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# federal register

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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

**[Docket No. HR–97–001]**

### Revisions of Delegations of Authority

**AGENCY:** Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by redelegating to the Administrator, Agricultural Marketing Service, authorities currently reserved to the Assistant Secretary for Marketing and Regulatory Programs under 7 CFR 2.79(b) that relate to marketing agreements and orders and commodity research and promotion programs.

**EFFECTIVE DATE:** July 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Barbara Bryant, Legislative Analyst, Legislative Affairs Staff, Agricultural Marketing Service, United States Department of Agriculture, Room 3510—South Building, 1400 Independence Avenue SW, Washington, DC 20250, (202) 720–3203.

**SUPPLEMENTARY INFORMATION:** This rule redelegates to the Administrator, AMS, matters previously reserved to the Assistant Secretary for Marketing and Regulatory Programs that relate to marketing agreements and orders and commodity research and promotion laws. The Administrator, AMS, will assume responsiblity for actions previously reserved to the Assistant Secretary for Marketing and Regulatory Programs which include (a) final actions on regulations for fruit and vegetable and dairy marketing agreements and orders; and (b) issuing, amending, terminating or suspending any marketing agreement or order, or any of the numerous commodity research and promotions laws administered by AMS.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12866 and E.O. 12988. Finally, this subject is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of the Act.

### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended to read as follows:

### PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

**Authority:** Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

### Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

2. Section 2.79 is amended by removing and reserving paragraph (b).

Dated: July 8, 1997.

**Michael V. Dunn,**

*Assistant Secretary for Marketing and Regulatory Programs.*

[FR Doc. 97–18327 Filed 7–11–97; 8:45 am]
**BILLING CODE 3410–01–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 981

**[Docket No. FV97–981–3 IFR]**

### Almonds Grown in California; Revision to Requirements Regarding Inedible Almonds

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This document revises the administrative rules and regulations of the California almond marketing order regarding inedible almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. This rule allows alternative methods of determining handlers' inedible disposition obligations in such instances. It will add flexibility to the order's rules and regulations and will help ensure that the integrity of the quality control provisions is maintained.

**DATES:** Effective on August 1, 1997. Comments received by August 13, 1997 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Maureen Pello, Marketing Specialist, or Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR part 981), regulating the handling

of almonds grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule revises the administrative rules and regulations of the California almond order regarding inedible almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. The quantity of almonds required to be disposed of is the handler's inedible disposition obligation. However, there are times when an incoming inspection sample may not be drawn, may be lost, or the size of the sample drawn may be too small for an inedible weight to be determined. This rule provides handlers with the opportunity in such cases to substantiate to the Board the weight of almonds received, the edible and inedible kernel weights, and the adjusted kernel weight. Such information can often be obtained from an outgoing inspection certificate. The inedible disposition obligation may then be based on that information. If a handler is only able to substantiate the approximate weight of almonds received, an inedible disposition obligation of 10 percent of the weight of almonds received in that particular lot may be applied, upon agreement between Board staff and the handler. The appropriate weight received can often be obtained from a weight masters certificate. In adding these procedures to the text of the rules and regulations, this rule will add flexibility to the rules and regulations and will help ensure that the integrity of the quality control provisions of the order is maintained. This change was unanimously recommended by the Board.

Section 981.42(a) of the almond order requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in any variety. Handlers are required to report such inedible determination for each lot received to the Board. Inedible kernels are those kernels, pieces, or particles of kernels with any defect scored as serious damage (excluding the presence of web and frass), or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Grades of Shelled Almonds, or which have embedded dirt not easily removed by washing. Edible kernels are kernels, pieces, or particles of almond kernels that are not inedible. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's incoming quality control provisions.

Section 981.442(a)(4) of the order's administrative rules and regulations specifies that the weight of inedible kernels in each lot of any variety of almonds in excess of 1 percent of the kernel weight received by a handler shall constitute such handler's inedible disposition obligation. Inedible kernels accumulated in the course of processing must be disposed of in non-human consumption outlets such as Board approved oil crushers, feed manufacturers, and animal feeders. Requiring handlers to meet this obligation helps to ensure that each handler's outgoing shipments of almonds are relatively free of almonds with serious damage, and the number of kernels with minor damage should be minimal. Thus, the intent of the order's inedible program is to help ensure that only quality almonds are ultimately shipped into market channels.

At a meeting on May 9, 1997, the Board recommended that § 981.442 of the order's administrative rules and regulations be revised to allow alternative methods of establishing handlers' inedible disposition obligations in certain instances. The Board recommended that this rule be in effect for the beginning of the 1997–98 crop year which begins on August 1, 1997.

Discussions at this and prior meetings of the Board's Quality Control Committee indicated that a considerable amount of activity occurs at handlers' facilities when handlers are receiving almonds from growers. For example, handlers may be receiving, moving, processing, and shipping several lots of almonds at a rapid pace. During this time, incoming inspection for some lots of almonds may be inadvertently missed due to the high level of activity. In addition, samples are occasionally lost or the size of the samples drawn are too small for kernel weight determinations. Board staff commented that there are instances where handlers notice that an error was made and contact the Board's staff in an effort to comply with the order's rules and regulations. Board staff also indicated that this is not a large problem but that it does occur occasionally.

Thus, the Board recommended that for any lot of almonds where a sample is not drawn, is lost, or is too small for the kernel weight to be determined, the handler may establish and substantiate, to the Board's satisfaction, the weight of the almonds received, the edible and inedible kernel weights, and the adjusted kernel weight. Adjusted kernel weight means the actual gross weight of any lot of almonds less the following: the weight of containers; moisture of kernels in excess of 5 percent; shells (if applicable); processing loss of 1 percent for deliveries with less than 95 percent kernels; and trash or other foreign material. In such instances, the handler's inedible disposition obligation will be based on that information. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between Board staff and the handler.

This change will add flexibility to the order and will help ensure that the integrity of the order's quality control provisions is maintained. The Board estimates that for the past 3 years, about 3.05 percent of the almonds received by handlers from growers were inedible. Thus, the Board's recommended 10 percent disposition obligation for lots of almonds where an inedible weight was

not determined exceeds historical averages. This should provide a disincentive for handlers to purposely avoid inspection, while providing handlers an opportunity to maintain compliance with order requirements.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 97 handlers of California almonds who are subject to regulation under the marketing order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 58 percent of the handlers ship under $5,000,000 worth of almonds and 42 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $156,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule revises the administrative rules and regulations of the almond order regarding inedible almonds. Section 981.42(a) of the order requires handlers to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's incoming quality control provisions.

Under § 981.442(a)(4) of the order's administrative rules and regulations, handlers are required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible in non-human consumption outlets. However, there are times when a sample may not be drawn, may be lost, or the size of the sample drawn may be too small for an inedible kernel weight to be determined. This rule revises § 981.442(a)(4) to allow a handler's inedible disposition obligation in such cases to be based on documentation provided by the handler, to the satisfaction of Board staff. If sufficient documentation is not available, an inedible disposition obligation of 10 percent of the received weight may be applied. This change adds flexibility to the regulations while maintaining the integrity of the order's quality control provisions. This rule was unanimously recommended by the Board and will be in effect beginning with the 1997–98 season which begins on August 1, 1997.

Regarding the impact of this rule on handlers and growers in terms of cost, providing handlers with the option of accepting an inedible disposition obligation based on appropriate documentation or accepting an obligation of 10 percent for lots where a sample was not drawn, was lost, or was too small for an inedible weight to be determined are options that will be made available to all handlers, both large and small. Handlers receive lower prices for inedible almonds that must be sold in non-human consumption outlets as opposed to edible almonds that can be sold in normal market channels. For example, handlers receive about 28–35 cents per pound for almonds used for crushing into oil and about 2–3 cents per pound for almonds used for animal feed. Price levels for sales of edible almonds to normal market outlets vary significantly from year to year depending on available supplies and market conditions and can range from $1.00–$3.00 per pound. If inedible almonds were allowed to be sold in normal market channels, consumer and buyer satisfaction would likely decrease because poor quality almonds were being made available. Buyers would likely purchase fewer almonds and demand for almonds would thus decline, which would in turn decrease returns to growers and handlers, both large and small.

Thus, this rule will add flexibility to the rules and regulations and help ensure that the integrity of the order's quality control provisions is maintained. As previously mentioned, the Board estimates that for the past 3 years, about 3.05 percent of the almonds received by handlers from growers were inedible. The Board's recommended 10 percent disposition obligation for lots where an inedible weight was not determined exceeds historical averages. This rule also provides handlers an opportunity to maintain compliance with order requirements.

An alternative to this change would be to not incorporate these options into the order's administrative rules and regulations. Thus, in cases where an inedible disposition obligation was inadvertently not obtained, such handlers would be considered to be out of compliance with order requirements and subject to penalties under the Act. However, the Board determined that it would be in the industry's best interest to provide alternative methods of determining inedible disposition obligations. This will allow handlers additional options in the rules and regulations to remain in compliance with order requirements and the integrity of the order's incoming quality control program will still be maintained.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the May 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Quality Control Committee met on April 23, 1997, and discussed this inedible disposition obligation issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and information impacts of this action on small businesses.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on revising the requirements regarding inedible almonds currently prescribed under the California almond marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule provides for alternative methods of determining handlers' inedible disposition obligations; (2) this rule should be in effect at the beginning of the crop year which begins on August 1, 1997, so that all handlers are provided the same opportunities under the order; (3) this change was unanimously recommended by the Board at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides for a 30-day comment period and any comments received will be considered prior to finalization of this rule.

### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 981.442, paragraph (a)(4) is amended by designating the existing text as paragraph (i) and adding a new paragraph (ii) to read as follows:

**§ 981.442 Quality Control.**

(a) * * *

(4) * * *

(ii) If a sufficient sample is not available for any lot of almonds, the handler may establish and substantiate, to the satisfaction of the Board, the received weight, the edible and inedible kernel weights, and the adjusted kernel weight by providing sufficient information as the Board may prescribe. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between the Board and the handler.

* * * * *

Dated: July 8, 1997.

**Sharon Bomer Lauritsen,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 97–18392 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 981

**[Docket No. A0–214–A7; FV93–981–1]**

### Almonds Grown In California; Order Amending the Marketing Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Correction of final rule.

**SUMMARY:** This document contains a correction to the final rule published on June 26, 1996, (FR Doc. 96–16304). The final rule amended the marketing order (order) for California almonds and made corresponding changes to the administrative rules and regulations administered under the order.

**EFFECTIVE DATE:** July 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

**SUPPLEMENTARY INFORMATION:**

### Background

This final rule amended the order for California almonds. The amendments changed order provisions regarding: five definitions in the order; Almond Board of California nomination procedures, terms of office, qualification procedures, eligibility requirements, voting and tenure requirements; modifying creditable advertising provisions; revising volume control procedures; requiring handlers to maintain records in the State of California; authorizing interest or late payment charges on assessments paid late; providing for periodic continuance referenda; and made necessary conforming changes. That rule overlooked a change to an administrative reporting regulation which corresponded to the change made to the crop year definition. This rule makes that change.

### Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 981 is corrected by making the following correcting amendments:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 981.472 [Corrected]**

2. In § 981.472, paragraph (a) is amended by removing the date ''June 30'' and adding in its place ''July 31''.

Dated: July 8, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97–18391 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1220

**[No. LS–97–005]**

### Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was reapportioned in 1994. These adjustments are required by the Soybean Promotion and Research Order (Order) and result in an increase in Board membership from 59 to 62 effective with the Secretary's 1998 appointments.

**EFFECTIVE DATE:** August 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, STOP 0251; Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456; telephone 202/720–1115.

**SUPPLEMENTARY INFORMATION:**

### Executive Orders 12866 and 12988, and Regulatory Flexibility Act

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

This rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

### Effect on Small Entities

The Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 1994. As such, this change will not impact on persons subject to the program. There are an estimated 381,000 soybean producers who pay assessments and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.601).

### Background and Change

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each three (3) year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its March 1997 meeting the Board voted to recommend to the Secretary that no modification be made.

Section 1220.201(d) of the Order provides that at the end of each three (3) year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

Representation on the Board, effective with this final rule, (62) is based on average production levels for the years 1992–1996 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by NASS. Board adjustment is effective with the 1998 nominations and appointments.

The number of geographical units remains at 30.

### List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, part 1220 is amended as follows:

## PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION:

1. The authority citation for 7 CFR Part 1220 continues to read as follows:

**Authority:** 7 U.S.C. 6301–6311.

2. In § 1220.201, the table immediately following paragraph (a) is revised to read as follows:

**§ 1220.201 Membership of board.**

* * * * *

| Unit | No. of members |
|---|---|
| Illinois | 4 |
| Iowa | 4 |
| Minnesota | 4 |
| Indiana | 4 |
| Missouri | 3 |
| Ohio | 3 |
| Arkansas | 3 |
| Nebraska | 3 |
| South Dakota | 3 |
| Mississippi | 2 |

| Unit | No. of members |
|---|---|
| Kansas | 2 |
| Louisiana | 2 |
| Tennessee | 2 |
| North Carolina | 2 |
| Kentucky | 2 |
| Michigan | 2 |
| North Dakota | 2 |
| Maryland | 2 |
| Wisconsin | 2 |
| Virginia | 1 |
| Georgia | 1 |
| South Carolina | 1 |
| Alabama | 1 |
| Delaware | 1 |
| Texas | 1 |
| Pennsylvania | 1 |
| Oklahoma | 1 |
| New Jersey | 1 |
| Eastern Region (New York, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico | |
| Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) | 1 |

* * * * *

Dated: July 9, 1997.

**Barry L. Carpenter,**

*Director, Livestock and Seed Division.*

[FR Doc. 97–18390 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1, 31, and 40

**[TD 8723]**

**RIN 1545–AS79**

## Federal Tax Deposits by Electronic Funds Transfer

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT). The regulations provide rules regarding which taxpayers must make deposits by EFT, the types of Federal taxes that must be deposited by EFT, and when deposits by EFT must begin. The regulations affect taxpayers required to make deposits of Federal taxes by EFT. The final regulations reflect changes to the Internal Revenue Code of 1986 (Code) made by the North American Free Trade Agreement Implementation Act and the Small Business Job Protection Act of 1996.

