takes into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations.

Network pharmacy means a licensed pharmacy that is not a mail order pharmacy and that is under contract with an endorsed sponsor to provide negotiated prices to its card enrollees and accept transitional assistance as payment for covered discount card drugs provided to its transitional assistance enrollees.

New Medicare managed care organization means an entity applying for approval to enter into a new contract with CMS to offer a new, coordinated care plan or plans as described in section 1851(a)(2)(A) of the Act under Medicare Part C and an exclusive card program under the Medicare Drug Discount Card Program.

Over-the-counter drug means a non-prescription drug.

Part C organization means an organization offering a Part C plan.

Part C plan means a plan described in section 1859(b)(1) of the Act.

Pharmacy network means the group of network pharmacies under contract with an endorsed sponsor.

Poverty line means the income level defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2), including any revision required by such section, applicable to the family size involved.

Rural means a five-digit zip code in which the population density is less than 1000 persons per square mile.

Second enrollment year means the period beginning on January 1, 2005 and ending on December 31, 2005.

Solicitation means the application materials identified in the notice CMS publishes in the **Federal Register** announcing its intention to accept and consider applications from applicants seeking Medicare endorsement for their prescription drug discount card programs.

Special election period means the period beginning the day after the effective date of an individual's disenrollment from an endorsed discount card program for one of the reasons listed in § 403.811(b)(2). The length of any given election period will be specified by CMS in a form and manner that supports the goals of the Medicare Drug Discount Card Program.

Special endorsed sponsor means an endorsed sponsor who has received special endorsement by CMS.

Special endorsement means an endorsement granted under § 403.816 or § 403.817.

Standard enrollment form means an enrollment form or other approved process for enrolling individuals into an endorsed program that incorporates the standard elements provided by CMS.

Subcontractor means an organization or entity doing business in the United States with which an applicant or endorsed sponsor enters into a contract or other legal arrangement in connection with the operation of a prescription drug discount card program.

Suburban means a five-digit zip code in which the population density is between 1000 and 3000 persons per square mile.

Transition period means the period beginning on January 1, 2006 and ending, for individuals enrolled for coverage under Part D, on the effective date of the individual's coverage, and for individuals not so enrolled, on the last day of the initial Part D open enrollment period.

Transitional assistance means a subsidy that transitional assistance enrollees may apply toward the cost of covered discount card drugs in the manner described in § 403.808(d).

Transitional assistance effective date means the date on which a transitional assistance enrollee can access transitional assistance.

Transitional assistance enrollee means an individual described in § 403.810(b) who has applied for and been determined eligible for transitional assistance and has enrolled in a discount card program.

Urban means a five-digit zip code in which the population density is greater than 3000 persons per square mile.

§ 403.804 General rules for solicitation, application and Medicare endorsement period.

(a) *Application.* (1) Except as provided in paragraph (a)(2) of this section, an applicant must submit an application to CMS by the deadline announced in the solicitation to be eligible for Medicare endorsement of its prescription drug discount card program. The applicant must certify that based on best knowledge, information, and belief, the reported information is accurate, complete, truthful, and supportable.

(2) A new Medicare managed care organization may simultaneously apply to offer a new Part C plan or plans and an exclusive card program after the deadline announced in the solicitation. New Medicare managed care organizations seeking endorsement of their prescription drug discount card programs must submit an application to CMS at the time that they submit their Part C applications. New Medicare managed care organizations will be eligible for endorsement provided CMS approves their Part C application, the new Medicare managed care organizations demonstrate to CMS that they meet the criteria under paragraph (b) of this section, and the new Medicare managed care organizations demonstrate that they will meet the requirements of paragraph (e)(2) of this section.

(b) *Eligibility to receive endorsement.* Except as specified in §§ 403.814, 403.816 and 403.817, an applicant will be eligible for endorsement if its application demonstrates to CMS's satisfaction that the applicant meets the requirements of § 403.806(a) and § 403.806(b)(1) and that it would operate its endorsed program in a manner consistent with the requirements of § 403.806(b)(2) and (b)(3) through § 403.806(m). An applicant that submits a complete application that meets all of the requirements of this subpart will be eligible to enter into a contract with CMS to operate a Medicare-endorsed prescription drug discount card program. Following the receipt of its Medicare endorsement, an endorsed sponsor must comply with the requirements of § 403.806(b)(2) and (b)(3) through § 403.806(m) through the end of the transition period.

(c) *Ability to subcontract with other organizations and entities.* (1) An applicant for endorsement may demonstrate that it meets the requirements of this subpart by combining with subcontractors.

(2) Any subcontracts must be in final form satisfactory to CMS, signed by all applicable parties, and filed with CMS before an endorsed sponsor will be permitted to engage in any enrollment or information and outreach.

(3) Once endorsed, an endorsed sponsor must ensure that its subcontractors comply with all applicable requirements of this subpart.

(d) *Period of endorsement.* An applicant eligible to receive endorsement will be required to sign a contract with CMS agreeing to operate its approved Medicare-endorsed prescription drug discount card program(s) until the end of the transition period.

(e)(1) Except as provided in paragraph (e)(2) of this section, we expect an endorsed sponsor to be ready by June 8, 2004, to initiate enrollment and fully operate its endorsed program in compliance with the requirements of § 403.806(b)(2) and (b)(3) through § 403.806(m).

(2) A new Medicare managed care organization must be ready to initiate enrollment and fully operate its exclusive card program in compliance with the requirements of §§ 403.806(b)(2) and (b)(3) through § 403.806(m) upon approval of its Part C application and application for Medicare endorsement of its prescription drug discount card program.

§ 403.806 Sponsor requirements for eligibility for endorsement.

Except as specified in § 403.814, § 403.816, and § 403.817, an endorsed sponsor must meet the following requirements:

(a) *Applicant experience.* (1) An applicant must be a non-governmental, single legal entity doing business in the United States.

(2) An applicant must have 3 years of private sector experience in the United States in pharmacy benefit management, which is defined to mean—

(i) Adjudicating and processing claims for drugs at the point of sale;

(ii) Negotiating with prescription drug manufacturers and others for discounts, rebates, and/or other price concessions on prescription drugs; and

(iii) Administering and tracking individuals' subsidies or benefits in real time.

(3) A single legal entity which is either the applicant or a subcontractor must, at the time of application for Medicare endorsement, operate a pharmacy benefit program, a prescription drug discount card program, a low-income drug assistance program, or a similar program that serves at least 1 million covered lives.

(b) *Financial stability and business integrity.* (1) An applicant must

demonstrate a satisfactory record of the financial stability and business integrity of itself, any subcontractors on whom the applicant relies to satisfy the 3 years experience requirement in paragraph (a)(2) of this section and the 1 million covered lives requirement in paragraph (a)(3) of this section, and any subcontractors engaged by the applicant to perform the following activities: develop the pharmacy network; negotiate with manufacturers or pharmacies for rebates, discounts, or other price concessions; handle eligibility for or enrollment in the endorsed sponsor's endorsed discount card program and/or transitional assistance; and administer transitional assistance.

(2) An endorsed sponsor and any subcontractors described in paragraph (b)(1) of this section must maintain a satisfactory record of financial stability and business integrity during the term of the endorsed program.

(3) Medicare endorsement of a discount card program shall not be construed to express or imply any opinion that an endorsed sponsor or any subcontractor of an endorsed sponsor is in compliance with or not liable under the False Claims Act, anti-kickback statute (section 1128B(b) of the Act), or other legal authorities for any improper billing, claims submission, or related conduct.

(c) *Compliance with applicable law.* An endorsed sponsor must comply with all applicable Federal and State laws, including the Federal anti-kickback statute (section 1128B(b) of the Act).

(d) *Prescription drug offering.* An endorsed sponsor must comply with the following discount, rebate, and formulary requirements:

(1) Offer all of its discount card enrollees negotiated prices on covered discount card drugs, which may be limited to those covered discount card drugs included on the endorsed sponsor's formulary.

(2) If the endorsed sponsor uses a formulary, offer a negotiated price on at least one covered discount card drug in each of the lowest level categories for each of the therapeutic groups representing the drugs most commonly needed by Medicare beneficiaries as determined by CMS. A specific covered discount card drug may not be used to fulfill this requirement for more than one category.

(3) Offer a negotiated price on a generic drug in at least 55 percent of the lowest level categories in each of the therapeutic groups representing the drugs most commonly needed by Medicare beneficiaries as determined by CMS.

(4) In setting negotiated prices under this section, an endorsed sponsor may vary its prices and the drugs included on the formulary by pharmacy contract and enrollee characteristics, such as transitional assistance eligibility status.

(5) Synchronize changes in the list of, and negotiated prices for, covered discount card drugs included in the endorsed sponsor's formulary with formulary and negotiated prices published on a price comparison Web site, as described in paragraph (i)(4)(v) of this section.

(6) Obtain rebates, discounts, or other price concessions from manufacturers on covered discount card drugs and pass a share of such concessions to enrollees through negotiated prices.

(7) Guarantee that network and mail order pharmacies provide the lower of the negotiated price or usual and customary price when a covered discount card drug for a negotiated price is available at the point of sale.

(8) Guarantee that a network pharmacy, at the point of sale, inform a discount card enrollee of any differential between the price of a prescribed drug (if it is a covered discount card drug) and the price of the lowest priced generic covered discount card drug that is therapeutically equivalent and bioequivalent and available at such pharmacy. Mail order pharmacies are to provide this information at the time of delivery of the drug.

(9) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), ensure that any increase in the negotiated price for a covered discount card drug does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP), and/or an amount proportionate to the changes in the endorsed sponsor's cost structure, including material changes to any discounts, rebates, or other price concessions the endorsed sponsor receives from a pharmaceutical manufacturer or pharmacy.

(e) *Transitional assistance administration.* An endorsed sponsor must administer transitional assistance funds, including any roll-over funds as described in § 403.808(f), for transitional assistance enrollees, through the following procedures:

(1) Establish accounting procedures to manage the transitional assistance funds for each transitional assistance enrollee.

(2) Ensure that transitional assistance funds are applicable to, and only to, all covered discount card drugs available at the endorsed sponsors' network and mail order pharmacies, regardless of formulary.

(3) Ensure that, at network and mail order pharmacies, transitional assistance funds are applied at the lower of negotiated price (if any) and the pharmacy's usual and customary price.

(4) Ensure that network pharmacies make available to the transitional assistance enrollee, electronically or by telephone, at the point-of-sale of covered discount card drugs, the amount of transitional assistance remaining available to the transitional assistance enrollee. Mail order pharmacies are to make this information available by telephone.

(5) Maintain a toll-free telephone number that discount card enrollees may use to determine their transitional assistance balances.

(6) Enforce coinsurance requirements described in § 403.808(e) and ensure that the portion of the price paid through coinsurance is not deducted from the total transitional assistance funds available to the discount card enrollee.

(f) *Service area and pharmacy access.* An endorsed sponsor must meet the following requirements for its service area and its pharmacy network:

(1) The service area must cover one or more States.

(2) The endorsed sponsor's discount card program must be available to all eligible individuals residing in each State in the endorsed sponsor's service area and may not be offered to individuals residing outside of the United States.

(3) The endorsed sponsor must have a contracted pharmacy network, consisting of pharmacies other than mail-order pharmacies, sufficient to ensure that for beneficiaries residing in the endorsed sponsor's service area the following requirements are satisfied:

(i) At least 90 percent of Medicare beneficiaries, on average, in urban areas served by the endorsed program, live within 2 miles of a network pharmacy;

(ii) At least 90 percent of Medicare beneficiaries, on average, in suburban areas served by the endorsed program, live within 5 miles of a network pharmacy; and

(iii) At least 70 percent of Medicare beneficiaries, on average, in rural areas served by the endorsed program, live within 15 miles of a network pharmacy.

(4) The endorsed sponsor's pharmacy network may be supplemented by pharmacies offering home delivery via mail-order, provided the requirements of paragraph (f)(3) of this section are met.

(g) *Information and outreach and customer service.* (1) An endorsed

sponsor must provide through the Internet and some other tangible medium (such as a mailing) to Medicare beneficiaries information and outreach materials describing its endorsed drug card program, including the following information—

(i) The enrollment fee;

(ii) Negotiated prices offered for covered discount card drugs;

(iii) If offered, discounts on over-the-counter drugs;

(iv) Any other products or services offered under the endorsement; and

(v) Any other information that CMS determines is necessary for a full description of the endorsed discount drug card program.