**DATES:** The final regulations are effective July 14, 1997. For dates of applicability of these regulations, see § 31.6302–1(h)(2).

**FOR FURTHER INFORMATION CONTACT:** Vincent G. Surabian, 202–622–6232 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 523 of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), amended section 6302 of the Code by enacting a new subsection (h) requiring the Secretary of the Treasury to prescribe such regulations as may be necessary for the development and implementation of an EFT system to be used for the collection of depository taxes.

On July 11, 1994, the IRS published temporary regulations (TD 8553) in the **Federal Register** (59 FR 35414) relating to the deposit of Federal taxes by EFT. A notice of proposed rulemaking (IA–03–94) cross-referencing the temporary regulations was also published in the **Federal Register** for the same day (59 FR 35418). Subsequently, on March 21, 1996, additional temporary regulations (TD 8661) were published in the **Federal Register** (61 FR 11548) as well as a notice of proposed rulemaking (IA–03–94, 61 FR 11595) that both cross-referenced the temporary regulations published that day and amended the notice of proposed rulemaking published July 11, 1994. Many written comments were received in response to these notices of proposed rulemaking. A public hearing on the 1994 notice was held on October 3, 1994. There were no requests for a public hearing on the 1996 notice and none was held.

Section 1809 of the Small Business Job Protection Act of 1996, Pub. L. 104–188, 110 Stat. 1755 (August 20, 1996), delayed the date by which certain taxpayers must begin EFT deposits.

After consideration of all comments, the regulations proposed by IA–03–94 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

### Explanation of Provisions

Under the temporary regulations, the requirement to deposit by EFT is based on the taxpayer's total deposits of certain taxes during certain ''determination periods.'' If the taxpayer's deposits of the taxes during a determination period exceed a prescribed dollar threshold, the taxpayer must use EFT to make deposits on and after the date prescribed in the temporary regulations.

*Delay in January 1, 1997, Start-Up Date*

The Small Business Job Protection Act of 1996 provides that taxpayers first required by the temporary regulations to deposit by EFT for return periods beginning on and after January 1, 1997, need not begin to deposit by EFT until July 1, 1997. The final regulations provide that these taxpayers must use EFT to make deposits that are due on or after July 1, 1997, and relate to return periods beginning on or after January 1, 1997. For example, a corporation to which this rule applies, and which files its income tax returns on a calendar year basis, must use EFT to make corporate and estimated income tax deposits that are due on or after July 1, 1997. Thus, the corporation's September 15, 1997,

and subsequent estimated tax payments must be made by EFT.

*Penalty Relief*

Under Notice 97–43, (1997–30 I.R.B.), the IRS announced that no penalties for failure to deposit by EFT will be imposed through December 31, 1997, on any taxpayer first required to deposit by EFT on or after July 1, 1997. These taxpayers will remain liable for the failure-to-deposit penalty (absent reasonable cause) under section 6656 if they fail to make a required deposit (using either EFT or paper coupons) in a timely manner.

*Threshold for January 1, 1999 Mandate*

The temporary regulations provide that if a taxpayer's employment tax deposits during 1997 exceed $20,000, or, if no employment taxes are deposited, the other taxes deposited in 1997 exceed $20,000, the taxpayer must begin depositing by EFT for return periods beginning on and after January 1, 1999. Based on information available in 1994, the IRS and Treasury Department concluded that the $20,000 threshold was necessary to assure that 94% of employment taxes and 94% of other depository taxes would be collected by EFT in fiscal year 1999 and subsequent years as required by section 6302(h). Based on information currently available, the IRS and Treasury Department have concluded that the statutory requirement for 1999 and subsequent years will be satisfied without the need to reduce the threshold below $50,000. Accordingly, the final regulations raise the threshold for the January 1, 1997 through December 31, 1997 determination period from $20,000 to $50,000.

*Technical Correction—First Required Deposit*

The final regulations revise the special rule requiring taxpayers with no employment tax deposits to use EFT if their deposits of other taxes exceed a specified threshold. As revised, the requirement to deposit by EFT ''applies to all depository taxes due with respect to deposit obligations incurred for return periods beginning on and after the applicable effective date.'' The words ''for return periods beginning'' were inadvertently omitted in the temporary regulations.

*Miscellaneous*

The definition of time deemed deposited has been revised solely for purposes of clarity.

Certain obsolete provisions in the temporary regulations relating to agreements entered into by the Commissioner with third party bulk data processors for the period prior to January 1, 1995, have been deleted.

Public Comment

Some commentators asked if the IRS intends to notify each affected taxpayer of the EFT requirement before the date on which the taxpayer must begin depositing by EFT. The IRS mailed several advance notices to each taxpayer that became subject to the EFT requirement in 1997, and plans to provide similar notices to taxpayers required to begin depositing by EFT in 1998.

Other commentators stated that it would be easier for taxpayers to determine whether they are subject to the rules if the thresholds were based on deposit liabilities incurred during the calendar year rather than deposits made during the calendar year. Although the specific suggestion was not adopted, the IRS is addressing the underlying concern in other ways. The IRS will make the threshold determination for affected taxpayers and, as indicated above, notify those taxpayers, in advance, of their obligation to begin depositing by EFT.

Some commentators suggested that the final regulations should clarify whether tax payments made with returns by check, money order, etc. are taken into account in threshold determinations. Payments submitted with a return are not ''deposits'' and are, therefore, not taken into account in determining if a threshold has been exceeded for EFT purposes.

Other commentators stated that the determination period for EFT should be the same as the lookback period used in determining a taxpayer's deposit status (semi-weekly or monthly) for employment tax deposit purposes. This suggestion was not adopted because the lookback periods for determining a taxpayer's deposit status with respect to employment tax vary depending upon the type of employment tax being deposited (for example, Form 943 and 945 depositors have a calendar year lookback period whereas Form 941 depositors do not).

Several commentators suggested employers need a safe harbor more generous than the current 98 percent rule because deposits by EFT must be initiated earlier than current paper coupon deposits. The IRS and Treasury Department do not believe it is necessary to change the safe harbor. EFT depositors may use the Same Day Payment option (Electronic Tax Application (ETA)) and, when using this option, are not required to initiate deposits any earlier than paper coupon depositors. Thus, EFT depositors will have as much time as they have always had to determine the amount they are required to deposit.

One commentator indicated that following the ACH Holiday Schedule will cause problems for $100,000 next-day depositors. The IRS and Treasury Department believe that the availability of ETA will alleviate any problems caused by the ACH Holiday Schedule.

Another commentator noted that many securities firms that have next-day deposits will be unable to comply with the EFT deposit requirement because of the nature of the securities business. The commentator recommends either exempting nonpayroll related income tax deposits from the EFT deposit requirement or allowing the use of Fedwire on a regular basis. Since ETA includes Fedwire value transfers, Fedwire non-value transfers, and Direct Access transactions, and is available for taxpayers to use on a regular basis, securities firms should be able to comply with the next-day deposit rule.

Another commentator suggested that a deposit by EFT should be considered timely if initiated with the Automated Clearing House (ACH) in a timely and correct manner and that the taxpayer should not be responsible for possible ACH breakdowns. Rev. Rul. 94–46 (1994–2 C.B. 278), has been published to address this situation. The revenue ruling provides guidance on establishing reasonable cause for abatement of the failure-to-deposit penalty in certain situations involving deposits by EFT.

A commentator suggested that the regulations should allow taxpayers to make deposits by EFT from any institution that has the ability to make ACH credit or debit transfers and should not require the taxpayers to open accounts with a Treasury Financial Agent. A taxpayer is not required to open an account with a Treasury Financial Agent. The ACH debit and ACH credit options allow a taxpayer to make a deposit from any of the many institutions that have the ability to make ACH credit or debit transfers.

One commentator suggested that a $500 minimum threshold should be provided for EFT deposits. This change would unduly complicate administration of the rules and has not been adopted.

Some of the issues raised in comments on the notice of proposed rulemaking published on July 11, 1994, were addressed in changes made to the temporary regulations by TD 8661. These issues were discussed in the preamble to TD 8661 and will not be addressed again here. In addition,

several other comments that were outside the scope of this regulations project have not been addressed here.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the notices of proposed rulemaking preceding the regulations were issued prior to March 29, 1996, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the two notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

*26 CFR Part 40*

Excise taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31, and 40 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by removing the citations for ''Section 1.6302–1(a)'', and ''Sections 1.6302–1T, 1.6302–2T and 1.6302–3T'', and ''Section 1.6302–4T'' and adding entries in numerical order to read as follows:

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

Section 1.6302–1 also issued under 26 U.S.C. 6302(c) and (h).

Section 1.6302–2 also issued under 26 U.S.C. 6302(h).

Section 1.6302–3 also issued under 26 U.S.C. 6302(h).

Section 1.6302–4 also issued under 26 U.S.C. 6302(a) and (c). * * *

**Par. 2.** Section 1.6302–1 is amended as follows:

1. The heading for paragraph (b) is revised.

2. The text of paragraph (b) is redesignated as paragraph (b)(1) and a heading for (b)(1) is added.

3. Paragraph (b)(2) is added.

4. The OMB parenthetical at the end of the section is removed.

The revised and added provisions read as follows:

**§ 1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations.**

* * * * *

(b) *Manner of deposit*—(1) *Deposit by Federal tax deposit coupon.* * * *

(b)(2) *Deposits by electronic funds transfer.* For the requirement to deposit corporation income and estimated income taxes and certain taxes of tax-exempt organizations by electronic funds transfer, see § 31.6302–1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1(h) of this chapter remains subject to the rules of paragraph (b)(1) of this section.

**§ 1.6302–1T [Removed]**

**Par. 3.** Section 1.6302–1T is removed.

**Par. 4.** Section 1.6302–2 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is redesignated as paragraph (b)(6).

3. A new paragraph (c) is added.

4. The OMB parenthetical at the end of the section is removed.

The revised and added provisions read as follows:

**§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.**

* * * * *

(b) *Deposits by Federal tax deposit coupon.* * * *

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see § 31.6302–1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1(h) of this chapter remains subject to the rules of paragraph (b) of this section.

* * * * *

**§ 1.6302–2T [Removed]**

**Par. 5.** Section 1.6302–2T is removed.

**Par. 6.** In § 1.6302–3, paragraph (c) is revised to read as follows:

**§ 1.6302–3 Use of Government depositaries in connection with estimated taxes of certain trusts.**

* * * * *

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Rev. Proc. 89–49 (1989–2 C.B. 615), (see § 601.601(d)(2) of this chapter) or any successor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1(h) of this chapter.

**§ 1.6302–3T [Removed]**

**Par. 7.** Section 1.6302–3T is removed.

**Par. 8.** Section 1.6302–4 is added to read as follows:

**§ 1.6302–4 Use of financial institutions in connection with individual income taxes.**

*Voluntary payments by electronic funds transfer.* An individual may voluntarily remit by electronic funds transfer all payments of tax imposed by subtitle A of the Code, including any payments of estimated tax. Such payments must be made in accordance with procedures to be prescribed by the Commissioner.

**§ 1.6302–4T [Removed]**

**Par. 9.** Section 1.6302–4T is removed.

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

**Par. 10.** The authority citation for Part 31 is amended by removing the entries for ''Section 31.6302–1T'', and ''Section 31.6302(c)–3T'' and revising the entry for ''Sections 31.6302–1 through 31.6302–3'' and by adding an entry for ''Section 31.6302(c)–3'' to read as follows:

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

Sections 31.6302–1 through 31.6302–3 also issued under 26 U.S.C. 6302(a), (c), and (h). * * *

Section 31.6302(c)–3 also issued under 26 U.S.C. 6302(h).

**Par. 11.** In § 31.0–1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

**§ 31.0–1 Introduction.**

(a) * * * The regulations in this part also provide rules relating to the deposit of other taxes by electronic funds transfer.

* * * * *

**Par. 12.** In § 31.0–3, paragraph (f) is amended by adding a sentence at the end of the paragraph to read as follows:

**§ 31.0–3 Scope of regulations.**

* * * * *

(f) * * * Subpart G of this part also provides rules relating to the deposit of other taxes by electronic funds transfer.

**Par. 13.** In § 31.6302–1, paragraph (h) is redesignated as paragraph (i), and new paragraph (h) is added to read as follows:

**§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.**

* * * * *

(h) *Time and manner of deposit—deposits required to be made by electronic funds transfer*—(1) *In general.* Section 6302(h) requires the Secretary to prescribe such regulations as may be necessary for the development and implementation of an electronic funds transfer system to be used for the collection of the depository taxes as described in paragraph (h)(3) of this section. Section 6302(h)(2) provides a phase-in schedule that sets forth escalating minimum percentages of those depository taxes to be deposited by electronic funds transfer. This paragraph (h) prescribes the rules necessary for implementing an electronic funds transfer system for collection of depository taxes and for effecting an orderly and expeditious phase-in of that system.

(2) *Threshold amounts, determination periods, and effective dates.* (i)(A) Taxpayers whose aggregate deposits of the taxes imposed by Chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during a 12-month determination period exceed the applicable threshold amount are required to deposit all depository taxes described in paragraph (h)(3) of this section by electronic funds transfer (as defined in paragraph (h)(4) of this section) unless exempted under paragraph (h)(5) of this section. If the applicable effective date is January 1, 1995, or January 1, 1996, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on or after the applicable effective date. If the applicable effective date is July 1, 1997, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on or after July 1, 1997 with respect to deposit obligations incurred for return periods beginning on or after January 1, 1997. If the applicable effective date is January 1, 1998, or thereafter, the requirement to deposit by electronic funds transfer applies to all deposits required to be made with respect to deposit obligations incurred for return periods beginning on or after the applicable effective date. In general, each applicable effective date has one 12-month determination period. However, for the applicable effective date January 1, 1996, there are two determination periods. If the applicable threshold amount is exceeded in either of those determination periods, the taxpayer becomes subject to the requirement to deposit by electronic funds transfer, effective January 1, 1996. The threshold amounts, determination periods and applicable effective dates for purposes of this paragraph (h)(2)(i)(A) are as follows:

| Threshold amount | Determination period | Applicable effective date |
|---|---|---|
| $78 million | 1–1–93 to 12–31–93 | Jan. 1, 1995. |
| $47 million | 1–1–93 to 12–31–93 | Jan. 1, 1996. |
| $47 million | 1–1–94 to 12–31–94 | Jan. 1, 1996. |
| $50 thousand | 1–1–95 to 12–31–95 | July 1, 1997. |
| $50 thousand | 1–1–96 to 12–31–96 | Jan. 1, 1998. |
| $50 thousand | 1–1–97 to 12–31–97 | Jan. 1, 1999. |

(B) Unless exempted under paragraph (h)(5) of this section, a taxpayer that does not deposit any of the taxes imposed by chapters 21, 22, and 24 during the applicable determination periods set forth in paragraph (h)(2)(i)(A) of this section, but that does make deposits of other depository taxes (as described in paragraph (h)(3) of this section), is nevertheless subject to the requirement to deposit by electronic funds transfer if the taxpayer's aggregate deposits of all depository taxes exceed the threshold amount set forth in this paragraph (h)(2)(i)(B) during an applicable 12-month determination period. This requirement to deposit by electronic funds transfer applies to all depository taxes due with respect to deposit obligations incurred for return periods beginning on or after the applicable effective date. The threshold amount, determination periods, and applicable effective dates for purposes of this paragraph (h)(2)(i)(B) are as follows:

| Threshold amount | Determination period | Applicable effective date |
|---|---|---|
| $50 thousand | 1–1–95 to 12–31–95 | Jan. 1, 1998. |
| $50 thousand | 1–1–96 to 12–31–96 | Jan. 1, 1998. |
| $50 thousand | 1–1–97 to 12–31–97 | Jan. 1, 1999. |

(ii) Once a taxpayer is required to deposit by electronic funds transfer pursuant to this paragraph (h)(2), the taxpayer must continue to deposit by electronic funds transfer. Until such time as a taxpayer is required by this section to deposit by electronic funds transfer, the taxpayer may voluntarily make deposits by electronic funds transfer, but remains subject to the rules of paragraph (i) of this section, pertaining to deposits by Federal tax deposit (FTD) coupon, in making deposits other than by electronic funds transfer.

(3) *Taxes required to be deposited by electronic funds transfer.* The requirement to deposit by electronic funds transfer under paragraph (h)(2) of this section applies to all the taxes required to be deposited under §§ 1.6302–1, 1.6302–2, and 1.6302–3 of this chapter; §§ 31.6302–1, 31.6302–2, 31.6302–3, 31.6302–4, and 31.6302(c)–3; and § 40.6302(c)–1 of this chapter.

(4) *Definitions*—(i) *Electronic funds transfer. An electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 97–33, (1997–30 I.R.B.), (see § 601.601(d)(2)

of this chapter), or in accordance with procedures subsequently prescribed by the Commissioner.

(ii) *Taxpayer.* For purposes of this section, a *taxpayer* is any person required to deposit federal taxes, including not only individuals, but also any trust, estate, partnership, association, company or corporation.

(5) *Exemptions.* If any categories of taxpayers are to be exempted from the requirement to deposit by electronic funds transfer, the Commissioner will identify those taxpayers by guidance published in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(6) *Separation of deposits.* A deposit for one return period must be made separately from a deposit for another return period.

(7) *Payment of balance due.* If the aggregate amount of taxes reportable on the applicable tax return for the return period exceeds the total amount deposited by the taxpayer with regard to the return period, then the balance due must be remitted in accordance with the applicable form and instructions.

(8) *Time deemed deposited.* A deposit of taxes by electronic funds transfer will be deemed made when the amount is withdrawn from the taxpayer's account, provided the U.S. Government is the payee and the amount is not returned or reversed.

(9) *Time deemed paid.* In general, an amount deposited under this paragraph (h) will be considered to be a payment of tax on the last day prescribed for filing the applicable return for the return period (determined without regard to any extension of time for filing the return) or, if later, at the time deemed deposited under paragraph (h)(8) of this section. In the case of the taxes imposed by chapters 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is deposited prior to April 15th of the calendar year immediately succeeding the calendar year that includes the period for which the amount was deposited, the amount will be considered paid on April 15th.

* * * * *

**§ 31.6302–1T [Removed]**

**Par. 14.** Section 31.6302–1T is removed.

**Par. 15.** Section 31.6302(c)–3 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is revised.

3. Paragraph (d) is added.

The revised and added provisions read as follows:

**§ 31.6302(c)–3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.**

* * * * *

(b) *Manner of deposit—deposits required to be made by Federal tax deposit (FTD) coupon.* * * *

(c) *Manner of deposit—deposits required to be made by electronic funds transfer.* For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1(h). A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1(h) remains subject to the rules of paragraph (b) of this section.

(d) *Effective date.* The provisions of paragraphs (a) and (b) of this section apply with respect to calendar quarters beginning after December 31, 1969. The provisions of paragraph (c) of this section apply with respect to calendar quarters beginning on or after January 1, 1995.

**§ 31.6302(c)–3T [Removed]**

**Par. 16.** Section 31.6302(c)–3T is removed.

## PART 40—EXCISE TAX PROCEDURAL REGULATIONS

**Par. 17.** The authority citation for part 40 is amended by revising the entry for ''Sections 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4'' and removing the entry for ''Section 40.6302(c)–1T'' to read as follows:

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

Section 40.6302(c)–1 also issued under 26 U.S.C. 6302(a) and (h).

Sections 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4 also issued under 26 U.S.C. 6302(a).

**Par. 18.** Section 40.6302(c)–1 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for (d)(1).

2. Paragraph (d)(2) is added.

The added provisions read as follows:

**§ 40.6302(c)–1 Use of Government depositaries.**

* * * * *

(d) *Remittance of deposits*—(1) Deposits by Federal tax deposit coupon. * * *

(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see § 31.6302–1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1(h) of this chapter remains subject to the rules of this paragraph (d).

* * * * *

**§ 40.6302(c)–1T [Removed]**

**Par. 19.** Section 40.6302(c)–1T is removed.

Dated: June 27, 1997.

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 97–18285 Filed 7–11–97; 8:45 am]

BILLING CODE 4830–02–U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IL117–1a; FRL–5857–3]**

### Approval and Promulgation of State Implementation Plan; Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** In this action, EPA is approving, as revisions to the Illinois State Implementation Plan (SIP): Rate-Of-Progress (ROP) plans for the purpose of reducing Volatile Organic Compound (VOC) emissions in the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Oswego Township in Kendall County, and Aux Sable and Goose Lake Townships in Grundy County) and in the Metro-East St. Louis ozone nonattainment area (Madison, Monroe, and St. Clair Counties) by 15 percent by November 15, 1996, relative to 1990 baseline emissions; contingency plans for the same ozone nonattainment areas for the purpose of achieving an additional 3 percent VOC emission reductions beyond the 15 percent ROP plans; and transportation control measures (TCM) for the Metro-East St. Louis area. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. High concentrations of ground-level ozone can aggravate asthma, cause inflammation of lung tissue, decrease lung function, and impair the body's defenses against respiratory infection. In this action, EPA is approving Illinois' 15% ROP and contingency plans through a ''direct final'' rulemaking; the rationale for this approval is set forth below.

**DATES:** This final rule is effective September 12, 1997 unless adverse written comments are received by

August 13, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office).

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

**SUPPLEMENTARY INFORMATION:**

## I. Background on Rate-Of-Progress and Contingency Plan Requirements and EPA Review Criteria

On November 15, 1990, Congress enacted amendments to the Clean Air Act (Act); Pub. L. 101–549, 104, Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(1) of the Act requires States with ozone nonattainment areas classified as moderate and above to submit ROP plans to reduce VOC emissions by 15 percent from 1990 levels by November 15, 1996, accounting for growth in the VOC emissions occurring after 1990. For purposes of these plans, the Act, under sections 182(b)(1)(B) and (D), defines baseline emissions as the total amounts of actual VOC emissions from all anthropogenic sources in the ozone nonattainment areas during the calendar year of the enactment of the revision of the Act (1990), subtracting or factoring out emission reductions achieved by the Federal Motor Vehicle Emissions Control Program (FMVCP) regulations promulgated before January 1, 1990, and by the 1990 gasoline Reid Vapor Pressure (RVP) regulations (55 FR 23666, June 11, 1990).[1] The baseline emissions are also referred to as the ''1990 adjusted base year inventories.'' EPA interprets ''calendar year'' emissions to consist of typical ozone season weekday emissions, because the ozone National Ambient Air Quality Standard (NAAQS) (0.12 parts per million, one-hour average) is generally exceeded or violated during ozone season weekdays when ozone precursor emissions and meteorological conditions are the most conducive to ozone formation. (See ''State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' proposed rule (57 FR 13507), **Federal Register**, April 16, 1992 (hereafter referred to as the General Preamble)).

Section 182(b)(1)(D) of the Act places limits on what emission reductions can be claimed by ROP plans. All permanent and enforceable VOC emission reductions occurring after 1990 are creditable with the following exceptions: (1) those resulting from any emission control measure relating to motor vehicle exhaust and evaporative emissions promulgated by the Administrator by January 1, 1990; (2) those due to RVP regulations promulgated by the Administrator by November 15, 1990, or due to regulations required under section 211(h) of the Act; (3) those due to measures to correct Reasonably Available Control Technology (RACT) regulations as required under section 182(a)(2)(A) of the Act; and (4) those due to measures to correct previously noted problems in an existing vehicle inspection and maintenance (I/M) program as required under section 182(a)(2)(B) of the Act.

Section 172(c)(9) of the Act requires States with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or fails to attain the NAAQS within the time-frames specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revision for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the State or by the EPA Administrator upon failure by the State to meet ROP requirements or attainment of the NAAQS by the required deadline, or other applicable milestones of the Act.

The General Preamble states that the contingency measures, in total, must generally provide for 3 percent reductions from the 1990 baseline emissions. While all contingency measures must be fully adopted rules or measures, States can use the measures in two different ways. A State can choose to implement contingency measures before the November 15, 1996, ROP milestone deadline. Alternatively, a State may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure.

The EPA has developed a number of guidelines addressing the review of ROP and contingency plans and addressing such topics as: (1) the relationship of ROP plans to other SIP elements required by the Act; (2) recommended emission reduction levels for various control measures including Federal emission control measures; and (3) emission inventory projection procedures. All relevant guidelines are listed below.

1. Procedures for Preparing Emissions Projections, EPA–450/4-91–019, Environmental Protection Agency, July 1991.

2. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed rule (57 FR 13498), **Federal Register**, April 16, 1992.

3. ''November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories,'' memorandum from J. David Mobley, Edwin L. Meyer, and G. T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

4. Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans, EPA–452/R–92–005, Environmental Protection Agency, October 1992.

5. ''Quantification of Rule Effectiveness Improvements,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

6. Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans, EPA–452/R–93–002, March 1993.

7. ''Correction to 'Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans','' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards,

[1] The 1990 RVP regulations limit the volatility of gasoline in ozone nonattainment areas during the ozone season. The FMVCP provides vehicle emission limits that automobile manufacturers must meet in designing and building new automobiles.

Environmental Protection Agency, March 2, 1993.

8. ''15 Percent Rate-of-Progress Plans,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

9. Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act, EPA–452/R–93–007, Environmental Protection Agency, May 1993.

10. ''Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, May 6, 1993.

11. Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans, EPA–452/R–93–005, Environmental Protection Agency, June 1993.

12. ''Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series,'' memorandum from G. T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, Environmental Protection Agency, July 28, 1993.

13. ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, August 13, 1993.

14. ''Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans,'' memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

15. ''Guidance on Issues Related to 15 Percent Rate-of-Progress Plans,'' memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

16. ''Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

17. ''Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

18. ''Clarification of Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate of Progress Plans,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

19. ''Review and Rulemaking on 15 Percent Rate-of-Progress Plans,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

20. ''Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, October 29, 1993.

21. ''Rate-of-Progress Plan Guidance on the 15 Percent Calculations,'' memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

22. ''Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993, for Moderate and Above Ozone Nonattainment Areas,'' memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

23. ''Credit for 15 percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

24. ''Guidance on Projection of Nonroad Inventories to Future Years,'' memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

25. ''Discussion at the Division Directors Meeting on June 1 Concerning the 15 Percent and 3 Percent Calculations,'' memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 2, 1994.

26. ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,'' memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

27. ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

28. ''Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations,'' memorandum from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

29. ''Future Nonroad Emission Reduction Credits for Locomotives,'' memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

30. ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

31. ''Fifteen Percent Rate-of-Progress Plans—Additional Guidance,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

32. ''Update on the credit for the 15 percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule,'' memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

## II. Rate-Of-Progress and Contingency Plan Submittals for the Chicago and Metro-East St. Louis Ozone Nonattainment Areas

### *A. Administrative Actions/ Requirements*

The Act requires States to observe certain procedural requirements in developing SIPs and SIP revisions for submittal to the EPA. Sections 110(a)(2) and 110(l) of the Act provide that each SIP submitted by a State must be adopted by the State after reasonable notice and public hearing.