(2) An endorsed sponsor must include on a Web site the following:

(i) Information regarding when the Web site was last updated; and

(ii) A disclaimer that the information on the Web site may not be current.

(3) An endorsed sponsor must use the following forms which incorporate standard elements provided by CMS:

(i) An enrollment form (except as may be modified for an exclusive card sponsor as discussed in § 403.814(b)(5)(iii); and

(ii) An eligibility determination notice.

(4) An endorsed sponsor must provide to each enrollee a card that complies with National Council for Prescription Drug Programs standards.

(5) An endorsed sponsor must meet the following requirements for the review and approval of information and outreach materials:

(i) Comply with the Information and Outreach Guidelines published by CMS; and

(ii) Except as provided in paragraph (g)(5)(iii) of this section, not distribute any information and outreach materials until or unless they are approved by CMS.

(iii) If CMS does not disapprove the initial submission of information and outreach materials within 30 days of receipt of these materials, then the materials will be deemed approved under paragraph (g)(5)(ii) of this section.

(iv) Information and outreach materials may discuss only products or services inside the scope of endorsement, as described in paragraph (h) of this section.

(v) Information and outreach materials include the same kinds of materials described in 42 CFR 422.80(b), as well as the enrollment form, eligibility determination form, and membership card described in paragraphs (g)(3) and (g)(4) of this section, Web site content, and information regarding discounts for over-the-counter drugs.

(6) An endorsed sponsor must maintain a toll-free customer call center that is open during usual business hours and that provides customer telephone service, including to pharmacists, in accordance with standard business practices. The endorsed sponsor must inform enrollees that the toll-free telephone number provides information on the amount of remaining transitional assistance, in accordance with paragraph (e)(5) of this section.

(7) An endorsed sponsor must provide a system to reduce the likelihood of medical errors and adverse drug interactions and to improve medication use.

(h) *Products and services inside and outside the scope of the endorsement.* (1) An endorsed sponsor may provide, under the endorsement, only those products and services inside the scope of the endorsement, including conducting enrollment. An endorsed sponsor must ensure that discount card enrollees are not charged any additional fee (other than the enrollment fee allowed under § 403.811(c)) for products or services inside the scope of the endorsement.

(2) Products and services inside the scope of the endorsement are limited to—

(i) Products or services offered for no additional fee, other than the enrollment fee allowed under § 403.811(c), that are directly related to a covered discount card drug; or

(ii) A discounted price for an over-the-counter drug.

(i) *Reporting.* (1) An endorsed sponsor must report to CMS on a periodic basis information on the major features of the endorsed sponsor's programs that correspond to the qualifications for endorsement, including, but not limited to, information concerning—

(i) Savings from pharmacies and manufacturers obtained through rebates, discounts, and other price concessions;

(ii) Savings shared with discount card enrollees by manufacturer, by all retail pharmacies, by all mail order pharmacies, and by all brand name and all generic covered discount card drugs;

(iii) Dispensing fees;

(iv) Certified (by the chief financial officer) financial accounting records on transitional assistance used by the transitional assistance enrollees in each month;

(v) Participant utilization and spending statements;

(vi) Utilization and spending for selected drugs;

(vii) Performance on customer service metrics such as call center performance;

(viii) Grievance logs; and

(ix) Endorsed sponsor's compliance with the pharmacy network access standards.

(2) An endorsed sponsor must provide notice of, and the rationale for, negotiated price increases, except for increases during the week of November 15, 2004, due to reasons other than changes in average wholesale price (AWP).

(3) An endorsed sponsor must certify that based on best knowledge, information, and belief, the reported information is accurate, complete, truthful, and supportable.

(4) Through a price comparison Web site, an endorsed sponsor must report the following information:

(i) Customer service hours;

(ii) Customer service contact information;

(iii) Endorsed program Web site address;

(iv) Annual enrollment fee; and

(v) Negotiated prices (including any applicable dispensing fee), for every covered discount card drug included in the discount card program's offering.

(5) CMS may require endorsed sponsors to submit, in standard terminology, descriptions of other discount card related services they provide, such as pharmacist services.

(j) *Grievance process.* An endorsed sponsor must establish and maintain a grievance process. This process must be designed to track and appropriately address in a timely manner enrollees' complaints about any aspect of their endorsed program for which the endorsed sponsor is responsible.

(k) *Eligibility, enrollment, and disenrollment.* (1) An endorsed sponsor must make preliminary eligibility determinations in accordance with § 403.810 and conduct enrollment and disenrollment in accordance with § 403.811.

(l) *Authorized representative.* An endorsed sponsor must treat an individual's authorized representative as the individual, if under applicable law, the authorized representative has the legal authority to act on behalf of the individual with respect to the action at issue.

(m) *Other.* An endorsed sponsor must meet the requirements of §§ 403.812, 403.813, and 403.822 of this subpart.

§ 403.808 Use of transitional assistance funds.

(a) *Individuals determined eligible for transitional assistance in 2004.* Subject to paragraph (d) of this section, an individual who, in calendar year 2004, is determined eligible for transitional assistance under § 403.810(b) is entitled to the following:

(1) $600 in calendar year 2004; and

(2) $600 in calendar year 2005.

(b) *Individuals determined eligible for transitional assistance in 2005.* Subject to paragraph (d) of this section, an individual who, in calendar year 2005, is determined eligible for transitional assistance under § 403.810(b) is entitled to one of the following amounts for calendar year 2005:

(1) If the complete application for the individual's transitional assistance eligibility is received on or after January 1, 2005 and before April 1, 2005, $600.

(2) If the complete application for the individual's transitional assistance eligibility is received on or after April 1, 2005 and before July 1, 2005, $450.

(3) If the complete application for the individual's transitional assistance eligibility is received on or after July 1, 2005 and before October 1, 2005, $300.

(4) If the complete application for the individual's transitional assistance eligibility is received on or after October 1, 2005 and on or before December 31, 2005, $150.

(c) *Payment of enrollment fee.* An individual found eligible for transitional assistance is entitled to have CMS pay the annual enrollment fee to the endorsed sponsor on his or her behalf.

(d) *Conditions on use of transitional assistance.* A transitional assistance enrollee may access the transitional assistance described in paragraphs (a) and (b) of this section only if the following conditions are met:

(1) Except as provided in § 403.814(b)(3)(v), the transitional assistance funds are applied toward the cost of a covered discount card drug obtained under the Medicare Prescription Drug Discount Card and Transitional Assistance Program;

(2) The individual pays a coinsurance amount in accordance with § 403.808(e);

(3) The individual purchases the covered discount card drug on or after the individual's transitional assistance effective date; and

(4) The individual is enrolled in the Medicare Prescription Drug Discount Card and Transitional Assistance Program on the date the individual's claim for the covered discount card drug is adjudicated.

(e) *Coinsurance.* If sufficient transitional assistance funds are available, transitional assistance funds must be expended in accordance with the following:

(1) For beneficiaries with incomes at or below 100 percent of the poverty line, 95 percent of the price of a covered discount card drug must be paid from the available transitional assistance funds.

(2) For beneficiaries with incomes greater than 100 percent but at or below 135 percent of the poverty line, 90 percent of the price of a covered discount card drug must be paid from the available transitional assistance funds.

(f) *Rollover.* An individual with transitional assistance retains access to any balance of transitional assistance not expended in a calendar year during the next calendar year, up to and including the transition period, if the individual—

(1) Remains in his or her current endorsed discount card program;

(2) Elects a new endorsed program in an Annual Coordinated Election Period; or

(3) Is eligible for a Special Election Period under § 403.811(b)(2) and elects a new endorsed discount card program during such Special Election Period.

§ 403.810 Eligibility and reconsiderations.

(a) *Eligibility for an endorsed discount card program.* An individual is eligible to enroll in an endorsed discount card program only if such individual meets the following conditions:

(1) The individual is entitled to benefits, or enrolled, under Medicare Part A or enrolled under Medicare Part B; and

(2) The individual, at the time of applying to enroll in an endorsed discount card program, is not enrolled in a State medical assistance program under Title XIX of the Act or under a waiver pursuant to section 1115 of the Act, under which the individual is entitled to any medical assistance for outpatient prescribed drugs as described in section 1905(a)(12) of the Act, except as allowed in § 403.817(d).

(b) *Eligibility for transitional assistance.* An individual is eligible to receive transitional assistance if, at the time of applying for transitional assistance, the individual meets the following conditions:

(1) The individual meets the conditions in paragraph (a) of this section;

(2) The individual resides in one of the 50 States or the District of Columbia;

(3) The individual's income is not more than 135 percent of the poverty line applicable to the individual's family size;

(4) The individual does not have coverage for covered discount card drugs under one or more of the following sources:

(i) A group health plan or health insurance coverage, as these terms are defined under section 2791 of the Public Health Service Act, other than a Part C plan or a group health plan consisting solely of excepted benefits (such as a Medigap plan) as the term is defined under section 2791 of the Public Health Service Act;

(ii) Coverage provided under Chapter 55 of Title 10, United States Code, including TRICARE; or

(iii) A Federal Employee's Health Benefits Program plan; and

(5) The individual (or the individual's authorized representative) completes a standard enrollment form and signs and dates the form in accordance with § 403.811(a)(4). By signing the form, the individual (or the individual's authorized representative) certifies, under penalty of perjury, that, to the best of the individual's knowledge, the information he or she provides on the form is accurate.

(c) *Special rule for QMBs, SLMBs and QIs.* An individual is deemed to meet the income requirements in paragraph (b)(3) of this section if the individual is enrolled under Title XIX of the Act as a—

(1) Qualified Medicare Beneficiary (QMB);

(2) Specified Low-Income Medicare Beneficiary (SLMB); or

(3) Qualified Individual (QI).

(d) *Duration of eligibility determinations.* An individual determined eligible for the Medicare Prescription Drug Discount Card and Transitional Assistance Program and, in the case of transitional assistance enrollees, for transitional assistance, shall remain eligible for the Medicare Prescription Drug Discount Card and Transitional Assistance Program and, in the case of transitional assistance enrollees, for transitional assistance for the duration of the individual's enrollment in the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

(e) *Drug card and transitional assistance benefits not treated as benefits under other Federal programs.* Any benefits received under the Medicare Prescription Drug Discount Card and Transitional Assistance Program must not be taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program.

(f) *Verification of eligibility.* (1) CMS will verify eligibility to enroll in an endorsed discount card program or to receive transitional assistance.

(2) If CMS is unable to verify an individual's eligibility or ineligibility for transitional assistance, CMS can require the individual to provide additional income information in a form and manner specified by CMS as one condition of eligibility for transitional assistance.

(g) *Reconsideration.* (1) If an individual is determined ineligible to enroll in an endorsed discount card program under paragraph (a) of this section or determined ineligible to receive transitional assistance under paragraph (b) of this section, the individual (or the individual's authorized representative) has a right to request that an independent review entity under contract with CMS reconsider the determination.

(2) Reconsideration requests must be filed within 60 days from date of notice of an ineligibility determination, unless the individual (or the individual's authorized representative) can demonstrate good cause for why the 60-day time frame should be extended.

(3) An individual (or the individual's authorized representative) may submit additional documentary evidence or an explanation about his or her eligibility in writing to the independent review entity, as part of the reconsideration process.

(4) Reconsideration decisions shall be issued by the independent review entity in writing and contain an explanation of the reasoning of the decision.

§ 403.811 Enrollment and disenrollment and associated endorsed sponsor requirements.

(a) *Enrollment process.* (1) An individual (or an individual's authorized representative) applying to enroll in an endorsed discount card program must complete a standard enrollment form or other method allowed by CMS and provide such information to the endorsed discount card program in which the individual wishes to enroll.

(2) An individual electing to join an endorsed discount card program that charges an annual enrollment fee, and who is not applying for transitional assistance, must agree to pay the annual enrollment fee, if any, in a form and manner determined by the endorsed card sponsor.

(3) An individual applying for transitional assistance at the time that they apply for enrollment in an endorsed discount card program may only enroll in the endorsed discount card program at that time if CMS determines that the individual is eligible for transitional assistance. Individuals not found eligible for transitional assistance may enroll in an endorsed discount card program without applying for transitional assistance after being notified of their ineligibility for transitional assistance.

(4) An individual applying for transitional assistance must complete a standard enrollment form and sign and date the form, certifying, under penalty of perjury or similar sanction for false statements, as to the accuracy of the information provided on the standard enrollment form.

(5) Except as provided in § 403.811(b)(4), an individual who is not currently enrolled in an endorsed card program seeking to enroll in the Medicare Prescription Drug Discount Card and Transitional Assistance Program may do so at any time during the enrollment period.

(6) An individual may not be enrolled in more than one endorsed discount card program at a time.

(7) An individual may enroll in only one endorsed discount card program per year during the enrollment period. An individual enrolling during the initial enrollment year, with the exception of the circumstances under paragraph (b)(2) of this section, may change election for the second enrollment year during the annual coordinated election period. During the second enrollment year, an individual may enroll in only one endorsed discount card program, unless the individual meets the circumstances described in paragraph (b)(2) of this section.

(8) An individual remains enrolled in an endorsed discount card program elected unless—

(i) The individual is disenrolled under paragraph (b) of this section;

(ii) The individual elects a new program during the Annual Coordinated Election Period; or

(iii) The endorsed sponsor terminates its endorsed discount card program, or is terminated.

(9) No new enrollment in an endorsed discount card program or changing election of an endorsed discount card program is allowed during the transition period.

(10) Except as specified in § 403.814(b)(6)(i), an individual may enroll in any endorsed discount card program, and only those endorsed discount card programs, offered in the individual's State of residence.

(11) In order to access negotiated prices or transitional assistance, if applicable, an individual must be enrolled in an endorsed discount card program. Access to negotiated prices begins with the effective date of enrollment and ends with disenrollment. Access to transitional assistance begins with the transitional assistance effective date and ends for claims finalized on the date of disenrollment.

(12) Except as provided in paragraph (b)(5) of this section, an individual may apply for transitional assistance at any time during the enrollment period.

(b) *Disenrollment process.* (1) An enrollee may voluntarily disenroll at any time by notifying (or by having his authorized representative notify) the endorsed sponsor.

(2) An enrolled individual who disenrolls during the enrollment period under the following circumstances is granted a Special Election Period in which the individual may enroll in another endorsed discount card program during the enrollment period:

(i) A move of residence outside the service area of the current program;

(ii) A change in residence to or from a long-term care facility;

(iii) Enrollment in or disenrollment from a Part C plan or Medicare cost plan;

(iv) An individual's current endorsed discount card program is terminated or terminates; or

(v) Other exceptional circumstances, as defined by the Secretary.

(3) Notification in order to effect a disenrollment is not required for an individual disenrolling from a terminating endorsed discount card program or enrolling in or disenrolling from a Medicare managed care plan offering an exclusive card program, or for individuals changing endorsed discount card programs during the Annual Coordinated Election Period.

(4) A drug discount card enrollee who disenrolls from an endorsed discount card program other than for one of the reasons listed in paragraph (b)(2) of this section will no longer be determined eligible for the Medicare Prescription Drug Discount Card and Transitional Assistance Program and, if he or she disenrolls in 2004, must re-apply for the Medicare Prescription Drug Discount Card and Transitional Assistance Program should he or she wish to enroll in another endorsed discount card program for the second enrollment year.

(5) An individual receiving transitional assistance who voluntarily disenrolls from an endorsed discount card program other than for one of the reasons listed in paragraph (b)(2) of this section will forfeit any transitional assistance remaining available to the individual on the date of disenrollment, and, if he or she disenrolls in 2004, must re-apply for transitional assistance for 2005 in order to receive transitional assistance in 2005.

(6) A discount card enrollee other than a transitional assistance enrollee may be involuntarily disenrolled from his or her endorsed discount card program for failure to pay the annual enrollment fee on a timely basis.

(7) A discount drug card enrollee other than a transitional assistance enrollee may be charged another annual

enrollment fee each time the individual disenrolls from one endorsed discount card program and enrolls in another endorsed discount card program during the calendar year.

(c) *Enrollment fees.* (1) An endorsed sponsor may charge an annual enrollment fee of no more than $30 to each individual enrolled in its endorsed discount card program.

(2) An endorsed sponsor may not collect an enrollment fee from any individual applying for or receiving transitional assistance.

(3) The annual enrollment fee must not be prorated for portions of the year.

(4) An endorsed sponsor must charge a uniform enrollment fee to every discount card eligible individual, or to the Secretary in the case of individuals receiving transitional assistance, residing in a State.

(5) An endorsed sponsor must refund any enrollment fee collected from a discount card enrollee, or any State that has paid the enrollment fee on behalf of the discount card enrollee, during the calendar year during which the individual is determined eligible to receive transitional assistance.

(6) An endorsed sponsor may not charge an annual enrollment fee during the transition period.

§ 403.812 HIPAA privacy, security, administrative data standards, and national identifiers.

(a) *HIPAA covered entities.* An endorsed sponsor is a HIPAA covered entity and must comply with the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164 as set forth in this section. Those functions of a endorsed sponsor the performance of which are necessary or directly related to the operations of the endorsed discount card program are covered functions for purposes of applying to endorsed sponsors the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164.

(b) *HIPAA privacy requirements.* An endorsed sponsor must comply with the standards, implementation specifications, and requirements in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR parts 160 and 164, subparts A and E, in the same manner as a health plan, except to the extent such requirements are temporarily waived by the Secretary.

(c) *Security requirements.* (1) *Standard.* An endorsed sponsor must comply with the applicable standards, implementation specifications, and requirements in the HIPAA Security Rule, 45 CFR parts 160 and 164, subparts A and C, in the same manner as other covered entities as of the compliance date of such Rule.

(2) *Attestation.* An applicant in its application shall—

(i) Attest that, as of the initial enrollment date, it will have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information in accordance with 45 CFR 164.530(c); and

(ii) Attest that its information security measures will meet the standards, implementation specifications, and requirements of 45 CFR part 164 subparts A and C as of the initial enrollment date, or, if unable to make this attestation, provide a plan for coming into compliance with these requirements by the compliance date of the Security Rule set forth in 45 CFR part 164, subpart C.

(d) *Administrative data standards.* An endorsed sponsor must comply with any applicable standards, implementation specifications, and requirements in the Standards for Electronic Transactions under 45 CFR parts 160 and 162 subparts I through R.

(e) *Unique identifiers.* An endorsed sponsor must comply with any applicable standards, implementation specifications, and requirements regarding standard unique identifiers under 45 CFR parts 160 and 162 as of the compliance date of any final rule for standard unique identifiers.

(f) *Applicability of other regulations.* Nothing in this paragraph or in § 403.813 shall be deemed a modification of parts 160, 162 and 164 of title 45, Code of Federal Regulations or otherwise modify the applicability of such regulations to other organizations or covered entities independently subject to the mandates of HIPAA. If an endorsed sponsor is also a health plan, health care provider, or health care clearinghouse, nothing is this paragraph shall impair or otherwise affect the application of HIPAA or parts 160, 162 and 164 of title 45, Code of Federal Regulations to such entity and its performance of those functions which make such entity a health plan, health care provider, or health care clearinghouse.

§ 403.813 Marketing limitations and record retention requirements.

(a) *Marketing limitations.* (1) An endorsed sponsor may only market those products and services offered under its endorsed program that are inside the scope of endorsement as defined in § 403.806(h) and permitted under § 403.812(b).

(2) An endorsed sponsor may not request that a drug card enrollee or an individual seeking to enroll in its endorsed discount card program authorize the endorsed sponsor to use or disclose individually identifiable health information for purposes of marketing any product or service not allowed under paragraph (a)(1) of this section.

(3) An endorsed sponsor may not co-mingle any materials related to the marketing of products and services allowed under paragraph (a)(1) of this section with other marketing materials.

(4) Following termination of an endorsed sponsor's endorsement under §§ 403.820(c), (d) or (e) or termination of the Medicare Drug Discount Card and Transitional Assistance Program, a drug card enrollee's individually identifiable health information collected or maintained by an endorsed sponsor may not be used or disclosed for purposes of marketing any product or service.

(b) *Record retention standard.* (1) An endorsed sponsor must retain records that it creates, collects, or maintains while participating in the Medicare Drug Discount Card and Transitional Assistance Program as part of its operations of an endorsed program for at least 6 years following termination of such program, or, in the event the endorsed sponsor's endorsement is terminated under § 420.820(c), (d), or (e) of this chapter at least 6 years following termination of such endorsement. The Secretary may extend the six-year retention period if an endorsed sponsor's records relate to an ongoing investigation, litigation, or negotiation by the Secretary, the Department of Health and Human Services Office of Inspector General, the Department of Justice, or a State, or such documents otherwise relate to suspicions of fraud and abuse or violations of Federal or State law.

(2) For the period during which an endorsed sponsor retains records as specified in paragraph (b)(1) of this section, an endorsed sponsor must continue to apply security and privacy protections to such records and the information contained therein to the same extent endorsed sponsors are required to do so under § 403.812(b) and § 403.812(c)(1) prior to termination.

§ 403.814 Special rules concerning Part C organizations and Medicare cost plans and their enrollees.

(a) *General requirements.* (1) A Part C organization and Medicare cost plan may not require enrollment in an endorsed discount card program as a condition for enrollment in its Part C plan or Medicare cost plan.

(2) A Part C organization may subsidize the enrollment fee for an endorsed discount card program, whether operated by the Part C organization or another endorsed sponsor, for individuals described in § 403.810(a), provided that any such benefit is reflected in the Part C organization's Adjusted Community Rate filing.

(b) *Exclusive card sponsors.* (1) A Medicare managed care organization may elect to become an exclusive card sponsor by limiting enrollment in its endorsed discount card program to individuals described in § 403.810(a) who are enrolled in any of its Medicare managed care plans. The Medicare managed care organization must be the applicant for endorsement in order to offer an exclusive card program. Such an election must be made at the time of application for endorsement.

(2) Except as noted in paragraphs (b)(3) and (b)(4) of this section, an exclusive card sponsor must comply with all requirements for endorsed sponsors noted in § 403.804 and § 403.806.

(3) An exclusive card sponsor is deemed to meet or is exempt from certain specific requirements listed in § 403.806 as follows:

(i) An exclusive card sponsor is deemed to meet the pharmacy network requirement in § 403.806(f)(3) if its pharmacy network is not limited to mail-order pharmacies and is equivalent to the pharmacy network used in its Medicare managed care plan and such pharmacy network has been approved by the Secretary, or, if its Medicare managed care plan does not use a pharmacy network, the Secretary determines that the pharmacy network provides sufficient access to covered discount card drugs at negotiated prices for discount card enrollees under the standard set forth under 42 CFR 422.112 for a Part C organization described in section 1851(a)(2)(A) of the Act, or under 42 CFR 417.416(e) for a Medicare cost plan.

(ii) An exclusive card sponsor is deemed to meet the service area requirements in § 403.806(f)(1) and (f)(2) if it operates in a service area equivalent to its Medicare managed care plan's service area.

(iii) An exclusive card sponsor is deemed to meet the requirement for financial stability and business integrity in § 403.806(b) through compliance with § 422.400 of this chapter (if a Part C organization described in section 1851(a)(2)(A) of the Act) or compliance with § 417.120 and § 417.122 of this chapter (if a Medicare cost plan).

(iv) An exclusive card sponsor is deemed to meet the covered lives requirement in § 403.806(a)(3).

(v) An exclusive card sponsor is deemed to meet the requirements of § 403.806(e)(2) if it ensures that transitional assistance funds are applied to, and only to, the cost to transitional assistance enrollees of any covered discount card drugs obtained from a network or mail order pharmacy included in the exclusive card sponsor's pharmacy network, and at the option of the exclusive card sponsor, any covered discount card drug obtained under an outpatient prescription drug benefit offered under the affiliated Medicare managed care plan, including any deductibles, co-payments, coinsurance, and other cost-sharing amounts for which transitional assistance enrollees are responsible under the Medicare managed care plan's outpatient prescription drug benefit.