The State of Illinois held a public hearing on October 15, 1993, to hear and collect public comments on the 15 percent ROP and 3 percent contingency plans for both the Chicago and the Metro-East St. Louis ozone nonattainment areas. Subsequently, the plans were adopted by the State and submitted to EPA on November 15, 1993. The submittals included records

of public comments, hearing records, and responses to public comments. The plans were supplemented with additional submittals to the EPA on February 18, 1994, November 22, 1994, January 31, 1995, and May 23, 1995. These subsequent submittals contain supplemental documentation on the State's emission reduction estimates for various source categories. At EPA's request, the Illinois Environmental Protection Agency (IEPA) made additional submittals of technical support information and updated emission estimates on May 9, 1996, and July 22, 1996. All of the above submittals are considered to be part of the record of decision for this rulemaking. All submittals are available for review at the EPA Region 5 offices noted above.

On January 21, 1994, by letter, the EPA found the November 1993, submittals to be incomplete due to an incomplete set of State emission control regulations. Subsequently, the State adopted and submitted all required regulations. EPA found the ROP and contingency plan submittals to be complete, by letter, on June 15, 1995.

*B. Accurate Emission Inventories*

Sections 172(c)(3) and 182(b)(1) of the Act require nonattainment plans to include and be based on comprehensive, accurate, and current inventories of actual emissions from all sources of relevant pollutants in the nonattainment areas. On March 14, 1995 (60 FR 13631), EPA approved base year (1990) VOC emission inventories for the Chicago and Metro-East St. Louis ozone nonattainment areas (the inventories also included major source emissions from surrounding areas). The VOC emissions from these emission inventories establish the baseline for Illinois' ROP and contingency plans.

It should be noted throughout the discussions that follow that volatile organic emissions are referred to as VOC emissions. In the Illinois ROP and contingency plans (as well as in the base year emission inventory documentation), the State uses the term ''Volatile Organic Material (VOM)'' rather than VOC. The State's definition of VOM is equivalent to EPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and with EPA policy, the term VOC is used in this rulemaking. VOC emissions referred to in today's action are identical to VOM emissions referred to in Illinois' ROP and contingency measure plans.

*C. Required VOC Emission Reductions*

Following EPA ROP guidelines (primarily guidance contained in the Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target of the 15 Percent Rate of Progress Plans, EPA–452/R–92–005, October 1992, and in the Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans, EPA–452/R–93–002, March 1993), the IEPA has determined that creditable VOC reductions (as opposed to noncreditable emission reductions defined in section 182(b)(1)(D) of the Act) of 249.98 tons per day (TPD) for the Chicago ozone nonattainment area, and 26.66 TPD for the Metro-East St. Louis ozone nonattainment area are needed to achieve the 15% ROP requirement. To meet the 3 percent contingency requirement, the IEPA determined that the contingency measures must also achieve a 31.92 TPD VOC emission reduction in the Chicago ozone nonattainment area and 4.96 TPD VOC emission reduction in the Metro-East St. Louis ozone nonattainment area. The IEPA has fully documented the calculation of these emission reduction requirements and has shown that EPA recommended procedures were followed. This documentation includes identification of emission/source growth factors and noncreditable emission reductions from emission controls referenced in section 182(b)(1)(D) of the Act. Tables 1 and 2 summarize the calculation of emission reductions needed by 1996.

TABLE 1.—EMISSION REDUCTIONS REQUIRED BY 1996 FOR THE CHICAGO AREA

| Calculation of reduction needs by 1996 | Tons VOC/day |
|---|---|
| 1990 Chicago Area Total VOC Emissions | 1,363.40 |
| 1990 ROP Emissions (Anthropogenic only) | 1,216.56 |
| 1990–1996 Noncreditable Reductions (Reductions from 1990 RVP, Pre-1990 FMVCP, and RACT Fix-up Regulations) | 199.93 |
| 1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions) | 1,064.05 |
| 15 Percent of Adjusted Base Year Emissions | 159.61 |
| Total Required Emission Reductions by 1996 (15 Percent of Adjusted Base Year Emissions plus Noncreditable Reductions) | 359.54 |
| 1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996) | 857.02 |
| 1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors) | 1,107.00 |
| Reduction needs by 1996 to achieve 15 percent net of growth (1996 Projected Emissions plus 1996 Target Level) | 249.98 |
| Contingency measure requirement (3% of Adjusted Base Year Emissions | 31.92 |
| Total emission reductions required | 281.90 |

TABLE 2.—EMISSION REDUCTIONS REQUIRED BY 1996 FOR THE METRO-EAST ST. LOUIS AREA

| Calculation of reduction needs by 1996 | Tons VOC/day |
|---|---|
| 1990 Metro-East Area Total VOC Emissions | 234.79 |
| 1990 ROP Emissions (Anthropogenic only) | 174.65 |
| 1990–1996 Noncreditable Reductions (1990 RVP, Pre-1990 FMVCP, and RACT Fix-Up Reductions) | 10.75 |
| 1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions) | 165.24 |
| 15 Percent of Adjusted Base Year Emissions | 24.79 |
| Total Required Emission Reductions by 1996 (15 Percent of Adjusted Base Year Emissions plus Noncreditable Reductions) | 35.54 |
| 1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996) | 139.11 |
| 1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors) | 165.77 |
| Reduction needs by 1996 to achieve 15 percent net of growth (1996 Projected Emissions minus 1996 Target Level) | 26.66 |
| Contingency measure requirement (3% of Adjusted Base Year Emissions | 4.96 |

TABLE 2.—EMISSION REDUCTIONS REQUIRED BY 1996 FOR THE METRO-EAST ST. LOUIS AREA—Continued

| Calculation of reduction needs by 1996 | Tons VOC/day |
|---|---|
| Total emission reductions required | 31.62 |

*D. Control Measures*

Tables 3 and 4 below summarize the creditable emission reductions from the 15% ROP and 3% contingency plan control measures. These tables indicate the emission reduction credit the State has claimed for each control measure, and the actual emission reduction credit which EPA finds acceptable. Unless otherwise noted, the emission control measures apply to both the Chicago and Metro-East St. Louis ozone nonattainment areas. Table 5 indicates the date of EPA approval of State adopted control measures, date of EPA promulgation of Federal control measures, or an identification of the source for taking credit for a control measure, where EPA promulgation has not occurred. Following the tables is a discussion describing each of the emission control measures selected to help achieve ROP and contingency measure plan requirements, and EPA's review of the emission reduction claimed for each control measure. (Note that the IEPA, in describing the selected emission control measures and emission reduction impacts, does not distinguish between ROP plan measures and contingency plan measures).

Emission reductions not needed to achieve 15 percent ROP and 3 percent contingency requirements in the Chicago and Metro-East St. Louis ozone nonattainment areas, respectively, will be applied toward achieving the post-1996 ROP requirement, leading to attainment of the ozone air quality standard. (Post-1996 ROP plans are required to be submitted under section 182(c)(2)(B) of the Act).

TABLE 3.—CONTROL MEASURES FOR THE CHICAGO OZONE NONATTAINMENT AREA

| Control measure | Voc reduction state claimed tons/day | Voc reduction credit accepted tons/day |
|---|---|---|
| **Mobile Source Measures** | | |
| Enhanced Vehicle I/M Program | 19.60 | (1) |
| Conventional TCMs | 2.00 | 2.00 |
| National Energy Policy Act of 1992 | 0.20 | 0.20 |
| Post-1994 Tier 1 Vehicle Emission Rates | 2.40 | 2.40 |
| 1995 Reformulated Gasoline | 112.79 | 112.79 |
| 1992 Vehicle I/M Program Amendments | 8.40 | 8.40 |
| Federal Detergent Additive Gasoline | 2.20 | 2.20 |
| Federal Non-Road Small Engine Standards | 4.37 | 4.37 |
| Subtotal | 151.96 | 132.36 |
| **Industrial Source Measures** | | |
| RACT Geographic Expansion | 3.43 | 3.43 |
| Expanded RACT—Lowered Source Size Cutoffs (25 Tons Per Year) | 2.78 | 2.78 |
| New Control Technique Guidelines (CTG): | ..... | ..... |
| Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processes | 12.60 | 3.21 |
| Industrial Waste Treatment Facilities (IWTF) | 0.14 | 0.14 |
| Volatile Organic Liquid (VOL) Storage | 2.18 | 2.18 |
| Plastic Parts Coating | 0.28 | 0.28 |
| Lithographic Printing | 4.06 | 4.06 |
| Automobile Refinishing | 16.30 | 16.30 |
| Coke Oven National Emission Standard for Hazardous Air Pollutants (NESHAP)/Maximum Available Control Technology (MACT) | 6.93 | 6.93 |
| SOCMI NESHAP | 1.33 | 1.33 |
| Toxic Substance Disposal Facility (TSDF) RACT and Resource Conservation Recovery Act (RCRA) Phase I and II Controls | 2.08 | 2.08 |
| Marine Vessel Loading | 1.40 | 1.40 |
| Tightening of RACT Standards and Source Size Cutoffs | 12.05 | 12.05 |
| Plant Shut-Downs | 31.60 | 31.60 |
| Improved Rule Effectiveness from Clean Air Act Permit Program (CAAPP) | 26.30 | 26.30 |
| Subtotal | 123.46 | 114.07 |
| **Area Source Measures** | | |
| Stage II Service Station Vapor Recovery | 23.67 | 23.67 |
| Architectural and Industrial Maintenance (AIM) Coating | 13.28 | 10.60 |
| Traffic and Maintenance Coatings | 3.73 | 3.73 |
| Underground Gasoline Storage Tank Breathing Control | 4.87 | 4.87 |
| Consumer and Commercial Products Solvent Control | 8.10 | 8.10 |
| Subtotal | 53.65 | 50.97 |
| Total | 329.07 | 297.40 |

[1] See below.

TABLE 4.—CONTROL MEASURES FOR THE METRO-EAST ST. LOUIS OZONE NONATTAINMENT AREA

| Control measure | VOC reduction credit requested (TPD) | VOC reduction credit approved (TPD) |
|---|---|---|
| **Mobile Source Measures** | | |
| Enhanced Vehicle I/M Program | 4.80 | (1) |
| Conventional TCMs | 0.20 | 0.20 |
| Post-1994 Tier 1 Vehicle Emission Rates | 0.19 | 0.19 |
| 7.2/8.2 psi RVP Conventional Gasoline | 8.55 | 8.55 |
| 1992 Vehicle I/M Program Amendments | 0.20 | 0.20 |
| Federal Detergent Additive Gasoline | 0.20 | 0.20 |
| Federal Non-Road Small Engine Standards | 0.42 | 0.42 |
| Subtotal | 14.56 | 9.76 |
| **Industrial Source Measures** | | |
| New CTGs or Available CTGs: | | |
| SOCMI Batch Processes | 0.36 | 0.36 |
| IWTF | 0.10 | 0.10 |
| Automobile Refinishing | 1.20 | 1.20 |
| Coke Oven NESHAP/MACT | 0.10 | 0.10 |
| SOCMI NESHAP | 0.26 | 0.26 |
| TSDF RACT and RCRA Phase I and II Controls | 0.06 | 0.06 |
| Marine Vessel Loading | 11.82 | 11.82 |
| Tightening of RACT Standards and Source Size Cutoffs | 0.39 | 0.39 |
| Plant Shut-Downs | 1.44 | 1.44 |
| Improved Rule Effectiveness From CAAPP | 9.50 | 9.50 |
| Hazardous Air Pollutant (HAP) Standards Early Reduction Program | 0.74 | 0.74 |
| Subtotal | 25.97 | 25.97 |
| **Area Source Measures** | | |
| AIM Coating | 0.94 | 0.75 |
| Traffic and Maintenance Coating | 0.62 | 0.62 |
| Underground Gasoline Storage Tank Breathing Control | 0.44 | 0.44 |
| Consumer and Commercial Product Solvent Reduction | 0.58 | 0.58 |
| Subtotal | 2.58 | 2.39 |
| Total | 43.11 | 38.12 |

TABLE 5.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES

| Control measure | Date of EPA approval |
|---|---|
| Chicago Area TCMs | September 21, 1995 (60 FR 4886). |
| Metro-East Area TCMs | Date of EPA approval action is date of today's **Federal Register**. See discussion below. |
| 1992 National Energy Policy Act | Federal Regulation March 14, 1996 (61 FR 10621). |
| Post-1994 Tier 1 Vehicle Emission Rates | Federal Regulation June 5, 1991 (56 FR 25724). |
| 1995 Reformulated Gasoline | Federal Regulation February 16, 1994 (59 FR 7716). |
| Metro-East area 7.2 psi RVP Conventional Gasoline Rule | March 23, 1995 (60 FR 5318). |
| 1992 Vehicle I/M Program Amendments | April 9, 1996 (61 FR 15715). |
| Federal Gasoline Detergent Additive | Federal Regulation November 1, 1994 (59 FR 54706). |
| Federal Non-Road Small Engine Standards | Federal Regulation August 2, 1995 (60 FR 34582) *See* ''Guidance on Projection of Nonroad Inventories to Future Years,'' February 4, 1994, and ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,'' November 28, 1994. |
| Chicago Area RACT Geographic Expansion | September 9, 1994 (59 FR 46562). |
| Chicago Area Expanded RACT—Lowered Size Cutoffs (25 Tons VOC Per Year). | October 21, 1996 (61 FR 54556). |
| SOCMI Batch Processes | April 2, 1996 (61 FR 14484). |
| IWTF | Federal Regulation April 22, 1994 (59 FR 19468). |
| VOL Storage Tanks | August 8, 1996 (61 FR 41338). |
| Plastic Parts Coating | October 26, 1995 (60 FR 54807). |
| Lithographic Printing | November 8, 1995 (60 FR 56238). |
| Automobile Refinishing | July 25, 1996 (61 FR 38577). |
| Coke Oven NESHAP | Federal Regulation October 27, 1993 (58 FR 57911). |
| SOCMI NESHAP | Federal Regulation April 22, 1994 (59 FR 19454). |
| TSDF RACT (RCRA) Phase I & II | Federal Regulation Phase I, June 21, 1990 (55 FR 25454) Phase II, December 6, 1994 (59 FR 62896) *See* ''Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures,'' May 6, 1993. |
| Marine Vessel Loading Control | April 3, 1995 (60 FR 16801). |