(4) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in § 403.804 and § 403.806, except for the requirements in § 403.812 and § 403.813, may be waived or modified on behalf of an exclusive card sponsor if:

(i) The requirements are duplicative of or conflict with the requirements that a Medicare managed care organization must meet either under Part C or under section 1876 of Title XVIII of the Act; or

(ii) The waiver or modification is necessary to improve coordination between benefits under the Medicare Prescription Drug Discount Card and Transitional Assistance Program and the benefits either under Part C or under section 1876 of Title XVIII of the Act.

(iii) The applicant seeking to become an exclusive card sponsor requests such waivers or modifications in writing in a manner required by the Secretary.

(5) An exclusive card sponsor may conduct group enrollment according to the following rules:

(i) The exclusive card sponsor must seek CMS verification that its Medicare managed care members are individuals described in § 403.810(a) and enroll such individuals as a group into its exclusive card program.

(ii) The exclusive card sponsor must give all individuals it is enrolling as a group the opportunity to decline enrollment, and the opportunity to apply for transitional assistance.

(iii) The exclusive card sponsor may use a modified version of the standard enrollment form described in § 403.806(g)(3) or other CMS-approved process for group enrollment in its endorsed discount card program.

(6) An individual enrolled in a Medicare managed care plan offered by a Medicare managed care organization offering an exclusive card program to individuals enrolled in such Medicare managed care plan is subject to the following requirements:

(i) The individual may enroll only in the endorsed discount card program offered by his or her Medicare managed care organization.

(ii) If the exclusive card sponsor group elects to group enroll into an exclusive card program members of the Medicare managed plan, the individual must actively decline enrollment to avoid enrollment in the exclusive card program.

(c) *Non-uniformity of Benefits.* Implementation of the Medicare Prescription Drug Discount Card and Transitional Assistance Program, including the provision of transitional assistance and the payment or waiver of any enrollment fee by a Part C organization, will not be taken into account in applying the uniform premium and uniform benefits requirement in sections 1854(c) and 1854(f)(1)(D) of the Act and 42 CFR 422.100(d)(2) and 42 CFR 422.312(b)(2).

§ 403.815 Special rules concerning States.

(a) *Optional State payment of enrollment fee.* (1) A State may enter into payment arrangements with endorsed sponsors to provide payment of some or all of endorsed discount card programs' enrollment fees for some or all of the State's individuals described in § 403.810(a) who are not transitional assistance enrollees, provided the enrollment fees are paid directly by the State to the endorsed sponsor.

(2) Expenditures made by a State for enrollment fees described in paragraph (a)(1) of this section must not be treated as State expenditures for which Federal matching payments are available under titles XIX or XXI of the Act.

(b) *Optional State payment of coinsurance.* (1) A State may enter into payment arrangements with pharmacies to provide payment of some or all of coinsurance amounts described in § 403.808(e) for some or all of the State's transitional assistance enrollees, provided the coinsurance amounts are paid directly by the State to the pharmacy.

(2) Expenditures made by a State for coinsurance described in paragraph (b)(1) of this section must not be treated as State expenditures for which Federal matching payments are available under titles XIX or XXI of the Act.

(c) *Coinsurance for Qualified Medicare Beneficiaries.* For transitional assistance enrollees who are qualified

Medicare beneficiaries, any coinsurance liability under § 403.808(e) must not be treated as Medicare cost-sharing coinsurance, under section 1905(p)(3)(B) of the Act, for which a State would otherwise be required to pay.

(d) *State data.* (1) A State must provide data on a monthly basis in an electronic format as determined necessary by the Secretary to effectuate the verification of beneficiary eligibility for the Medicare Prescription Drug Discount Card and Transitional Assistance Program.

(2) Expenditures made by a State in complying with the requirements of paragraph (d)(1) of this section will be treated as State expenditures for which Federal matching payments are available under section 1903(a)(7) of the Act.

§ 403.816 Special rules concerning long-term care and I/T/U pharmacies.

(a) *In general.* (1) An applicant for endorsement may submit an application to become a special endorsed sponsor for long-term care and/or for I/T/U pharmacies.

(2) Of qualified applicants, the Secretary will select at least two of the best-qualified applicants for special endorsement for long-term care and at least two of the best-qualified applicants for special endorsement for I/T/U pharmacies.

(3) Applicants for special endorsement for long-term care must demonstrate in their applications that they meet the requirements in paragraph (b) of this section.

(4) Applicants for special endorsement for I/T/U pharmacies must demonstrate in their applications that they meet the requirements in paragraph (d) of this section.

(b) *Long-term care.* A special endorsed sponsor for long-term care must—

(1) Apply transitional assistance toward the cost of covered discount card drugs obtained by transitional assistance enrollees who reside in long-term care facilities and who receive such prescription drugs through long-term care pharmacies;

(2) Offer contractual arrangements to any long-term care pharmacy seeking reimbursement from transitional assistance for covered discount card drugs provided by such pharmacy to transitional assistance enrollees who reside in long-term care facilities;

(3) Process any submitted claims from network pharmacies and out-of-network long-term care pharmacies that supply covered discount card drugs to transitional assistance enrollees who reside in long-term care facilities, when such enrollees have unspent transitional assistance remaining;

(4) Include special terms and conditions in its contracts with network pharmacies that are long-term care pharmacies to facilitate access to and the administration of transitional assistance to transitional assistance enrollees residing in long-term care facilities, including, but not limited to the following—

(i) Waiving penalties against long-term care pharmacies for submitting late claims to the special endorsed sponsor due to the pharmacy's coordination of benefits activities; and

(ii) Permitting a long-term care pharmacy to limit its services to only transitional assistance enrollees who reside in a long-term care facility served by the long-term care pharmacy.

(5) Except as noted in paragraph (c) of this section, comply with all requirements for endorsed sponsors noted in §§ 403.804 and 403.806.

(c) *Waiver of requirements.* (1) The following requirements will not apply to or will be waived for special endorsed sponsors providing transitional assistance to long-term care residents:

(i) Section 403.806(d) (relating to the prescription drug offering) shall not apply to long-term care pharmacies in the special endorsed sponsor's network; and

(ii) Section 403.806(e)(4) (requiring information about the amount of transitional assistance remaining) shall not apply to long-term care pharmacies in the special endorsed sponsor's network.

(2)(i) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in §§ 403.804 and 403.806, except for the requirements in §§ 403.812 and 403.813, may be waived or modified on behalf of a special endorsed sponsor for long-term care if the waiver or modification is—

(A) Necessary to enable the applicant to either initiate enrollment activities under the special endorsement within 6 months of enactment of section 1860D–31 of the Act, or accommodate the unique needs of long-term care pharmacies; or

(B) Compliance with the requirement(s) in question would be impracticable or inefficient.

(ii) Applicants to become special endorsed sponsors for long-term care must request such waivers or modifications in writing in a manner required by the Secretary.

(d) *I/T/U pharmacies.* A special endorsed sponsor for I/T/U pharmacies must—

(1) Apply transitional assistance toward the cost of covered discount card drugs obtained by transitional assistance enrollees who are American Indians and Alaska Natives and who receive prescription drugs through I/T/U pharmacies as allowed under paragraph (d)(2) of this section;

(2) Offer contractual arrangements to any I/T/U pharmacy that is in the special endorsed sponsor's service area and seeking reimbursement from transitional assistance for covered discount card drugs provided by such pharmacy to transitional assistance enrollees who are also American Indians/Alaska Natives;

(3) Include special terms and conditions in its contracts with network I/T/U pharmacies to facilitate access to and the administration of transitional assistance for transitional assistance enrollees who are American Indians/Alaska Natives, including, but not limited to the following:

(i) Permitting an I/T/U pharmacy to limit its services to only those transitional assistance enrollees who are American Indians/Alaska Natives, and

(ii) Allowing an I/T/U pharmacy to select which drugs to stock, which may be a more limited set than other retail pharmacies.

(4) Except as noted in paragraph (e) of this section, comply with all requirements for endorsed sponsors noted in §§ 403.804 and 403.806.

(e) *Waiver of requirements.* (1) The following requirements will not apply to or will be waived for special endorsed sponsors providing transitional assistance through I/T/U pharmacies:

(i) Section 403.806(d) (relating to the prescription drug offering) shall not apply to I/T/U pharmacies in the special endorsed sponsor's network; and

(ii) Section 403.806(e)(4) (requiring information about the amount of transitional assistance remaining) shall not apply to I/T/U pharmacies in the special endorsed sponsor's network.

(2)(i) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in §§ 403.804 and 403.806, except for the requirements in §§ 403.812 and 403.813, may be waived or modified on behalf of a special endorsed sponsor for I/T/U pharmacies if the waiver or modification is—

(A) Necessary to enable the applicant to either initiate enrollment activities under the special endorsement within 6 months of enactment of section 1860D–31 of the Act, or accommodate the unique needs of I/T/U pharmacies; or

(B) Compliance with the requirement(s) in question would be impracticable or inefficient.

(ii) Applicants to become special endorsed sponsors for I/T/U pharmacies must request such waivers or modifications in writing in a manner required by the Secretary.

§ 403.817 Special rules concerning the territories.

(a) *In general.* (1) An applicant for endorsement may submit an application to become a special endorsed sponsor for all of the territories.

(2) Of qualified applicants, the Secretary will select at least one of the best-qualified applicants to receive a special endorsement for the territories.

(3) Applicants for special endorsement for the territories must demonstrate in their applications that they meet the requirements in paragraph (b) of this section.

(b) *Requirements.* (1) *Negotiated prices.* A special endorsed sponsor for residents of the territories must provide access to negotiated prices in the territories.

(2) *Transitional assistance.* Any transitional assistance in the territories must be in accordance with paragraph (e) of this section.

(3) *Requirements, exception.* Except as specified in paragraph (c) of this section, a special endorsed sponsor for the territories must meet the requirements of §§ 403.804 and 403.806.

(c) *Waiver of requirements and alternative requirements.* (1) Section 403.806(d)(8) (requiring information about price differentials) shall not apply to pharmacies located in the territories and which are in the special endorsed sponsor's pharmacy network.

(2) Sections 403.806(f)(2) and (f)(3) will be deemed met if the special endorsed sponsor makes a good faith effort to secure the participation of retail and mail order pharmacies throughout a territory.

(3)(i) As the Secretary determines appropriate on a case-by-case basis, any additional requirements discussed in §§ 403.804 and 403.806, except for the requirements in §§ 403.812 and 403.813, may be waived or modified on behalf of a special endorsed sponsor for the territories if—

(A) Such waiver is necessary to enable the applicant to either initiate enrollment activities under the special endorsement within 6 months of enactment of section 1860D–31 of the Act, or accommodate the unique needs of pharmacies in the territories; or

(B) Compliance with the requirement(s) in question would be impracticable or inefficient.

(ii) Applicants to become special endorsed sponsors for the territories must request such waivers or modifications in writing in a manner required by the Secretary.

(d) *Other exceptions.* A special endorsed sponsor for the territories may enroll in its endorsed discount card program Medicaid enrollees with coverage for outpatient prescription drugs, as described in § 403.810(a)(2).

(e) *Transitional assistance provided by Territories.* (1) Transitional assistance in the territories may be administered only according to a plan submitted by a territory and approved by CMS.

(2) Territories choosing to provide transitional assistance must submit a plan to CMS within 90 days of the publication of this regulation. The plan must—

(i) Describe how funds allocated to the territory are to be used to cover the cost of covered discount card drugs obtained by individuals who reside in the territory, who are entitled to benefits under Medicare Part A or enrolled under Medicare Part B, and who have income at or below 135 percent of the poverty line for the contiguous United States; and

(ii) Describe how the territory will ensure that amounts received under the allotment are to be used only to provide covered discount card drugs to those individuals determined eligible for transitional assistance, as described in paragraph (e)(2)(i) of this section, and

(iii) Provide such written assurance for the requirements in paragraph (e)(2)(ii) of this section.

(3) CMS will review and approve plans submitted and make allotments to territories with approved plans.

(4) CMS may request reports or information to substantiate that the territories have administered the program consistent with the territory's approved transitional assistance plan.

§ 403.820 Sanctions, penalties, and termination.

(a) *Intermediate sanctions.* (1) For the violations listed in paragraph (a)(3) of this section, the following intermediate sanctions may be imposed on any endorsed sponsor:

(i) Suspension of enrollment of Medicare beneficiaries.

(ii) Suspension of information and outreach activities to Medicare beneficiaries.

(2) *Duration of sanctions.* The intermediate sanctions continue in effect until CMS is satisfied that the deficiency on which the determination was based has been corrected and is not likely to recur.

(3) *Sanctionable violations.* The violations for which intermediate sanctions may be imposed are as follows:

(i) Substantial failure to maintain a contracted retail pharmacy network meeting the requirements of § 403.806(f);

(ii) Substantial failure to comply with CMS Information and Outreach Guidelines;

(iii) Substantial failure to provide discount card enrollees with negotiated prices consistent with information reported to CMS for the price comparison Web site and/or reported by the endorsed sponsor;

(iv) Except during the week of November 15, 2004 (which coincides with the beginning of the annual coordinated election period), substantial failure to ensure that the negotiated price for a covered discount card drug does not exceed an amount proportionate to the change in the drug's average wholesale price (AWP), and/or an amount proportionate to changes in the card sponsor's cost structure (including material changes to any discounts, rebates, or other price concessions the sponsor receives from a pharmaceutical manufacturer or pharmacy);

(v) Charging drug card enrollees additional fees beyond a $30 enrollment fee;

(vi) Charging transitional assistance enrollees any enrollment fee;

(vii) Charging a coinsurance more than 5 percent for those at or below 100 percent of the poverty line, or 10 percent for those above 100 percent but at or below 135 percent of the poverty line;

(viii) Substantial failure to administer properly the transitional assistance funding for transitional assistance enrollees;

(ix) Substantial failure to provide CMS or its designees with requested information related to the endorsed sponsor's endorsed discount card operations; or

(x) Failure to otherwise substantially comply with the requirements of this subpart, including failing to perform the operational requirements of this program or the failure to submit an acceptable plan of correction within the timeframe specified by CMS.

(4) *Written notice of proposed sanctions.*

(i) Prior to imposing sanctions, CMS will send a written notice to the endorsed sponsor stating the nature and basis of the proposed sanction.

(ii) CMS will send a copy of the notice in paragraph (a)(4)(i) of this section to the Office of the Inspector General.

(iii) CMS will allow the endorsed sponsor 15 days from the receipt of notice to provide evidence that it has not committed an act or omission that

may fairly be characterized as a basis for sanction.

(iv) Should an endorsed sponsor present evidence described in paragraph (a)(4)(iii) of this section and by the time limit described in that paragraph, a CMS official not involved in the original sanction determination shall review the evidence and provide the endorsed sponsor a concise written decision setting forth the factual and legal basis for the decision that affirms or rescinds the original determination.

(5) *Effective date of sanction.*

(i) A sanction is effective 15 days after the date that the endorsed sponsor is notified of the sanction or, if the endorsed sponsor timely seeks reconsideration of that sanction decision, on the date specified in the notice of CMS's reconsideration determination.

(ii) The sanction remains in effect until CMS notifies the endorsed sponsor that CMS is satisfied that the basis for imposing the sanction has been corrected and is not likely to recur.

(b) *Civil monetary penalties.* (1) *OIG penalties.* The Office of the Inspector General (OIG) may impose civil monetary penalties in accordance with 42 CFR parts 1003 and 1005 in addition to, or in place of, sanctions that CMS may impose, as described in paragraph (a) of this section, against an endorsed sponsor whom it determines has knowingly—

(i) Misrepresented or falsified information in information and outreach or comparable material provided to program enrollee or other persons;

(ii) Charged a program enrollee in violation of the terms of the endorsement contract; or

(iii) Used transitional assistance funds in any manner that is inconsistent with the purpose of the transitional assistance program.

(2) *CMS penalties.* If CMS determines that an endorsed sponsor has engaged in conduct that it knows or should know constitutes a violation as described in paragraph (a)(3) of this section, where the failure to perform involves the operational requirements of the program, CMS may impose civil monetary penalties in accordance with 42 CFR parts 1003 and 1005 in addition to, or in place of, the sanctions that CMS may impose, as described in paragraph (a) of this section.

(3) CMS or the OIG may impose civil monetary penalties of no more than $10,000 for each violation.

(c) *Termination of endorsement by CMS.* (1) CMS may terminate the endorsement contract at any time with notice on the following bases:

(i) Any of the bases for the imposition of intermediate sanctions as stated in paragraph (a)(3) of this section; or

(ii) The endorsed sponsor engaged in false or misleading information and outreach practices; or

(iii) The endorsed sponsor fails to comply with the requirement of § 403.804(e).

(2) CMS shall provide the endorsed sponsor written notice of termination 30 days prior to the CMS-determined effective date of the termination at which time the endorsed sponsor must do the following:

(i) Provide its discount card enrollees notice of the termination within 10 days of receiving notice from CMS;

(ii) Continue to provide services to its discount card enrollees for 90 days after the discount card enrollees were sent the notice of termination from the endorsed sponsor; and

(iii) Suspend all information and outreach and enrollment activities once enrollees have received the notice of termination.

(3) *Corrective action plan.* Before terminating a contract, CMS shall provide the endorsed sponsor with reasonable opportunity to develop and receive CMS approval of a corrective action plan to correct the deficiencies that are the basis of the proposed termination.

(d) *Termination by endorsed sponsor*—(1) *Cause for termination.* The endorsed sponsor may terminate its endorsement contract if CMS fails substantially to carry out the terms of the contract.

(2) *Card sponsor notice.* The endorsed sponsor must give advance notice as follows:

(i) To CMS, at least 90 days prior to the intended date of termination. This notice must specify the reasons why the endorsed sponsor is requesting contract termination; and

(ii) To its discount card enrollees, by mail, at least 60 days prior to the termination effective date. This notice must include a written description of alternative endorsed discount card programs that serve the discount card enrollee's address.

(3) *Effective date of termination.* The effective date of the termination is determined by CMS and is at least 90 days after the date CMS receives the endorsed sponsor's notice of intent to terminate.

(e) *Termination by mutual consent.* (1) A contract may be modified or terminated at any time by written mutual consent.

(2) If the contract is terminated by mutual consent, the endorsed sponsor must provide notice to its discount card enrollees as provided in paragraph (d)(2) of this section.

(3) If the contract is modified by mutual consent, the endorsed sponsor must provide notice to its discount card enrollees of any changes that CMS determines are appropriate for notification within timeframes specified by CMS.

(f) *Appeal of contract determinations.* (1) *Scope.* This section establishes the procedures for reviewing the following contract determinations:

(i) A determination that an applicant is not qualified to enter into a contract with CMS under section 1860D–31 of the Act; and

(i) A determination to terminate a contract with an endorsed sponsor in accordance with paragraph (c) of this section.

(2) *Notice of determination.* When CMS makes an initial contract determination, it gives the endorsed sponsor or applicant written notice specifying—

(i) The reasons for the determination; and

(ii) The endorsed sponsor's or applicant's right to request reconsideration.

(3) *Effect of contract determination.* The contract determination is final and binding unless a timely request for a reconsideration hearing is filed under this section.

(4) *Right to reconsideration.* An endorsed sponsor whose contract is terminated or an applicant denied endorsement may request a hearing for reconsideration of the CMS contract determination.

(5) *Method and place for filing a request.* A request for a reconsideration hearing must be made in writing and filed with the CMS Central Office.

(6) *Time for filing a request.* The request for a reconsideration hearing must be filed within 15 days from the date of the notice of the initial determination.

(7) *Appointment of hearing officer.* CMS shall appoint a hearing officer to conduct the reconsideration. The hearing officer shall be a representative of the Administrator and not otherwise a party to the contract determination.

(8) *Conduct of hearing.* The endorsed sponsor or applicant may be represented by counsel and may present evidence and examine witnesses. A complete recording of the proceedings will be made and transcribed.

(9) *Reconsideration determination.* A reconsideration determination is a new determination that—

(i) Is based on a review of the contract determination, the evidence and findings upon which it was based, and

any other written evidence submitted before notice of the reconsidered determination is mailed, including facts relating to the status of the endorsed sponsor subsequent to the contract determination; and

(ii) Affirms, reverses, or modifies the initial contract determination.

(10) *Notice of reconsidered determination.* As soon as practicable after the close of the hearing, the hearing officer issues a written reconsideration determination that contains the following:

(i) Findings with respect to the applicant's qualifications to enter into or an endorsed sponsor's qualifications to remain under a contract with CMS under section 1860D–31 of the Act;

(ii) A statement of the specific reasons for the reconsidered determination.

(11) *Effect of reconsidered determination.* A reconsidered determination is final and binding on the parties and is not subject to judicial review.

(g) *Compliance with HIPAA.* Failure of an endorsed sponsor to comply with HIPAA and/or the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164, as established in § 403.812, shall be a violation of HIPAA and may be enforced under sections 1176 and 1177 of the Act.

§ 403.822 Reimbursement of transitional assistance and associated sponsor requirements.

(a) A Transitional Assistance Account is created within the Federal Supplementary Medical Insurance Trust Fund and kept separate from all other funds within that fund.

(b) The Managing Trustee of the Transitional Assistance Account shall pay on a monthly basis from the Account the amounts certified by CMS as necessary to make payments for transitional assistance as allowed in § 403.808.

(c) Endorsed sponsors must routinely account to CMS for the transitional assistance provided to the transitional assistance enrollees for finalized (not pending, or denied) claims up to the allowed balance provided by CMS to the sponsor.

(d) Payment transactions will be audited by the Secretary or his agent.

(e) Federal funding in excess of the amount of the balance included in CMS's system is not permitted.

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

■ 1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Amend 408.20 to add new paragraphs (a)(5) and (b)(4) to read as follows:

§ 408.20 Monthly premiums.

(a) * * *

(5) The law was further amended in 2003 to ensure that amounts payable from the Transitional Assistance Account described in § 403.822 of this chapter shall not be taken into account in computing actuarial rates or premium amounts.

(b) * * *

(4) In no case shall payment made for transitional assistance costs under part 403, subpart H of this chapter be included in the formula used to calculate actuarial rates or standard monthly premiums.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 8, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 8, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30753 Filed 12–10–03; 1:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4063–N]

Medicare Program; Medicare Prescription Drug Discount Card

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our intention to solicit applications from entities seeking a Medicare endorsement of their prescription drug discount card programs under the Prescription Drug and Medicare Improvement Act of 2003. Private sector entities that do business in the United States and meet all of the qualifications provided by CMS may receive a Medicare endorsement to operate a prescription drug discount card program, including the administration of up to $600 in transitional assistance for eligible Medicare beneficiaries. Additionally, Medicare Part C organizations that offer coordinated care plans, and Medicare reasonable cost reimbursement contractors, may qualify for a Medicare endorsement to provide such a discount card program with transitional assistance exclusively to members of one or more of its Medicare managed care plans. The requirements for these endorsements are stated in supplemental packages—solicitations for applications—that will be posted on the CMS Web site in December 2003. *See* **ADDRESSES** for CMS Web site address.

We anticipate that all applicants whose discount card programs meet the requirements stated in the supplemental package will receive the Medicare endorsement.

Who May Apply: Non-governmental entities that do business in the United States may apply.

DATES: Applications are due to CMS in early 2004, and CMS expects to announce endorsements shortly thereafter. Entities applying in 2004 to enter into a new contract with CMS as a Part C organization offering a coordinated care plan, or plans, will have an additional opportunity to apply for endorsement in 2004.

Deadline for Letter of Intent to Apply: Interested entities are encouraged to immediately submit a letter of intent to the attention of Scott Nelson by e-mail to *snelson2@cms.hhs.gov,* or by FAX, to 410–786–8933, to apply for an endorsement. Submission of a letter of intent is optional and will not affect the approval of an application.

Date of Pre-Application Conference: We will hold a pre-application conference shortly after the supplemental packages are posted on the CMS Web site and will post on our Web site the date and time of the conference, as well as instructions for registering to attend the conference.

Deadline for Application Submission: Applications for endorsement are due 45 days after the solicitations are posted.