TABLE 5.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES—Continued

| Control measure | Date of EPA approval |
|---|---|
| Tightened RACT Coating Standards | February 13, 1996 (61 FR 5511). |
| Tightened RACT SOCMI Air Oxidation | September 27, 1995 (60 FR 49770). |
| Plant Shut-downs | See discussion below. |
| Improved Rule Effectiveness from CAAPP | March 7, 1995 (60 FR 12478). |
| HAP Standards Early Reduction Program | Federal Regulation November 21, 1994 (59 FR 59924). |
| Underground Gasoline Storage Tank Breathing Controls | March 23, 1995 (60 FR 15233). |
| Stage II Gasoline Vapor Recovery | January 12, 1993 (58 FR 3841). |
| AIM Coatings | Creditable toward ROP. *See* ''Update on the Credit for the 15 Percent ROP Plans for Reductions from the AIM Coatings Rule,'' March 7, 1996. |
| Traffic and Maintenance Coatings | Creditable toward ROP. *See* ''Update on the Credit for the 15 Percent ROP Plans for Reductions from the AIM Coatings Rule,'' March 7, 1996. |
| Consumer and Commercial Products Solvent Control | Creditable toward ROP. *See* ''Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act,'' June 22, 1995. |

1. On-Road Mobile Source Sector

a. *Enhanced Vehicle I/M.* The Illinois 15 percent ROP plan submittal claims emission reduction credit for enhanced vehicle I/M for the Chicago and Metro-East St. Louis areas. The State has signed a contract for the construction and implementation of enhanced I/M, which provides that enhanced I/M testing will begin in January 1999. Based on EPA's review of the State's plan submittal, the State has adopted sufficient measures, in conjunction with credit from certain Federal measures, to achieve 15 percent ROP and 3 percent contingency requirements without enhanced I/M. Enhanced I/M will play a significant role in achieving post-1996 9% ROP requirements, and ultimately, help bring the Chicago and Metro-East St. Louis ozone nonattainment areas into attainment of the public health based ozone air quality standards. The amount of emission reduction credit which can be taken for enhanced I/M will be determined when Illinois submits and EPA takes action on the State's 9% ROP plan.

b. *Conventional TCMs.* The Metropolitan Planning Organizations (MPO) for the Chicago and Metro-East St. Louis areas (Chicago Area Transportation Study and East-West Gateway Coordinating Council, respectively) are administering a number of TCM projects to both reduce vehicle miles traveled (VMT) and the amount of VOC emissions per VMT. The projects have been programmed and funded through the areas' Transportation Improvement Programs (TIP) under the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ).[2] Illinois is claiming emission reductions from the TCMs in its 15 percent ROP plans for the Chicago and Metro-East areas.

States can take credit for TCMs which are approved as revisions to the SIP. EPA's requirements for TCMs are summarized in the June 1993, EPA guidance document, Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans. The required elements are (1) a complete description of the measure, and, if possible, its estimated emissions reduction benefits; (2) evidence that the measure was properly adopted by a jurisdiction(s) with legal authority to execute the measure; (3) evidence that funding will be available to implement the measure; (4) evidence that all necessary approvals have been obtained from all appropriate government offices; (5) evidence that a complete schedule to plan, implement, and enforce the measure has been adopted by the implementing agencies; and (6) a description of any monitoring program to evaluate the measure's effectiveness and to allow for necessary in-place corrections or alterations.

The Chicago area TCMs were approved on September 21, 1995 (60 FR 4886). The Metro-East St. Louis area's 15 percent ROP plan includes work trip reductions, transit improvements, and traffic flow improvements TCMs. These TCMs are being approved in today's action as a revision to the SIP because they fully satisfy all the requirements based on the following: (1) A complete description of the program and estimated emission reduction are provided in documentation included in the docket for this rulemaking action; (2) the measure has been adopted by the East-West Gateway Coordinating Council, the authorized MPO for the St. Louis metropolitan area; (3) the program is currently operating and has received federal CMAQ program money for operation; (4) all necessary approvals have been obtained from DOT on the FY 1994–1997 TIP (which includes the TCMs); (5) the TIP provides the schedule, implementation mechanism, and also the enforcement mechanism for the TCM (the conformity provisions in 40 CFR part 93 provide that TCMs in an approved SIP must be implemented on schedule before a conformity determination can be made by DOT); and (6) the CMAQ program requires monitoring of programs funded under CMAQ and annual reports to DOT on achieved emission reductions.

The emission reductions claimed in the ROP plans for both the Chicago and Metro-East TCMs are adequately documented and acceptable.

c. *National Energy Policy Act of 1992.* The National Energy Policy Act (EPAct) was enacted in October 1992. EPAct mandates implementation (use) of Alternative Fueled Vehicles (AFVs) in federal, State, and utility fleets. EPAct requires that 25% of new vehicle purchases by federal fleets, 10% of new vehicle purchases by State fleets, and 30% of new vehicle purchases by utility fleets must be AFVs beginning in 1996. IEPA estimated that EPAct would implement approximately 2,000 AFVs in the Chicago Area by 1996. The EPA mobile source emission factor model, MOBILE5a, was used to determine the impacts of EPAct on mobile source emissions. The State's emission reduction estimates for this federal measure are adequately documented and acceptable.

d. *Post-1994 Tier 1 Emission Rates.* Section 202 of the Act sets new Tier 1 emission standards for motor vehicles,

[2] MPOs can utilize United States Department of Transportation (DOT) funds from CMAQ. CMAQ is a federal program which provides funding for transportation related projects and programs designed to contribute to attainment of air quality standards.

some of which will be implemented prior to the end of 1996. The Tier 1 standards are approximately twice as stringent as prior (established prior to the 1990 Clean Air Act amendments) motor vehicle emission standards. For passenger cars and light-duty trucks weighing up to 6,000 pounds, the implementation of the standards is to be phased-in over three years, 40 percent of the manufactured vehicles for model year 1994, 80 percent of the manufactured vehicles in model year 1995, and 100 percent of the manufactured vehicles in the model year 1996 and later. For gasoline and diesel powered light-duty trucks weighing more than 6,000 pounds, the Tier 1 standards are to be met in 50 percent of the manufactured vehicles in model year 1996 and in 100 percent of the manufactured vehicles thereafter.

The IEPA has determined that the emission reductions resulting from these tightened vehicle standards are creditable toward the 15 percent ROP plan and used the MOBILE5a emission factor model to calculate the VOC emission reductions for this control measure. The State's emission reduction estimates are adequately documented and acceptable.

e. *1992 I/M Program Amendments.* As a result of an agreement resolving a lawsuit between Wisconsin and EPA, the State of Illinois added a tamper check and two-speed idle test to the basic I/M program in the Chicago metropolitan area. The I/M program area coverage was also increased to encompass almost all of the Chicago metropolitan area. These changes in the I/M program were implemented in 1992, and were approved by EPA on April 9, 1996 (61 FR 15715). Similar changes in the components of the I/M program were implemented in the Metro-East St. Louis area, as well.

The IEPA used the MOBILE5a emission factor model to estimate the emission reductions for both areas. The State's emission reduction estimates are adequately documented and are acceptable.

f. *Federal Detergent Gasoline Additive.* The Federal detergent gasoline additive regulation was promulgated November 1, 1994 (59 FR 54706). This regulation requires, beginning January 1, 1995, that gasoline sold nationwide contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiencies of engine systems and reduces VOC emissions resulting from engine efficiency degradation.

The State has reviewed guidance from EPA's Office of Mobile Sources which indicates that the use of gasoline containing the required additives will reduce vehicle VOC emissions by 0.7 percent in 1996. This guidance is the basis for the VOC emission reductions claimed in the 15 percent ROP plans for this control measure. The emission reduction estimates are acceptable.

g. *Federal Non-Road Small Engine Standards.* Federal standards for non-road engines (25 horsepower and below) were promulgated on August 2, 1995 (60 FR 34582). The standards would primarily affect 2 stroke and 4 stroke lawn and garden equipment and light commercial, construction, and logging equipment. Although full implementation of this control measure will not occur until after November 15, 1996, the States can take credit for this measure pursuant to EPA policy memoranda, ''Guidance on Projection of Nonroad Inventories to Future Years,'' February 4, 1994, and ''Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards,'' November 28, 1994. Based on this policy, the IEPA assumed that the Federal non-road small engine standards would reduce 1996 VOC emissions from these sources by 4.5 percent. The IEPA also assumes that these rules will have a rule effectiveness of 100 percent because the rules affect all manufacturers of small engines in the nation. The 4.5 percent emission reduction claim is assumed to appropriately account for rule penetration (the fraction of small engine emissions affected by the rule). The assumed emission reduction percentage is acceptable.

h. *Reformulated Gasoline.* Beginning January 1, 1995, sellers of gasoline in the Chicago ozone nonattainment area were required to sell only reformulated gasoline as required under federal regulation promulgated February 16, 1994 (59 FR 7716). Using the MOBILE5a emission factor model, the IEPA has determined that the use of reformulated gasoline will result in a 15 percent reduction in vehicle VOC emissions. The IEPA notes that the use of reformulated gasoline will also result in lower gasoline marketing and off-road engine emissions in the Chicago ozone nonattainment area. The emission reduction estimates are adequately documented and acceptable.

i. *7.2 RVP Gasoline.* On October 25, 1994, the IEPA submitted to the EPA a SIP revision request for the purpose of lowering the RVP of gasoline from 9.0 pounds per square inch (psi) to 7.2 psi in the Metro-East St. Louis ozone nonattainment area. EPA approved this SIP revision on March 23, 1995 (60 FR 15233). The Illinois rule requires the use of 7.2 psi RVP gasoline in the Metro-East St. Louis area during the period of June 1 through September 15 each year beginning in 1995. The rule grants a 1 psi waiver for ethanol blended gasolines that have an ethanol content between 9 and 10 percent ethanol by volume.

The IEPA used the MOBILE5a emission factor model to calculate the resulting VOC emission reduction for on-highway mobile sources. Illinois used a RVP ratio (reduced RVP versus average RVP of gasoline sold in 1990) along with 1996 gasoline usage estimates to calculate the VOC emission reduction from gasoline marketing sources. The calculation of the emission reduction is adequately documented and acceptable.

2. Industrial Sector

a. *RACT Geographic Expansion.* The State, on August 13, 1992, adopted a rule to expand the coverage of existing RACT regulations to include Oswego Township in Kendall County, and Aux Sable and Goose Lake Townships in Grundy County. This geographic expansion has affected several facilities, which are adequately documented in the ROP plan submittal. EPA approved this expansion on September 9, 1994 (59 FR 46562). The emission reduction estimate is acceptable.

b. *RACT—Reduction in Major Source Threshold.* Section 182(d) of the Act defines ''major source'' for severe ozone nonattainment areas to include any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons of VOC per year. This establishes a maximum source size cutoff for the application of RACT rules (the State has adopted RACT rules with much smaller source size cutoffs for most applicable source categories) for severe ozone nonattainment areas, such as the Chicago area.

On January 6, 1994, the Illinois Pollution Control Board (IPCB) adopted modified source size cutoffs of 25 tons per year, potential to emit, for flexographic/rotogravure printing operations, petroleum solvent dry cleaners, and non-Control Technology Guideline (non-CTG) sources in the Chicago ozone nonattainment area. Other source categories regulated in the Chicago area are covered by category-specific source size applicability cutoffs well below the 25 ton VOC per year specified in section 182(d) of the Act. EPA approved this regulation on October 21, 1996 (61 FR 54556). The State's emission reduction estimates for this rule are adequately documented and acceptable.

c. *Post-1990 CTG Rules.* Section 182(b)(2)(A) of the Act requires States with moderate and above ozone nonattainment areas to adopt RACT rules covering post-1990 CTG source categories. Illinois claimed emission reduction credit for many of the State rules adopted to meet the section 182(b)(2)(A) requirement. The following briefly discusses these rules and claimed emission reduction credit taken by the State:

i. SOCMI Batch Processes

Illinois' SOCMI batch process rule controls VOC emissions from batch chemical processes found in the following industries: plastic materials and resin manufacturing; cyclic crudes and intermediates manufacturing and processing; industrial organic chemical manufacturing; pharmaceuticals manufacturing; gum and wood chemicals manufacturing; and agricultural chemicals manufacturing. This rule was derived from an EPA draft CTG dated December 29, 1993, and an EPA Alternative Control Techniques (ACT) completed in February 1994. The rule was approved by EPA on April 2, 1996 (61 FR 14484). The IEPA used RACT flow rate equations from the draft CTG for the development of the control specifications of SOCMI batch processes. Emissions must be controlled using condensers, absorbers, adsorbers, thermal destruction systems, flares, thermal incinerators, or catalytic incinerators. In determining the applicability of the control requirements of the rule, owners or operators must determine the actual average flow rates for vent streams. If the actual average vent stream flow rate (standard cubic feet per minute) is below the applicability flow rate value calculated using the RACT flow rate equations (specific to volatility), the VOC from a process vent must be controlled with a reduction efficiency of 90 percent (or down to a VOC concentration of no more than 20 parts per million volume). Sources are exempted from emission controls if the annual VOC emissions are less than 500 pounds for individual batch operations or less than 30,000 pounds for a batch process train. The owner or operator must keep records of average flow rates during testing periods and annual VOC mass emission rates. Compliance with this rule is required by March 15, 1996.

The IEPA has determined there are 15 affected facilities in the Chicago ozone nonattainment area and 3 affected facilities in the Metro-East St. Louis ozone nonattainment area. The EPA accepts the emission reductions claimed for these facilities.

It should be noted that the State, during discussions with the EPA, has raised the point that a significant additional VOC emission reduction may be claimed for this source category. In the earlier submittals, the State indicated a significant emission reduction of 9.39 tons per day for an alcohol stripper unit at the Stepan Company's Millsdale facility (Chicago ozone nonattainment area) (permit/source number 78030038087). The State and EPA are working with the affected company to determine the exact timing of the emission reduction. If it is ultimately determined that the emission reduction occurred after 1990, the State will seek the correction of the ROP plan to credit this emission reduction in the post-1996 ROP plans.

ii. IWTF

The State is claiming emission reduction from the NESHAP for this source category, 40 CFR part 63, subpart G, promulgated April 22, 1994 (59 FR 19468). The State's emission reduction estimates for this rule are adequately documented and acceptable. It should be noted, however, that the IEPA is still expected to develop a State rule for this source category to implement RACT. If a RACT level rule is adopted and implemented in the near future, the State may claim additional emission reduction credits for this source category in the post-1996 ROP plans.

iii. VOL Storage

On November 30, 1994, the IEPA submitted an adopted rule and supporting information for the control of VOC emissions at VOL storage operations in the Chicago and Metro-East St. Louis ozone nonattainment areas. The EPA approved this rule on August 8, 1996 (61 FR 41339).

The VOL storage emission control requirements apply to facilities storing VOLs with vapor pressures of 0.75 pounds per square inch absolute (psia) or greater (facilities storing VOLs with vapor pressures equal to or exceeding 0.5 psia must keep records of VOLs stored including VOL vapor pressures) in any storage tank of 40,000 gallons capacity or greater. The rule does not apply to vessels storing petroleum liquids, which are covered under other rules.

For fixed roof tanks, the VOL storage rule requires the installation of internal floating roofs with foam or liquid-filled seals and secondary seals to close the gap between the tank's inner wall and the floating roof. These controls must be implemented by March 15, 1996.

External floating roof tanks must be equipped with primary and secondary seals before March 15, 2004, or at the time of the next tank cleaning, whichever comes first.

For internal floating roof tanks, the internal floating roofs must be equipped with primary and secondary seals before March 15, 2004, or at the time of the next tank cleaning, whichever comes first.

Sources may also use closed vent systems and emission control devices provided the emission control systems are operated with no detectable emissions or monitored VOC concentrations above 500 parts per million above background levels. Control devices must be operated to reduce VOC emissions by at least 95 percent. Storage vessels of 40,000 gallons or greater storage capacity that store VOLs with a maximum true vapor pressure equal to or greater than 11.1 psia must be equipped with a closed vent system and emission control device with emission control efficiency equal to or greater than 95 percent.

Recognizing that only fixed roof tanks would be required to implement emission controls by the end of 1996, the IEPA claimed emission reductions for only these types of tanks. The emission reduction estimates are adequately documented and acceptable.

iv. Plastic Parts Coating

On May 5, 1995, the IEPA submitted an adopted rule for the control of VOC emissions from automotive/transportation and business machine plastic parts coating operations in the Chicago and Metro-East St. Louis ozone nonattainment areas (no applicable sources exist in the Metro-East St. Louis area). The EPA approved this rule on October 25, 1995 (60 FR 54807).

The rule specifies the VOC content limits for various types of coating distinguishing between coating of automotive/transportation plastic parts and business machine plastic parts (see 60 FR 54808). Sources may also choose to use add-on control devices which achieve equivalent emission reductions. Compliance with this rule must be met by March 15, 1996. The emission reductions claimed for this source category are adequately documented and acceptable.

v. Lithographic Printing

Using EPA's September, 1993 draft CTG for this source category, the IEPA developed a regulation establishing VOC content limits, emission control requirements, and required work practices for this source category. The State's rule includes limitations on the VOC content of fountain solutions and cleaning solutions. The rule also

provides for the use of afterburners and other emission control devices for heat set web offset lithographic printing operations. The rule establishes recordkeeping, testing, and reporting requirements as well as work-practice requirements, such as a requirement for the storage of cleaning materials and spent cleaning solutions in air-tight containers.

The rule is applicable to all lithographic printing lines at a facility if the VOC emissions, in total, from the lithographic printing lines exceed 45.5 kilograms per day or 100 pounds per day. The rule also applies to facilities with heat set web offset printing lines if the maximum theoretical emissions of VOC, in total, ever exceed 90.7 megagrams per year or 100 tons per year. Compliance with the rule is required by March 15, 1996. The EPA approved this rule on November 8, 1995 (60 FR 56238).

The IEPA has determined that 113 facilities in the Chicago ozone nonattainment area will be affected by the rule, with 49 facilities likely to require new emission controls. Only one facility in the Metro-East St. Louis area is expected be affected by the rule, with no anticipated reduction in VOC emissions. Emission reduction credits for the Chicago facilities were calculated using the emission reduction factors for add-on controls, fountain solution reformulation or process modification, and cleaning solution reformulation provided for model plants in the September 1993 draft CTG. The emissions reduction credit claimed is adequately documented and acceptable.

vi. Automobile Refinishing

The EPA, on the behalf of the IEPA, contracted with Midwest Research Institute (MRI) to conduct a study of the motor vehicle refinishing industry in the Chicago and Metro-East St. Louis ozone nonattainment areas. This study included an estimate of the 1990 base year emissions and the study report recommended emission control strategies and possible resultant emission reductions. The study concluded that approximately 1,463 refinishing shops are located in the Chicago ozone nonattainment area, and 107 are located in the Metro-East St. Louis ozone nonattainment area.

Based on the study, review of similar regulations developed by the California Air Resources Board, and discussions with local automobile refinishing representatives, the IEPA adopted the following coating VOC content limits (pounds VOC per gallon of coating, minus water and exempt compounds):

| | |
|---|---|
| Pretreatment Wash Primer | 6.5 |
| Precoat | 5.5 |
| Primer/Primer Surfacer Coating | 4.8 |
| Primer Sealer | 4.6 |
| Topcoat System | 5.0 |
| Basecoat/Clearcoat | 5.0 |
| Three or Four Stage Topcoat System | 5.2 |
| Specialty Coatings | 7.0 |
| Anti-Glare/Safety Coating | 7.0 |

In addition to these VOC content limits, the regulation also establishes VOC content limits for surface preparation/cleaning products (6.5 pounds VOC per gallon of plastic parts cleaning compounds and 1.4 pounds of VOC per gallon of other surface cleaning/preparation products). The rule also requires the use of gun cleaners designed to minimize solvent evaporation during the cleaning, rinsing, and draining operations with recirculation of solvent during the cleaning operation and collection of spent solvent. Spent and fresh solvent must be stored in closed containers. Coating application must be done using High Volume, Low Pressure guns or electrostatic application systems. As an alternative to the VOC content limits, a facility may use add-on control systems, such as incinerators or carbon adsorbers, which would reduce VOC emissions by at least 90 percent. Facilities that use less than 20 gallons of coatings per year total are exempted from the coating application and gun cleaner equipment requirements.

Refinishing facilities are required to keep monthly records of coating purchases and the VOC contents of these coatings. Facilities are also required to use coatings in accordance with the coating manufacturer's specifications. Compliance with the rule must be met by March 15, 1996. The EPA approved the rule on July 25, 1996 (61 FR 38577). The emission reduction estimates for this rule are adequately documented and acceptable.

d. *Coke Oven NESHAP.* The coke oven NESHAP, 40 CFR part 63, subpart L, promulgated on October 27, 1993 (58 FR 57911), control emissions from coke oven doors, off-takes, lids, and charging. The emission control requirements of the rule must be met by the end of 1995. The emission reduction estimates are adequately documented and acceptable.

e. *Hazardous Organic NESHAP—SOCMI.* The SOCMI NESHAP, 40 CFR part 63, subpart F, promulgated April 22, 1994, (59 FR 19454) affects processes which produce one or more of the 396 designated SOCMI chemicals using one or more designated HAPs as a reactant or producing HAPs as a byproduct or co-product. Under EPA policy memorandum, ''Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures,'' May 6, 1993, 5 percent emission reduction from 1990 base line levels can be claimed from this rule. The State's emission reduction estimates are acceptable.

f. *TSDF RACT (RCRA) Phase I and II.* Under RCRA, EPA is taking action to control VOC emissions in three phases. Phase I regulations were promulgated by the EPA in June 1990 and became effective in December 1990. Phase II regulations were promulgated on December 6, 1994. The effective date for the Phase II regulations were suspended until December 6, 1996 (See 61 FR 59932, November 25, 1996). The Phase II compliance date is December 8, 1997. Although final compliance with the Phase II regulation will occur after November 15, 1996, States can take emission reduction credit for Phase II TSDF regulations toward the 15 percent ROP plan pursuant to EPA policy memorandum, ''Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures,'' May 6, 1993. Illinois' emission reduction estimates for these federal rules are acceptable.

g. *Marine Vessel Loading Controls.* The State's rule requires a 95 percent reduction in VOC emissions resulting from the loading of gasoline and crude oil into marine vessels at all marine terminals in the Chicago and Metro-East St. Louis ozone nonattainment areas which load gasoline or crude oil into tank ships and barges. The rule applies between May 1 and September 30 each year beginning in 1996, and requires that vessel cargo compartments be closed to the atmosphere during loading using: (1) Devices to protect tanks from underpressurization and overpressurization; (2) level-monitoring and alarm systems designed to prevent overfilling; and (3) devices for cargo gauging and sampling. VOC capture must be achieved with either (1) a vacuum-assisted vapor collection system, or (2) certification of vessel vapor-tightness. Piping used in the transfer of gasoline or crude oil must be maintained and operated to prevent visible liquid leaks, significant odors, and visible fumes. Owners and operators must use leak inspection procedures similar to those used at petroleum refineries.

Based on IEPA's records, there are five affected facilities in the Chicago ozone nonattainment area and six affected facilities in the Metro-East St. Louis ozone nonattainment area. To calculate VOC emission reduction for this source category, the IEPA assumed that vapor recovery and emissions control systems can reduce VOC

emissions by 90 percent. The rule was adopted on October 20, 1994, and was approved by the EPA on April 3, 1995 (60 FR 16801). The emission reduction credits claimed are adequately documented and acceptable.

h. *Tightening of RACT Standards and Cutoffs.* Based on an April 1993, Science Applications International Corporation (SAIC) report titled, ''Technical Document for Reasonably Available Control Technology for Illinois to Assist in Achieving 15 Percent Reduction in Ozone Nonattainment Areas,'' the IEPA determined that the VOC content limits for coatings could be lowered for the following source categories:

a. Automobile/Truck Coating
b. Paper Coating
c. Fabric Coating
d. Metal Furniture Coating
e. Flexographic/Rotogravure Printing
f. Miscellaneous Surface Coating
g. Can Coating
h. Metal Coil Coating
I. Vinyl Coating
j. Miscellaneous Metal Coating
k. Large Appliance Coating.

After further consideration, the IEPA determined that no additional tightening of existing coating VOC content limits could be justified at this time for automobile/truck coating and flexographic/rotogravure printing.

The State's tightened RACT coating limits are similar to those used in the South Coast Air Quality Management District of California. The tightened limits were adopted by the Illinois Pollution Control Board on April 20, 1995, and were approved by EPA on February 13, 1996 (61 FR 5511). The tightened SOCMI air oxidation requirements were adopted on October 20, 1994, and were approved by EPA on September 27, 1995 (60 FR 49770). The 15 percent ROP documentation indicates that by November 15, 1996, an estimated 8.00 tons VOC/day emission reduction has occurred from sources covered under the tightened RACT coating limit rule, and 4.05 tons VOC/day emission reduction has occurred from sources covered under the tightened SOCMI air oxidation rule. The emission reductions claimed are acceptable.

i. *Plant Shut-downs.* Facilities or plant units which have been shut-down since 1990 were identified through: (1) Facility responses to permit renewals; (2) responses to Annual Emission Report (AER) requests; (3) direct field inspections; and (4) requests from the facilities themselves to have their source permits withdrawn due to shut-down. Facility closings and emission reductions were verified through review of Emission Inventory System (EIS) records, permit file data, and field reports.

To further support the estimated emission reductions, the IEPA has provided the EPA with a list of closed facilities. The IEPA maintains a plant shut-down file which documents the methods of verification.

The shut-down credits were calculated using 1990 emissions projected to 1996 using the Emissions Growth Assessment System (EGAS) growth factors for specific source units. The projected 1996 emissions were used because these emissions had already been built into the projected 1996 emissions used to calculate the emission targets under the ROP plans.

Emission reductions from the plant shut-downs are made permanent through the closing of source permits and, therefore, are acceptable. The source permits for these facilities will not be reissued by the IEPA. If these sources wish to restart, they will have to go through new source review and will be controlled through new source emission control requirements.

j. *Improved Rule Effectiveness.* Illinois' Title V program, the CAAPP, covers most source facilities in the two ozone nonattainment areas. The IEPA submitted the CAAPP to the EPA in November 1993, and the EPA gave the program interim approval on March 7, 1995 (60 FR 12478). The program became effective in 1996.

A primary emphasis of the CAAPP is rigorous recordkeeping, reporting, and monitoring. The CAAPP regulations include recordkeeping, reporting, and monitoring requirements not covered under existing regulations or emphasizes existing regulations for such requirements. Sources must submit progress reports to the IEPA at a minimum of every 6 months and the permittees must certify no less frequently than annually that the facilities are in compliance with the permit requirements. Source owners or operators must also promptly report any deviances from permit conditions to the IEPA. The CAAPP requirements contain significant civil and criminal penalties for source owners or operators failing to comply with the permit requirements, including the recordkeeping, reporting, and monitoring requirements.

The IEPA used EPA's rule effectiveness evaluation questionnaire, and, based on the requirements of the CAAPP regulations, determined that the CAAPP requirements should lead to a rule effectiveness of 95 percent for all source facilities covered by the CAAPP. The IEPA determined the VOC emission reduction credit for this rule effectiveness improvement by considering the ''current'' rule effectiveness for each facility or source category used to develop the 1990 base year emissions inventory (80 percent for most facilities, with some facilities starting at 92 percent based on prior study results). The IEPA documented the rule effectiveness improvement findings in a report titled ''Impact of CAAPP on Inventory RE.''