ADDRESSES: Application instructions and materials are available in the solicitations from the Web site at *www.cms.hhs.gov/discountdrugs/.*

FOR FURTHER INFORMATION CONTACT: Questions about the solicitation may be directed to: Scott Nelson, Health Insurance Specialist, Center for Beneficiary Choices, Centers for Medicare and Medicaid Services at *snelson2@cms.hhs.gov.* Responses to the questions will be addressed at the conference and posted on the CMS Web site.

Approval of Collection of Information: The Secretary is authorized under section 105(e) of the Prescription Drug and Medicare Improvement Act of 2003 to conduct the collection of information requested in this solicitation without regard to the requirements of the Paperwork Reduction Act, chapter 35, title 44, United States Code.

Authority: Section 105 of the Prescription Drug and Medicare Improvement Act of 2003.

Dated: December 8, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 8, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–30754 Filed 12–12–03; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Monday,
December 15, 2003

Part IV

Department of Labor

Employment Standards Administration

20 CFR Parts 718 and 725

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718 and 725

RIN 1215–AB40

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule implements the decision of the United States Court of Appeals for the District of Columbia Circuit resolving a broad challenge to numerous provisions of a final rule, promulgated by the Department of Labor on December 20, 2000, amending the regulations implementing the Black Lung Benefits Act. In its June 14, 2002 opinion, the court reviewed both the substance of many provisions of the rule and the applicability of numerous provisions. It upheld the substance of all but one provision, and held that several other provisions were inapplicable to certain claims. The court therefore affirmed in part the district court's decision upholding the rule in its entirety, reversed in part, and remanded the case for further proceedings consistent with its opinion. The district court, in turn, remanded the case to the Department for further proceedings in accordance with the D.C. Circuit's opinion. This final rule implements the D.C. Circuit's opinion. It makes no other changes.

DATES: Effective December 15, 2003.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 693–0046

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On January 22, 1997, the Department issued a proposed rule to amend the regulations implementing the Black Lung Benefits Act. 62 FR 3338–3435 (Jan. 22, 1997). The Department received almost 200 written submissions from interested persons and organizations, and it held two hearings at which over 50 people testified. After carefully reviewing the comments and testimony, the Department issued a second notice of proposed rulemaking. 64 FR 54966–55072 (Oct. 8, 1999). The second notice proposed changing several important provisions in the initial proposal, and explained the Department's decision not to change other regulations. The Department received 37 written submissions during the ensuing 90-day comment period. After carefully reviewing these comments, the Department issued its final rule on December 20, 2000. 65 FR 79920–80107 (Dec. 20, 2000).

The National Mining Association and several other plaintiffs filed suit against the Department in the United States District Court for the District of Columbia, challenging a substantial number of the provisions in the final rule. The court upheld the validity of each of the challenged provisions and rejected the plaintiffs' argument that certain regulations should not apply to claims pending on the rule's effective date. *National Mining Ass'n* v. *Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). It also rejected a challenge to the procedural adequacy of the Department's rulemaking proceeding, holding that the rulemaking record met the procedural requirements of the Administrative Procedure Act. 160 F.Supp.2d at 87–88. The plaintiffs appealed to the D.C. Circuit.

II. D.C. Circuit's Review of the Final Rule

Substantive Challenges

In *National Mining Ass'n* v. *Dep't of Labor,* 292 F.3d 849 (D.C. Cir. 2002), the court upheld the validity of all of the challenged provisions except one. The court upheld the following regulations: 20 CFR 718.104(d), 718.201(a)(2) and (c), 718.204(a), 718.205(c)(5), 725.101(a)(6), 725.309(d), 725.310(b), 725.366(b), 725.408, 725.414, 725.456, 725.457(d), 725.458, 725.495(c), 725.701(e). The court invalidated one provision, however, holding that the Department lacked the specific statutory authorization necessary to shift the cost of cross-examination of an indigent claimant's witness to other parties in the absence of a successfully prosecuted claim. 292 F.3d at 875 (discussion of § 725.459). The Department's revision to § 725.459 is explained in detail under III, Explanation of Changes.

The court upheld the substance of other provisions based upon the plain language of the rules, the preamble explanation of their intended application, the rulemaking record and the government's representations made in the course of briefing and oral argument. The decision outlines the substance and intended application of the challenged rules, as described below.

Treating Physicians' Opinions—20 CFR 718.104(d)

Section 718.104(d) requires the adjudicator to give consideration to the relationship between the miner and any treating physician whose report is admitted into the record, and provides that, in appropriate cases, the relationship between the miner and his treating physician may constitute substantial evidence in support of the adjudicator's decision to give that physician's opinion controlling weight. In upholding the substance of the provision, the court recognized that the rule permits, but does not mandate, that the adjudicator give controlling weight to a treating physician's opinion. A decision to give a treating physician's opinion controlling weight must be ''based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.'' 292 F.3d at 870 (quoting 20 CFR 718.104(d)(5)). Just as the Department had explained in the preamble to the final rule (65 FR at 79933–79934, ¶ (h) (Dec. 20, 2000)), the court stated that the provision is not a presumption that ''relieves claimants of the burden of proving both pneumoconiosis and the credibility of the doctor's opinion.'' 292 F.3d at 870. Indeed, the court stated specifically that neither the regulation's plain language nor the Secretary's interpretation relieves claimants of the burden of proof. *Id.*

Definition of ''Pneumoconiosis''—20 CFR 718.201

Section 718.201(a) defines pneumoconiosis as ''a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.'' It further provides that ''this definition includes both medical, or 'clinical', pneumoconiosis and statutory, or 'legal', pneumoconiosis.'' *Id.* Section 718.201(a)(2) provides that the definition includes ''any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.'' Section 718.201(c) provides that pneumoconiosis ''is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.''

The court upheld § 718.201(a), stating that, by recognizing both ''clinical'' and ''legal'' pneumoconiosis, the regulation ''merely adopts a distinction embraced by all six circuits to have considered the issue,'' and ''neither 'expand[s]' nor 'redefine[s]' the meaning of pneumoconiosis beyond its statutory definition.'' 292 F.3d at 869. The court also noted that even if the regulation could be read to change the definition, the Black Lung Benefits Act gives the Secretary the authority to supplement

statutory terms. *Id.* The court upheld § 718.201(c), holding it had sufficient support in the rulemaking record. The court cited scientific evidence in the rulemaking record indicating that pneumoconiosis can be latent and progressive. The court cited two studies, one ''indicating that pneumoconiosis is latent and progressive in—at most—eight percent of cases,'' and the other ''indicating that pneumoconiosis is latent and progressive as much as 24% of the time.'' 292 F.3d at 869. Consistent with the Department's argument, the court therefore interpreted the regulation to mean that pneumoconiosis can be a latent and progressive disease, not that pneumoconiosis is always or typically a latent and progressive disease. *Id.* There is no irrebuttable presumption that each miner's pneumoconiosis is latent or progressive. The burden of proving the presence of pneumoconiosis is always on the miner. As the Department explained in the preamble to the final rule, ''the miner continues to bear the burden of establishing all of the statutory elements of entitlement.'' 65 FR at 79972 (Dec. 20, 2000).

Total Disability Rule—20 CFR 718.204(a)

Section 718.204(a) provides, in part, that ''any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis.'' In upholding this provision, the court stated that there is ''an obvious rational basis for the rule: the statute only pertains to whether a miner is disabled 'due to pneumoconiosis,' and evidence of nonpulmonary conditions has no relevance to that inquiry.'' 292 F.3d at 873. Recognizing that the rule is consistent with the holdings of three circuits and abrogates the holding of another, *see* 65 FR 79947, ¶ (c) (Dec. 20, 2000), the court explained that ''regulations promulgated to clarify disputed interpretations of a regulation are to be encouraged. Tidying-up a conflict in the circuits with a clarifying regulation permits a nationally uniform rule without the need for the Supreme Court to essay the meaning of every debatable regulation.''' 292 F.3d at 873 (quoting *Pope* v. *Shalala*, 998 F.2d 473, 486 (7th Cir. 1993)).

Establishing Death Due to Pneumoconiosis—20 CFR 718.205(c)

Section 718.205(c)(2) provides, in part, that for the purpose of adjudicating survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis ''[w]here pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. * * *'' Section 718.205(c)(5), in turn, provides that ''[p]neumoconiosis is a 'substantially contributing cause' of a miner's death if it hastens the miner's death.'' In upholding this provision, the court noted that the rulemaking record supported the Department's conclusion that ''pneumoconiosis [can] weaken the body's defenses to infections and increase susceptibility to other disease processes.'' 292 F.3d at 871 (quoting 65 FR 79950 (Dec. 20, 2000)). The court recognized that the provision ''nowhere mandates the conclusion that pneumoconiosis be regarded as a hastening cause of death,'' and that it ''expressly requires claimants to prove that pneumoconiosis is the hastening cause'' of death. 292 F.3d at 871. As the Department explained in the preamble to the final rule: (1) the survivor must ''submit credible medical evidence establishing a detectable hastening of the miner's death on account of pneumoconiosis,'' 65 FR 79949, ¶ (b) (Dec. 20, 2000); and (2) ''the burden of persuasion remains with the survivor to prove that the miner's death was due to pneumoconiosis.'' 65 FR 79951, ¶ (f) (Dec. 20, 2000).

Definition of ''Benefits''—20 CFR 725.101(a)(6)

Section 725.101(a)(6) includes in the definition of ''benefits'' the ''expenses related to the medical examination and testing authorized by the district director pursuant to § 725.406.'' The costs of such medical examination and testing are paid by the Black Lung Disability Trust Fund and are reimbursed by the employer only if benefits are ultimately awarded. *See* 20 CFR 725.406(e); 292 F.3d at 865–866. In upholding the substance of this provision, the court noted ''the Black Lung Benefits Act's express authorization to '[t]he Secretary * * * to charge the cost of examination * * * to the employer.' '' 292 F.3d at 875 (quoting 33 U.S.C. 907(e), as incorporated by 30 U.S.C. 932(a)).

Subsequent Claims—20 CFR 725.309(d)

Section 725.309(d) provides, in part, that a subsequent claim ''shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement * * * has changed since the date upon which the order denying the prior claim became final.'' A subsequent or additional claim is a claim filed more than one year after the denial of a claim previously filed by the same claimant. The court upheld this provision because: (1) The regulatory language squarely places the burden of proving a change in a condition of entitlement on the claimant; and (2) § 725.309(d) does not violate res judicata or traditional notions of finality because proof of the change must be based on evidence of the claimant's current condition. 292 F.3d at 870. *See also* 65 FR 79973, ¶ (d) (Dec. 20, 2000) (explaining that ''new evidence establish[ing] that [a miner's] condition has worsened'' is required to establish the necessary change). The claimant's condition at the time the previous claim was denied is not relevant to proving a change in a condition of entitlement. 292 F.3d at 870. Moreover, even after establishing a change in one condition of entitlement, the miner still bears the burden of proving the remaining conditions of entitlement. 292 F.3d at 861.

Attorneys' Fees—20 CFR 725.366(b)

Section 725.366(b) provides that in calculating an award of an attorney's fees, the ALJ ''shall take into account'' a number of factors, including ''the quality of the representation, the qualifications of the representative, [and] the complexity of the legal issues involved.'' The court upheld this provision, noting it required consideration of no factors not already included in the calculation of shifted attorneys' fees by the Supreme Court. In response to the argument that the rule would result in the ''double counting'' of some factors, the court stated that ''the factors identified in § 725.366(b) do not supplant the 'lodestar' method of calculating reasonable fees, or enhance the lodestar fee once it is calculated.'' 292 F.3d at 875 (quoting government's brief).

Evidence Limitations—20 CFR 725.310(b), .414, .456, .457(d), .458

Sections 725.310(b), 725.414, 725.456, 725.457(d), and 725.458 place various limits on the amount and timing of evidence admissible in claims proceedings. The court upheld all of these provisions, stating that the Administrative Procedure Act and the Black Lung Benefits Act authorize them. In holding that the new evidentiary limits are not at all ''artificial,'' the court quoted the Department's explanation for these limitations: they ''will enable ALJs to focus their attention 'on the quality of the medical evidence in the record before [them].' '' 292 F.3d at 874 (quoting 64 FR 54994 (Oct. 8, 1999)).