In comments on a draft version of the ROP plan, the EPA indicated to the IEPA that recent changes in Title V requirements and guidelines to allow more source flexibility could jeopardize the anticipated improvement in rule effectiveness, particularly since some of the changes in EPA policy could relax compliance monitoring (the increased flexibility would allow sources to switch from enhanced monitoring procedures to less stringent compliance assurance monitoring procedures). The IEPA, however, views this increased source flexibility as having minimal impact on the rule effectiveness to be obtained from the CAAPP. It is pointed out that the EPA engineers who are technically supporting the compliance assurance monitoring procedures in EPA's revised Title V policy agree with a rule effectiveness estimate of 95 percent. The EPA agrees with this view and accepts the estimated emission reduction claimed.

k. *HAP Early Reduction Program.* This program, promulgated on November 21, 1994 (59 FR 59924), allows an existing source subject to an applicable section 112(d) standard to be granted a 6-year compliance extension upon commitment by the owner or operator of the source that the source has achieved a reduction of 90 percent or more of HAP by 1994. Emission reductions are determined by comparing the post-control emissions with verifiable and actual emissions in a base year not earlier than 1987, except that 1985 or 1986 may be used as a base year if the emissions data are based on information received before November 15, 1990. In the Metro-East St. Louis nonattainment area, only one applicable facility has committed to the early reduction program. Under the program, such commitments are federally enforceable. The reduction in VOC from this facility due to the program, therefore, is creditable.

3. Area Sources

a. *Stage II Vapor Recovery.* On August 13, 1992, Illinois adopted Stage II vapor recovery rules, which require the return of gasoline vapors to underground storage tanks during automobile refueling. Full phase-in of the

requirements occurred on November 1, 1994. EPA approved these rules on January 12, 1993 (58 FR 3841).

The IEPA has monitored the effectiveness of the Stage II regulations and the status of service station compliance. The Stage II controls have been established at most service stations in the Chicago nonattainment area and have been certified to reduce VOC emissions by at least 95 percent. The emission reduction estimates derived from this observation are acceptable.

b. *Architectural Surface Coating.* EPA is in the process of adopting a national rule applicable to manufacturers of AIM coatings. EPA proposed this rule on June 25, 1996 (61 FR 32729). Based on EPA policy memoranda, the State has assumed that an emission reduction credit of 20 percent could be taken for this source category. Even though the final rule has not been promulgated, and the compliance with the rule is not expected until 1998, the EPA is allowing States to take credit for 20 percent emission reduction credit for this source category, relative to 1990 emission levels. See ''Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the AIM Coating Rule,'' March 22, 1995, and ''Update on the Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule,'' March 7, 1996. The State has calculated emission reductions for architectural coatings separate from the traffic marking and maintenance coating provisions of the AIM rule. The State's emission reduction estimates for architectural coatings are acceptable.

c. *Traffic Marking and Maintenance Coating.* The State has chosen to rely on the Federal AIM rule (now expected to be implemented in 1998) for emission reductions in this source category. Although EPA policy memoranda,''Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coating Rule,'' March 22, 1995, and ''Update on the Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule,'' March 7, 1996, indicated that the State can assume a 20 percent emission reduction for this source category, the State notes that a more appropriate method for determining the emission reduction for traffic marking and maintenance coatings would involve consideration of the VOC content limit (150 grams VOC/liter coating) proposed in EPA's draft AIM rule. Data supplied by the Illinois Department of Transportation indicates that the median VOC content in traffic/maintenance coatings in the State of Illinois in 1990 was 413 grams/liter coating (this median VOC content level is assumed to apply to both ozone nonattainment areas in the State). Comparing the proposed limit to this median VOC content level indicates that a 63.7 percent reduction in VOC emissions would occur if the proposed VOC content limit were attained. This leads to VOC reduction estimates of 3.73 TPD for the Chicago area and 0.62 TPD for the Metro-East St. Louis area. These estimates are acceptable.

d. *Underground Gasoline Storage Tank Breathing Controls.* The State rule, adopted by the State on September 15, 1994, requires the installation of Pressure/Vacuum relief-control valves (P/V valves) on gasoline storage tank vents by March 15, 1995. The P/V valves must remain closed against tank pressures of at least 3.5 inches water column and tank vacuums of at least 6 inches water column. Gasoline storage tank owners must maintain records of malfunctions and repairs and must register installation of the P/V valves with the IEPA prior to March 15, 1995. The P/V valves must be tested annually and the owners must keep records of the tests. EPA approved this rule on March 23, 1995 (60 FR 15233).

The IEPA estimates that this rule will reduce gasoline breathing emissions by 90 percent. This emission reduction estimate is acceptable as are the emission reduction credits claimed for the Chicago and Metro-East St. Louis areas.

e. *Consumer and Commercial Solvents.* The March 23, 1995 **Federal Register** contained EPA's list of affected product categories and schedule for regulation of consumer and commercial solvent contents as required by section 183(e) of the Act. The EPA intends to regulate the solvent contents in 24 product categories. The **Federal Register** action states that the EPA expects the regulation to achieve a 25 percent reduction in VOC emissions from the regulated product categories. This regulation was scheduled to be promulgated in 1996. Under EPA policy memorandum ''Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act,'' June 22, 1995, EPA will grant an emission reduction credit for this source category even though emission reductions are not expected to occur until after 1996.

The IEPA cites an EPA study which states that the best estimate of VOC emissions for consumer and commercial products is 8.03 pounds per person per year. The study further states that the Federal regulation of consumer and commercial product solvents is expected to reduce these emissions by 1 pound per person per year. Using the 1996 projected populations and the ratio of 6.3 pounds VOC per person per year used for this source category in the 1990 base year emissions inventory to the 8.03 pounds per person per year specified in the EPA study, the IEPA has determined that the Federal rule gives an 8.10 tons VOC per day reduction in the Chicago ozone nonattainment area and a 0.58 tons VOC per day reduction in the Metro-East St. Louis ozone nonattainment area. The emission reduction credits are acceptable.

## III. EPA Rulemaking Action

The EPA is approving, through direct final rulemaking action, Illinois' 15 percent ROP and 3 percent contingency plan SIP revisions for the Chicago and Metro-East St. Louis ozone nonattainment areas, and the Metro-East St. Louis TCM work trip reductions; transit improvements; and traffic flow improvements.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse written comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical written comments be filed. This action will be effective on September 12, 1997 unless, by August 13, 1997, adverse or critical written comments on the approval are received.

If the EPA receives adverse written comments, the approval will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public written comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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. If the effective date is delayed, timely notice will be published in the **Federal Register**.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

*A. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

*B. Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

*C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: July 2, 1997.

**Jerri-Anne Garl,**

*Acting Regional Administrator.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart O—Illinois

2. Section 52.726 is amended by adding paragraphs (p), (q) and (r) to read as follows:

**§ 52.726 Control strategy: Ozone.**

* * * * *

(p) On November 15, 1993, Illinois submitted 15 percent rate-of-progress and 3 percent contingency plans for the Chicago ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. These plans satisfy sections 182(b)(1), 172(c)(9), and 182(c)(9) of the Clean Air Act, as amended in 1990.

(q) Approval—On November 15, 1993, Illinois submitted 15 percent rate-of-progress and 3 percent contingency plans for the Metro-East St. Louis ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. These plans satisfy sections 182(b)(1) and 172(c)(9) of the Clean Air Act, as amended in 1990.

(r) Approval—On November 15, 1993, Illinois submitted the following transportation control measures as part of the 15 percent rate-of-progress and 3 percent contingency plans for the Metro-East ozone nonattainment area: work trip reductions; transit improvements; and traffic flow improvements.

[FR Doc. 97–18403 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[MA014–01–7195; A–1–FRL–5847–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** EPA is granting conditional interim approval of a State Implementation Plan (SIP) revision submitted by Massachusetts. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program statewide in Massachusetts. The intended effect of this action is to conditionally approve the Commonwealth's proposed enhanced I/M program for an interim period to last 18 months, based upon the Commonwealth's good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway Systems Designation Act.

**EFFECTIVE DATE:** This final rule is effective on August 13, 1997.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Peter Hagerty, by telephone at: (617)

565–3571, or at the above EPA Region I address.

**SUPPLEMENTARY INFORMATION:**

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## II. Background

On January 30, 1997 (62 FR 4505), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed conditional interim approval of Massachusetts' enhanced inspection and maintenance program, submitted to satisfy the applicable requirements of both the Clean Air Act (CAA) and the National Highway Systems Designation Act (NHSDA). The formal SIP revision was submitted by the Massachusetts Department of Environmental Protection on March 27, 1996. Supplemental information was submitted by letters dated September 17, 1996, November 21, 1996, and November 27, 1996.

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. The NHSDA also directs EPA and the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start up as soon as possible, which EPA believes should be on or before November 15, 1997, so that at least six months of operational program data can be collected to evaluate the interim programs. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of these programs. If the Commonwealth fails to start its program according to this schedule, this conditional interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state. Unlike the other specified conditions of this rulemaking, which are explicit conditions under section 110(k)(4) of the CAA and which will trigger an automatic disapproval should the Commonwealth fail to meet its commitments, the start date provision will only trigger a disapproval upon EPA's notification to the Commonwealth by letter that the start date has been missed. This letter will not only notify the Commonwealth that this rulemaking action has been converted to a disapproval, but also that the sanctions clock associated with this disapproval has been triggered as a result of this failure. Because the start date condition is not imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4), EPA does not believe it is necessary to have the SIP approval convert to a disapproval automatically if the start date is missed. EPA is imposing the start date condition under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion.

EPA recognizes Massachusetts' intent to start-up the program on or prior to November 15, 1997, but no later than January 1, 1998. The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both qualitative and quantitative measures, and this process has been deemed acceptable to EPA. The core requirement for the quantitative measure is that a mass emission transient test (METT) be performed on 0.1% of the subject fleet, as required by the I/M Rule at 40 CFR 51.353 and 366. EPA believes METT evaluation testing is not precluded by the NHSDA, and therefore, is still required to be performed by states implementing I/M programs under the NHSDA and the CAA.

As per the NHSDA requirements, this conditional interim rulemaking will expire on February 16, 1999. A full approval of Massachusetts' final I/M SIP revision (which will include the Commonwealth's program evaluation and final adopted state regulations) is still necessary under section 110 and under sections 182, 184 and 187 of the CAA. After EPA reviews the Commonwealth's submitted program evaluation and regulations, final rulemaking on the Commonwealth's full SIP revision will occur.

Specific requirements of the Massachusetts enhanced I/M SIP and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

## III. Public Comments/Response to Comments

No public comments were received with regard to this document during the comment period.

## IV. Final Rulemaking Action

EPA is conditionally approving the enhanced I/M program as a revision to the Massachusetts SIP, based upon certain conditions. This conditional approval satisfies the requirements of section 182(c)(3) and the NHSDA for an enhanced I/M program. EPA also clarifies its proposal to approve the SIP under section 110 as well. For the purposes of strengthening the SIP, EPA is also giving a limited approval under section 110 if the state fulfills all of its commitments within 12 months of this final rulemaking. This limited approval under section 110 will not expire at the end of the 18 month interim period. Thus, although an approved I/M SIP satisfying the requirements of section 182(c)(3) may no longer be in place after the termination of the interim SIP approval period provided by the NHSDA, this program will remain a part of the federally enforceable SIP.

Should the Commonwealth fail to fulfill the conditions, other than the start date condition which will be treated as described above, by the deadlines contained in each condition, the latest of which is no more than one year after the date of EPA's final interim approval action, this conditional, interim approval will convert to a disapproval pursuant to CAA section 110(k)(4). In that event, EPA would issue a letter to notify the Commonwealth that the conditions had not been met and that the approval had converted to a disapproval starting the sanctions clock.

## V. Conditional Interim Approval

Under the terms of EPA's January 30, 1997 proposed interim conditional approval rulemaking, the Commonwealth was required to make commitments (within 30 days) to remedy major deficiencies with the I/M program SIP (as specified in the NPR), within twelve months of final interim approval. On March 3, 1997, Massachusetts submitted a letter from David B. Struhs, Commissioner of the Massachusetts Department of Environmental Protection, to EPA committing to satisfy the major deficiencies cited in the NPR, by dates

certain specified in the letter. Since EPA is in receipt of the Commonwealth's commitments, EPA is today taking final conditional approval action upon the Massachusetts I/M SIP, under section 110 of the CAA. As discussed in detail later in this document, this approval is being granted on an interim basis, for an 18-month period under authority of the NHSDA.

The conditions for approvability of the SIP as described in the proposal are as follows:

(1) The Commonwealth, must revise and submit to EPA, by April 1, 1997, a complete revised 15% plan utilizing appropriate I/M waiver, compliance rates, test type and the phase-in emission standards which will be used in November 1997 (i.e. ASM2 emission credits with phase in cut points.) This submittal was made on March 30, 1997 and is being proposed for interim approval elsewhere in today's **Federal Register**. Therefore, Massachusetts has met this condition.

(2) The time extension program as described and committed to in the March 3, 1997 letter from Massachusetts must be further defined to meet the requirements of 51.360 (Waivers and Compliance via Diagnostic Inspection) and must be submitted to EPA as a SIP revision by a date no later than one year after the effective date of this interim approval. Another program which meets the requirements of 40 CFR 51.360 and provides for no more than a 1% waiver rate would also be approvable.

(3) Other major deficiencies as outlined in the proposal must also be corrected to achieve the requirements of 40 CFR 51.351 (Enhanced IM Performance Standard), 51.354 (Adequate Tools and Resources), § 51.357 (Test Procedures and Standards), § 51.359 (Quality Control), and § 51.363 (Quality Assurance). The Commonwealth, in a letter dated March 3, 1997 committed to correct these deficiencies by a date certain within one year of conditional interim approval by EPA.