Criteria for Determining a Responsible Operator—20 CFR 725.408, .495(c)

Section 725.408 establishes a deadline for a coal mine operator named a ''potentially liable operator'' in a specific claim to submit evidence regarding its financial status and employment of the miner if it disagrees with its identification. Upholding the validity of this provision, the court stated that the section shifted only the burden of production, not the burden of proof, and that ''it requires nothing more than that operators must submit evidence rebutting an assertion of liability within a given period of time.'' 292 F.3d at 871. ''[T]he evidence required by § 725.408 is limited to evidence relevant to the notified operator's own employment of the miner and that operator's financial status.'' 65 FR at 79986, ¶ (e) (Dec. 20, 2000)).

Section 725.495(c) provides that once an operator has been designated as the ''responsible operator'' (the operator responsible for a specific claim) from among the companies named potentially liable operators, it may be relieved of liability only if it proves either that it is financially incapable of assuming liability or that another potentially liable operator more recently employed the miner and is capable of assuming liability. The court upheld this provision, recognizing that it shifted the burden of proof, because it applies only after the operator has been designated as the responsible operator. 292 F.3d at 872. *See also* 65 FR 80009, ¶ (e) (Dec. 20, 2000); 64 FR at 54973 (Oct. 8, 1999); 62 FR at 3365 (Jan. 22, 1997). In seeking to be excused from liability in such circumstances, the court noted ''the operator becomes the 'proponent' of a remedial order of the ALJ and, therefore, the party to which [the APA] assigns the burden of proof.'' 292 F.3d at 872 (quoting 160 F.Supp.2d at 71). Given that the provision ''affords a mine operator liable for a claimant's black lung disease the opportunity to shift liability to another party, it is hardly irrational to require the operator to bear the burden of proving that the other party is in fact liable.'' 292 F.3d at 872.

Medical Benefits Presumption—20 CFR 725.701(e)

Section 725.701(e) provides that if a miner who is totally disabled due to pneumoconiosis receives treatment for a pulmonary disorder, there is a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis. If the presumption is not rebutted, the cost of the treatment is compensable. The court upheld this provision, noting that the Department explained in the preamble to the final rule that the provision ''shifts only the burden of *production* to operators to produce evidence that the treated disease was unrelated to the miner's pneumoconiosis; the ultimate burden of proof remains on claimants at all times.'' 292 F.3d at 872 (citing 65 FR 80022 (Dec. 20, 2000)). The court also agreed with the Department's preamble explanation, stating that ''there is a clear rational relationship between the fact proved (that a miner suffered from totally disabling pneumoconiosis in the past) and the fact presumed (that the miner's treated pulmonary disorder is related to that pneumoconiosis).'' 292 F.3d at 873 (citing 65 FR 80023 (Dec. 20, 2000)). The court concluded that this rational relationship ''suffices for purposes of our review.'' 292 F.3d at 873.

Retroactivity Challenges

The court also addressed the contention that some of the new provisions were impermissibly retroactive, that is, could not be applied to claims for benefits pending on January 19, 2001, the effective date of the final rule. The court agreed with this contention as to eight provisions—the second sentence of § 718.204(a), as well as §§ 725.101(a)(31), 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d), and 725.701(e). The court noted, as had the Department in the preamble to the initial notice of proposed rulemaking (*see* 62 FR at 3347 (Jan. 22, 1997)), that the Department is not authorized to promulgate retroactive black lung benefits regulations. The court explained that application of a regulation to a claim pending on the regulation's effective date would be impermissibly retroactive if the regulation ''change[d] the legal landscape.'' 292 F.3d at 859. The court determined that the eight provisions listed above did change the legal landscape, and that application of these provisions to claims pending on the effective date of the final rule was therefore improper. 292 F.3d at 864–868. The Department's revisions to effectuate the court's holdings are found at 20 CFR 718.2 and 725.2(c), and are explained in detail under III, Explanation of Changes.

In rejecting challenges to the applicability of 20 CFR 718.104(d), 718.201(a)(2) and (c), 725.101(a)(6), and 725.309(d), the court reasoned as follows:

Treating Physicians' Opinions—20 CFR 718.104(d)

In holding that the treating physician rule, § 718.104(d), is not impermissibly retroactive, the court explained that the rule ''codifies judicial precedent and does not work a substantive change in the law.'' 292 F.3d at 861.

Definition of ''Pneumoconiosis''—20 CFR 718.201

Holding that § 718.201(a)(2)—which includes ''chronic restrictive or obstructive pulmonary disease arising out of coal mine employment'' in the definition of ''pneumoconiosis''—is not impermissibly retroactive, the court concluded that the provision ''does not alter the requirement that individual miners must demonstrate that their obstructive lung disease arose out of their work in the mines.'' 292 F.3d at 863 (citing 65 FR 79938 (Dec. 20, 2000)). The court noted that the rulemaking record supports the premise that obstructive lung disease may be caused by coal mining exposure, and that this provision ''does no more than reflect this reality.'' 292 F.3d at 862. It rejected the argument that the provision creates a presumption that a miner's obstructive lung disease is caused by exposure to coal dust. It held, consistent with the Department's preamble explanation, that the provision requires ''that each miner bear the burden of proving that his obstructive lung disease did in fact arise out of his coal mine employment.'' 65 FR at 79938 (Dec. 20, 2000). *See* 292 F.3d at 862–863. The court also rejected as ''meritless'' the contention that the regulation permits an adjudicator to ''ignore a medical report if the reporting doctor concludes that a miner's obstructive lung disease was caused by smoking, rather than mining.'' 292 F.3d at 863. ''The regulation's plain text in no way indicates that medical reports will be excluded if they conclude that a particular miner's obstructive disease was caused by smoking, rather than mining.'' *Id.*

Section 718.201(c) provides that pneumoconiosis is ''recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.'' Holding that this regulation is not impermissibly retroactive, the court rejected the argument that the rule assumes that all pneumoconiosis is latent and progressive as ''based on a false reading of the rule.'' 292 F.3d at 863. The court explained that ''[t]he rule simply prevents operators from claiming that pneumoconiosis is never latent and progressive. The medical literature

makes it clear that pneumoconiosis may be latent and progressive. * * *'' *Id.*

Definition of ''Benefits''—20 CFR 725.101(a)(6)

In holding that § 725.101(a)(6)—which defines ''benefits'' to include ''any expenses related to the medical examination and testing authorized by the district director pursuant to § 725.406''—is not impermissibly retroactive, the court stated that the operators ''have not pointed to anything in the new definition that departs from the system already in place under the old § 725.406(c). Thus, the new definition changes nothing and is not impermissibly retroactive.'' 292 F.3d at 866.

Subsequent Claims—20 CFR 725.309(d)

Holding that the subsequent claims rule, § 725.309(d), is not impermissibly retroactive, the court stated that the regulation ''applies only to claims filed after the regulations' effective date'' and, in any event, is not substantively new and therefore ''does not change the legal landscape.'' 292 F.3d at 863–864.

III. Explanation of Changes

In order to conform to the D.C. Circuit's holding invalidating the witness-fee-shifting provision in § 725.459, the Department must revise that regulation. Similarly, to conform the regulations to the court's retroactivity holdings, the Department must revise both § 718.2 and § 725.2(c). Those sections address the applicability of the regulations in Parts 718 and 725. Since the court ruled that one provision in Part 718 and several regulations in Part 725 were impermissibly retroactive if applied to claims pending on January 19, 2001, both § 718.2 and § 725.2(c) must be revised.

20 CFR 718.2

(a) In the final rule promulgated on December 20, 2000, the Department revised § 718.204(a) by adding the following sentence: ''For purposes of this section, any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis.'' This revision clarified that non-respiratory/pulmonary impairments are not relevant to the total disability determination; thus, a miner who suffers from disabling pneumoconiosis is totally disabled for purposes of the Black Lung Benefits Act notwithstanding the existence of any independently disabling non-respiratory/pulmonary impairments. The change codified the holdings in *Cross Mountain Coal Co.* v. *Ward*, 93 F.3d 211, 216–217 (6th Cir. 1996); *Youghiogheny & Ohio Coal Co.* v. *McAngues*, 996 F.2d 130, 134–135 (6th Cir. 1993), *cert. den.* 510 U.S. 1040 (1994); *Twin Pines Coal Co.* v. *U.S. Dept. of Labor*, 854 F.2d 1212, 1215 (10th Cir. 1988); and *Peabody Coal Co.* v. *Director, OWCP* [*Huber*], 778 F.2d 358, 363 (7th Cir. 1985), and emphasized the Department's disagreement with *Peabody Coal Co.* v. *Vigna,* 22 F.3d 1388, 1394–1395 (7th Cir. 1994) (holding claimant's entitlement precluded by disabling stroke which was unrelated to coal mine employment and occurred before evidence of disability due to pneumoconiosis). *See* 62 FR at 3344–3345 (Jan. 22, 1997); 64 FR at 54979, ¶ (b) (Oct. 8, 1999); 65 FR at 79947, ¶ (c) (Dec. 20, 2000). By virtue of § 718.2, this provision, located in the second sentence of § 718.204(a), applied to the adjudication of all claims filed after March 31, 1980, including those pending on January 19, 2001. 20 CFR 718.2 (''This part is applicable to the adjudication of all claims filed after March 31, 1980. * * *'').

(b) Because the second sentence of § 718.204(a) is a departure from the Seventh Circuit's *Vigna* decision, the D.C. Circuit held the rule impermissibly retroactive as applied to claims pending on January 19, 2001, the regulation's effective date. 292 F.3d at 864–865. The court stressed, however, that it did not ''intend to affect the law in circuits that have adopted or might adopt positions that conform with the Secretary's interpretation. * * * Instead, the effect of our ruling is to leave the state of the law on this question exactly as it was prior to the regulations' promulgation'' for pending cases. *Id.* The court otherwise upheld the substance of the regulation, holding that the ''regulation has a rational basis and is consistent with the APA.'' 292 F.3d at 873.

(c) The Department has revised § 718.2 to reflect the D.C. Circuit's conclusion that the second sentence of § 718.204(a) may not be applied to claims pending on the effective date of the regulations: January 19, 2001.

20 CFR 725.2(c)

(a)(i) In the final rule issued on December 20, 2000, the Department amended the definition of ''workers' compensation law'' (previously codified at 20 CFR 725.101(a)(4) (2000)) in § 725.101(a)(31) to clarify its longstanding interpretation of the statute that payments made from a state's general revenues are not workers' compensation benefits subject to offset under the Black Lung Benefits Act. 62 FR 3348–3349 (Jan. 22, 1997); 64 FR 54982–54983, ¶ (e) (Oct. 8, 1999); 65 FR 79958–79959, ¶ (e) (Dec. 20, 2000). The revision responded to a Third Circuit decision rejecting the Department's position as inconsistent with the language of the prior implementing regulation. *Director, OWCP* v. *Eastern Associated Coal Co.* [*O'Brockta*], 54 F.3d 141, 148–150 (3d Cir. 1995). Despite its holding, the Third Circuit agreed that the Department's position reflected a permissible interpretation of the statute, and noted that the Department ''has the means and obligation to amend its regulations to provide for'' its interpretation. 54 F.3d at 150. (ii) Because the Third Circuit had rejected the Department's position under the prior regulations, the D.C. Circuit held the revised rule impermissibly retroactive when applied ''to claims that were already pending when the new regulation took effect'' or to ''adjust payments being made on settled or resolved claims.'' 292 F.3d at 866. The court emphasized that ''other circuits remain free to apply the Secretary's longstanding interpretation of the prior regulation to pending claims.'' *Id.* (iii) To reflect the D.C. Circuit's decision, the Department has revised § 725.2(c) in two ways. First, the Department has included § 725.101(a)(31) in the list of regulations that do not apply to claims pending on January 19, 2001. Second, the Department has revised the first two sentences of the subsection to clarify that the regulations included in the list do not apply to benefit payments made on claims pending on January 19, 2001, even where the benefit payments are made after January 19, 2001. Thus, § 725.101(a)(31) applies only to claims filed after January 19, 2001.

(b)(i) In the final rule issued on December 20, 2000, the Department revised a number of provisions relating to the criteria for determining the relationship and dependency of a miner's dependents and survivors, including §§ 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d). These revisions were necessary to reflect certain amendments to the underlying incorporated Social Security Act provisions and to the Black Lung Benefits Act, and to clarify the Department's policy with regard to the issues involved. 62 FR 3349–3351 (Jan. 22, 1997); 65 FR 79963–79967 (Dec. 20, 2000). (ii) The D.C. Circuit concluded that these revisions are impermissibly retroactive ''as applied to claims other than those filed after the regulations'

effective date'' because they ''expand the scope of coverage by making more dependents and survivors eligible for benefits.'' 292 F.3d at 866–867. The court recognized that the Department's regulations also contemplated application of these revisions to ''all benefits payments made'' after January 19, 2001, even payments made on claims finally adjudicated prior to that time. The court rejected the Department's approach and reiterated that ''it would be unlawfully retroactive to apply the definitions to any claims other than those filed on or after the regulations' effective date.'' 292 F.3d at 867. (iii) To reflect the D.C. Circuit's decision, the Department has revised § 725.2(c) in two ways. First, the Department has included §§ 725.204, 725.212(b), 725.213(c), 725.214(d), and 725.219(d) in the list of regulations that do not apply to claims pending on January 19, 2001. Second, the Department has revised the first two sentences of the subsection to clarify that the regulations included in the list do not apply to benefits payments made on claims pending on January 19, 2001, even where the benefit payments are made after January 19, 2001. Through these two revisions, the Department has ensured that the regulations deemed impermissibly retroactive by the D.C. Circuit will not be applied either to claims filed before the effective date of the regulations or to any benefits paid on those claims. Under the plain language of the revised regulation, the regulations that are not listed will continue to apply to all benefits payments made, including those paid pursuant to claims filed prior to the effective date of the regulations. The regulations listed in § 725.2(c) apply only to claims filed after January 19, 2001.

(c) The court mentioned both § 725.209 and § 725.219(c) in the course of discussing whether revisions made to the criteria for determining the relationship and dependency of a miner's dependents and survivors found in Part 725, Subpart B could be applied to pending claims, but did not hold that either regulation is impermissibly retroactive. 292 F.3d at 867. Neither of these regulations was revised in any substantive way in the final rule issued on December 20, 2000. Although the Department initially proposed substantive changes to § 725.209, finally-revised § 725.209 contains only one revision, which eliminated unnecessary words. *Compare* 20 CFR 725.209(a)(2)(ii) (1999) *with* 20 CFR 725.209(a)(2)(ii) (2002); *Compare* 62 FR at 3350 (Jan. 22, 1997) *with* 65 FR at 79963 (Dec. 20, 2000). And § 725.219(c) was not revised at all. *Compare* 20 CFR 725.219(c) (1999) *with* 20 CFR 725.219(c) (2002). Accordingly, the Department has not added either of these regulations to the list set forth in § 725.2(c), and both regulations apply to claims pending on January 19, 2001.

(d)(i) In the final rule issued on December 20, 2000, the Department added § 725.701(e) to establish a rebuttable presumption of medical benefits coverage for the treatment of any pulmonary disorder suffered by a miner totally disabled due to pneumoconiosis arising out of coal mine employment. This presumption is derived from a judicially-created presumption first announced by the Fourth Circuit in *Doris Coal Co.* v. *Director, OWCP*, 938 F.2d 492 (4th Cir. 1991), and later refined by that court in *Gulf & Western Indus.* v. *Ling*, 176 F.3d 226 (4th Cir. 1999), and *General Trucking Corp.* v. *Salyers*, 175 F.3d 322 (4th Cir. 1999). 65 FR at 80021–80022 (Dec. 20, 2000). The Department also recognized the Sixth Circuit had held in *Glen Coal Co.* v. *Seals*, 147 F.3d 502 (6th Cir. 1998), that the administrative law judge and the Benefits Review Board erred in applying the *Doris Coal* presumption to a miner whose coal mine employment took place within the jurisdiction of the Sixth Circuit. 65 FR at 80021–80022, ¶ (a) (Dec. 20, 2000). (ii) Because the D.C. Circuit found the rebuttable presumption established by § 725.701(e) contradicted by the Sixth Circuit's decision in *Seals*, it held that the rule is impermissibly retroactive when applied to pending claims. The court explained that its holding was ''not intended to affect the law in the Fourth Circuit or any other circuit that would have embraced the *Doris Coal* presumption. The judicial presumption remains the law in the circuits that adopt it.'' 292 F.3d at 865. (iii) To reflect the D.C. Circuit's decision, the Department has revised § 725.2(c) to include § 725.701(e) in the list of regulations that do not apply to claims pending on January 19, 2001.

20 CFR 725.459

(a) In the final rule issued on December 20, 2000, the Department revised § 725.459(b) to include a provision relieving an indigent claimant of the cost of producing his or her witnesses for cross-examination, regardless of whether such indigent claimant ultimately prevailed: ''If the claimant is the proponent of the witness whose cross-examination is sought, and demonstrates, within time limits established by the administrative law judge, that he would be deprived of ordinary and necessary living expenses if required to pay the witness fee and mileage necessary to produce that witness for cross-examination, the administrative law judge shall apportion the costs of such cross-examination among the parties to the case.'' The Department also added a new subsection (d) adopting certain criteria for determining indigency in this context. See 64 FR at 54996–54997 (Oct. 8, 1999); 65 FR at 80003, ¶ (a) (Dec. 20, 2000).

(b) The D.C. Circuit held these provisions in § 725.459 invalid under *West Virginia University Hospitals, Inc.* v. *Casey*, 499 U.S. 83, 97–100 (1991), because the court found no specific statutory authority for shifting this cost to an employer in the absence of a successfully prosecuted claim. 292 F.3d at 875.

(c) To reflect the D.C. Circuit's decision, the Department has revised § 725.459 to eliminate the fourth sentence and the beginning of the fifth sentence of paragraph (b). The Department has also eliminated paragraph (d). Thus, ''the proponent of [a] witness [called for cross-examination] shall pay the witness' fee,'' 20 CFR 725.459(b). This rule applies to all parties, including the claimant.

IV. Rulemaking Analyses

Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The Department has determined that there is good cause to conclude that notice and public procedure are unnecessary because this action is taken merely to conform the regulations to the D.C. Circuit's decision. Because this action does not change the law, but merely reflects the state of the law as determined by the D.C. Circuit, there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make the action effective upon publication.

Regulatory Flexibility Act

Because the Department has found good cause to conclude that this action is not subject to notice and public procedure under the Administrative Procedure Act, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

This action is not subject to sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA, Pub. L. 104–4) because the Department has made a good cause finding the action is not subject to notice and public procedure under the Administrative Procedure Act. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 12866

This action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)).

Executive Order 13132

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

List of Subjects in 20 CFR Parts 718 and 725

Black lung benefits, Claims, Health care, Lung diseases, Miners, Mines, Workers' compensation, X-rays.

For the reasons set forth in the preamble, title 20, Chapter VI, Subchapter B of the Code of Federal Regulations is amended as set forth below:

Signed at Washington, DC, this 26th day of November, 2003.

Victoria Lipnic,

Assistant Secretary for Employment Standards.

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

■ 1. The authority citation for Part 718 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 *et seq.*, 902(f), 934, 936, 945, 33 U.S.C. 901 *et seq.*, 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

■ 2. Section 718.2 is revised to read as follows:

§ 718.2 Applicability of this part.

With the exception of the second sentence of § 718.204(a), this part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and part 725 of this subchapter. The second sentence of § 718.204(a) is applicable to the adjudication of all claims filed after January 19, 2001. If a claim subject to the provisions of section 435 of the Act and subpart C of part 727 of this subchapter (see 20 CFR 725.4(d)) cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for Part 725 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 *et seq.*, 921, 932, 936; 33 U.S.C. 901 *et seq.*, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

■ 2. Section 725.2 is amended by revising paragraph (c) to read as follows:

§ 725.2 Purpose and applicability of this part.

* * * * *

(c) The provisions of this part reflect revisions that became effective on January 19, 2001. This part applies to all claims filed after January 19, 2001 and all benefits payments made on such claims. With the exception of the following sections, this part shall also apply to the adjudication of claims that were pending on January 19, 2001 and all benefits payments made on such claims: §§ 725.101(a)(31), 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d), 725.309, 725.310, 725.351, 725.360, 725.367, 725.406, 725.407, 725.408, 725.409, 725.410, 725.411, 725.412, 725.414, 725.415, 725.416, 725.417, 725.418, 725.421(b), 725.423, 725.454, 725.456, 725.457, 725.458, 725.459, 725.465, 725.491, 725.492, 725.493, 725.494, 725.495, 725.547, 725.701(e). The version of those sections set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 1999, apply to the adjudications of claims that were pending on January 19, 2001. For purposes of construing the provisions of this section, a claim shall be considered pending on January 19, 2001 if it was not finally denied more than one year prior to that date.

■ 3. Section 725.459 is amended by revising paragraph (b), and by removing paragraph (d), to read as follows.

§ 725.459 Witness fees

* * * * *

(b) If the witness' proponent does not intend to call the witness to appear at a hearing or deposition, any other party may subpoena the witness for cross-examination. The administrative law judge (ALJ) shall authorize the least intrusive and expensive means of cross-examination as the ALJ deems appropriate and necessary to the full and true disclosure of the facts. If such witness is required to attend the hearing, give a deposition or respond to interrogatories for cross-examination purposes, the proponent of the witness shall pay the witness' fee. The fund shall remain liable for any costs associated with the cross-examination of the physician who performed the complete pulmonary evaluation pursuant to § 725.406.

(c) * * *

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Federal Register

Monday,
December 15, 2003

Part V

The President

Proclamation 7744—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2003

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Presidential Documents

Title 3—

The President

Proclamation 7744 of December 10, 2003

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2003

By the President of the United States of America

A Proclamation

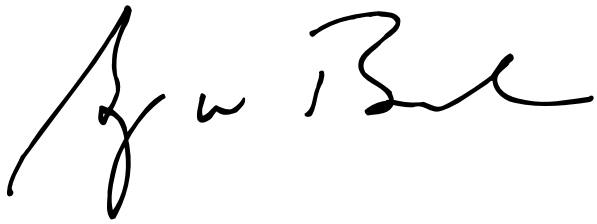
America's founders dedicated this country to life, liberty, and the pursuit of happiness. During Human Rights Day, Bill of Rights Day, and Human Rights Week, we recognize the advances we have made expanding freedom, democracy, and individual rights in this country and around the world.

America has helped bring liberty to Afghanistan and Iraq. In countries like Belarus, Cuba, and Zimbabwe, we continue to stand with those who struggle for democracy. We will continue to call on Burma's ruling junta to release political prisoners and engage in an inclusive dialogue with the democratic opposition to bring democracy to Burma. We also look forward to the day when the men and women of North Korea can live in a free society.

Freedom is the right of mankind and the future of every nation. It is not America's gift to the world; it is God's gift to every man and woman who lives in this world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2003, as Human Rights Day; December 15, 2003, as Bill of Rights Day; and the week beginning December 10, 2003, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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To reauthorize the ban on undetectable firearms. (Dec. 9, 2003; 117 Stat. 2481)

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50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8] July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–050–00150–1)	50.00	July 1, 2003
86 (86.1–86.599–99)	(869–050–00151–9)	57.00	July 1, 2003
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–050–00161–6)	56.00	July 1, 2003
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
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	(869–050–00166–7)	24.00	July 1, 2003
102–200	(869–050–00167–5)	50.00	July 1, 2003
201–End	(869–050–00168–3)	22.00	July 1, 2003
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	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
*1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
*200–499	(869–050–00176–4)	33.00	[9] Oct. 1, 2003
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
*1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	[9] Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	[9] Oct. 1, 2003
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
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
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
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
*3–6	(869–050–00196–9)	33.00	Oct. 1, 2003
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–050–00199–3)	38.00	[9] Oct. 1, 2003
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
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600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
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CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
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Individual copies		2.00	2003
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Complete set (one-time mailing)		290.00	2001

[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, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. 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, 2003. The CFR volume issued as of October 1, 2001 should be retained.