The preamble to the NPR under Section III. ''Discussion for Rulemaking Action'' paragraph (2) inadvertently listed Motorist Compliance Enforcement under 40 CFR 51.361 as a major deficiency. See 62 FR at 4513, col. 2, (Jan. 30, 1997). As discussed in the section by section analysis in the proposal earlier in the preamble, Massachusetts addressed the major problem under section 51.361 in a letter dated November 27, 1996 by revising the compliance rate to 96% rather than 98%. See 62 FR at 4511, col. 3. Under the Proposed Action in the NPR, this section is correctly not listed as a major deficiency. See 62 FR at 4514 col. 1. Massachusetts must submit additional information for § 51.361 prior to final action on this program, as specified in de minimus condition #4, below.

In addition to the above conditions, the Commonwealth must correct several minor, or de minimus, deficiencies related to CAA requirements for enhanced I/M described below. Although satisfaction of these deficiencies does not affect the conditional interim approval status of the Commonwealth's rulemaking, these deficiencies must be corrected in the final I/M SIP revision, to be submitted at the end of the 18-month interim period:

(1) The SIP lacks a detailed description of the program evaluation element as required under 40 CFR 51.353;

(2) The SIP lacks a detailed description of the test frequency and convenience element required under 40 CFR 51.355;

(3) The SIP lacks a detailed description of the number and types of vehicles included in the program as required under 40 CFR 51.356;

(4) The SIP lacks detailed information concerning the enforcement process, and a commitment to a compliance rate to be maintained in practice required under 40 CFR 51.361;

(5) The SIP lacks the details of the enforcement oversight program including quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system as required under 40 CFR 51.362;

(6) The SIP lacks a detailed description of procedures for enforcement against contractors, stations and inspectors as required under 40 CFR 51.364;

(7) The SIP lacks a detailed description of data analysis and reporting provisions as required under 40 CFR 51.366;

(8) The SIP lacks a public awareness plan as required by 40 CFR 51.368; and

(9) The SIP lacks provisions for notifying motorists of required recalls prior to inspection of the vehicle as required by 40 CFR 51.370.

## VI. Further Requirements for Permanent I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. At the end of this period, the approval will lapse. At that time, EPA must take final rulemaking action upon the Commonwealth's SIP, under the authority of section 110 of the Clean Air Act. Final approval of the Commonwealth's plan will be granted based upon the following criteria:

(1) The Commonwealth has complied with all the conditions of its commitment to EPA;

(2) EPA's review of the Commonwealth's program evaluation confirms that the appropriate amount of program credit was claimed by the Commonwealth and achieved with the interim program;

(3) Final program regulations are submitted to EPA; and

(4) The Commonwealth's I/M program meets all of the requirements of EPA's I/M rule, including those de minimis deficiencies identified in the January 30, 1997 proposal (62 FR 4505) and this rule as minor for purposes of interim approval.

## VII. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### *A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because

the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet any commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement.

Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does its substitute a new federal requirement.

*C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Massachusetts I/M SIP, on an interim basis, 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) of the Clean Air Act.)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 14, 1997.

**John P. DeVillars,**

*Regional Administrator, Region I.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(114) to read as follows:

**§ 52.1120 Identification of plan.**

* * * * *

(c) * * *

(114) The Commonwealth of Massachusetts' March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on June 27, 1996 and July 29, 1996, and November 1, 1996, is conditionally approved based on certain contingencies, for an interim period to last eighteen months. If the Commonwealth fails to start its program according to schedule, or by November 15, 1997 at the latest, this conditional approval will convert to a disapproval after EPA sends a letter to the state. If the Commonwealth fails to satisfy the following conditions within 12 months of this rulemaking, this conditional approval will automatically convert to a disapproval as explained under section 110(k) of the Clean Air Act.

(i) The conditions for approvability are as follows:

(A) The time extension program as described and committed to in the March 3, 1997 letter from Massachusetts must be further defined and submitted to EPA as a SIP revision by no later than one year after the effective date of this interim approval. Another program which meets the requirements of 40 CFR 51.360 (Waivers and Compliance via Diagnostic Inspection) and provides for no more than a 1% waiver rate would also be approvable.

(B) Other major deficiencies as described in the proposal must also be corrected in 40 CFR 51.351 (Enhanced I/M Performance Standard), § 51.354 (Adequate Tools and Resources), § 51.357 (Test Procedures and Standards), § 51.359 (Quality Control), and § 51.363 (Quality Assurance). The Commonwealth, committed in a letter dated March 3, 1997 to correct these deficiencies within one year of conditional interim approval by EPA.

(ii) In addition to the above conditions for approval, the Commonwealth must correct several minor, or de minimus deficiencies related to CAA requirements for enhanced I/M. Although satisfaction of these deficiencies does not affect the conditional approval status of the Commonwealth's rulemaking granted under the authority of section 110 of the Clean Air Act, these deficiencies must be corrected in the final I/M SIP revision prior to the end of the 18-month interim period granted under the National Highway Safety Designation Act of 1995:

(A) The SIP lacks a detailed description of the program evaluation element as required under 40 CFR 51.353;

(B) The SIP lacks a detailed description of the test frequency and convenience element required under 40 CFR 51.355;

(C) The SIP lacks a detailed description of the number and types of vehicles included in the program as required under 40 CFR 51.356;

(D) The SIP lacks a detailed information concerning the enforcement process, and a commitment to a compliance rate to be maintained in practice required under 40 CFR 51.361.

(E) The SIP lacks the details of the enforcement oversight program including quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system as required under 40 CFR 51.362;

(F) The SIP lacks a detailed description of procedures for enforcement against contractors, stations and inspectors as required under 40 CFR 51.364;

(G) The SIP lacks a detailed description of data analysis and reporting provisions as required under 40 CFR 51.366;

(H) The SIP lacks a public awareness plan as required by 40 CFR 51.368; and

(I) The SIP lacks provisions for notifying motorists of required recalls prior to inspection of the vehicle as required by 40 CFR 51.370.

(iii) EPA is also approving this SIP revision under section 110(k), for its strengthening effect on the plan.

[FR Doc. 97–18407 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MA–7197a; FRL–5847–1]**

### Approval and Promulgation of Implementation Plans; Massachusetts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA today is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions consist of 1990 base year ozone emission inventories, and establishment of a Photochemical Assessment Monitoring System (PAMS) network.

The inventories were submitted by the Commonwealth to satisfy a Clean Air Act (CAA) requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions in accordance with guidance from the EPA. The ozone emission inventories submitted by the Commonwealth are for the Springfield serious area, and the Massachusetts portion of the Boston-Lawrence-Worcester serious area. The PAMS SIP revision was submitted to satisfy the requirements of the CAA and the PAMS regulations. The intended effect of this action is to approve as a revision to the Massachusetts SIP the state's 1990 base year ozone emission inventories, and to approve the PAMS network into the State's SIP.

**DATES:** This action will become effective on September 12, 1997 unless notice is received by August 13, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Massachusetts Department of Environmental Protection, Division of Air Quality Control, One Winter Street, 7th Floor, Boston, Massachusetts, 02108–4746. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Robert F. McConnell, Air Quality Planning Group, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

**SUPPLEMENTARY INFORMATION:** Massachusetts submitted its 1990 base year emission inventories of ozone precursors to the EPA on November 13, 1992. Revisions to the inventories were received on November 15, 1993, November 15, 1994, and March 31, 1997. The Commonwealth submitted a SIP revision establishing a PAMS network into the State's overall ambient air quality monitoring network on November 15, 1993. This document is divided into four parts:

I. Background Information
II. Analysis of State Submission
III. Final Action
IV. Administrative Requirements

### I. Background Information

*1. Emission Inventory:*

Under the CAA as amended in 1990, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce volatile organic compound (VOC) emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the ''Emission Inventory Requirements for Ozone State Implementation Plans,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)-(e) of title I of the CAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the agency intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. In this action EPA will rely on the General Preamble's interpretation of the CAA, and the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's rule and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides ($NO_X$), and carbon monoxide (CO). The inventory is to address actual VOC, $NO_X$, and CO

emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498 (April 16, 1992)).

*2. PAMS Network*

On November 15, 1993, the Massachusetts Department of Environmental Protection (DEP) submitted to the EPA a SIP revision incorporating PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The Commonwealth will establish and maintain PAMS as part of its overall ambient air quality monitoring network.

Section 182(c)(1) of the CAA and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, $NO_X$, and VOCs no later than 18 months after the date of the enactment of the Act. These rules will provide a mechanism for obtaining more comprehensive and representative data on ozone air pollution in areas designated nonattainment and classified as serious, severe, or extreme.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires the State to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, § 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

On December 30, 1993, the Massachusetts DEP submitted a PAMS network description. The EPA sent the Commonwealth a letter on May 17, 1994 finding the submittal administratively complete. This submittal was reviewed and approved on July 21, 1994 by the EPA and was judged to satisfy the requirements of section 58.40(a). Since network descriptions may change annually, they are not part of the SIP as recommended by the document, ''Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR part 58'' (EPA–450/4–78–038, OAQPS, November 1979). However, the network description is negotiated and approved during the annual review as required by 40 CFR sections 58.25 and 58.36, respectively, and any revision must be reviewed as provided at 40 CFR section 58.46.

The Massachusetts PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and to comply with the PAMS regulations, codified at 40 CFR part 58. The Massachusetts DEP held several public hearings on the PAMS SIP revision during October, 1993.

## II. Analysis of State Submission

*1. Emission Inventory*

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[1] Final approval of the inventory will not occur until the State revises the inventory to address public comments. Changes to the inventory that impact the 15 percent reduction calculation and require a revised control strategy will constitute a SIP revision. EPA created a ''de minimis'' exception to the public hearing requirement for minor changes. EPA defines ''de minimis'' for such purposes to be those in which the 15 percent reduction calculation and the associated control strategy or the maintenance plan showing, do not change. States will aggregate all such ''de minimis'' changes together when making the determination as to whether the change constitutes a SIP revision. The State will need to make the change through the formal SIP revision process, in conjunction with the change to the control measure or other SIP programs.[2] Section 110(a)(2) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

On November 13, 1992, the Commonwealth of Massachusetts submitted to the EPA as a SIP revision the 1990 base year inventories for the two serious ozone nonattainment areas. Prior to the Commonwealth's submittal of final inventories to the EPA on November 13, 1992, the State had submitted draft inventories to EPA on May 1, 1992. EPA reviewed the draft inventories and sent comments to the state by letter dated September 1, 1992. The revised inventories submitted to EPA on November 13, 1992, addressed many of EPA's comments. EPA reviewed the November 13, 1992 submittal and provided comments to the State through the hearing process by letter dated August 5, 1993. These comments included comments developed by an EPA contractor's review of the Massachusetts inventories. The contractor's comments are summarized within reports dated April 12 and May 25, 1993. Massachusetts submitted revisions to its final 1990 base year emission inventories on November 15, 1993, November 15, 1994, and March 31, 1997. The State held several public hearings on the emission inventories, the last of which occurred on February 13 and 14, 1997.

The EPA Region I Office has compared the final Massachusetts inventories with the deficiencies noted in the various comment letters and concluded that Massachusetts has adequately addressed the issues presented in the comment letters.

B. Emission Inventory Review

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 182(a)(1) (*see* 57 FR 13565–13566 (April 16, 1992)). The EPA is approving the Massachusetts ozone base year emission inventories submitted to the EPA in final form on November 15, 1994, based on the Levels I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventories are acceptable or should be disapproved.

The Levels I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current EPA guidance.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the QA program contained in the IPP was performed and its implementation documented.

2. Adequate documentation was provided that enabled the reviewer to

[1] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I-X, ''Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' September 29, 1992.

determine the emission estimation procedures and the data sources used to develop the inventory.

3. The point source inventory must be complete.

4. Point source emissions must have been prepared or calculated according to the current EPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must have been prepared or calculated according to the current EPA guidance.

7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.

8. The method (e.g., Highway Performance Modeling System or a network transportation planning model) used to develop vehicle miles travelled (VMT) estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,'' U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992.

9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in ''Quality Review Guidelines for 1990 Base Year Emission Inventories,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in EPA memoranda noted in the margin.[3]

The emission inventories prepared by Massachusetts for its two, serious ozone nonattainment areas meet each of Level III's ten criteria. Documentation of the EPA's evaluation, including details of the review procedure, is contained within the technical support document prepared for the Massachusetts 1990 base year inventory, which is available to the public as part of the docket supporting this action.

*2. PAMS Network*

The Massachusetts PAMS SIP revision will provide the Commonwealth with the authority to establish and operate the PAMS sites, will secure State funds for PAMS, and will provide the EPA with the authority to enforce the implementation of PAMS, since its implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, codified at 40 CFR Part 58, and are included in ''Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR part 58'' (EPA–450/4–78–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993, memorandum from G. T. Helms entitled, ''Final Boilerplate Language for the PAMS SIP Submittal,'' the CAA, and the General Preamble.

The September 2, 1993, Helms memorandum stipulates that the PAMS SIP, at a minimum, must:

1. Provide for monitoring of criteria pollutants, such as ozone and nitrogen dioxide and non-criteria pollutants, such as nitrogen oxides, speciated VOCs, including carbonyls, as well as meteorological parameters;

2. Provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules;

3. Make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network;

4. Provide a statement that SLAMS will employ Federal reference methods (FRM) or equivalent methods while most PAMS sampling will be conducted using methods approved by the EPA.

The Massachusetts PAMS SIP revision provides that the Commonwealth will implement PAMS as required in 40 CFR part 58, as amended February 12, 1993. The State will amend its SLAMS and its NAMS monitoring systems to include the PAMS requirements. It will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. The Commonwealth has begun implementing its PAMS network as required in 40 CFR part 58.

The Massachusetts PAMS SIP revision also includes a provision to meet quality assurance requirements as contained in 40 CFR part 58, Appendix A. The Commonwealth's SIP revision also assures EPA that the State's PAMS monitors will meet monitoring methodology requirements contained in 40 CFR part 58, Appendix C. Lastly, the Commonwealth's SIP revision requires that the Massachusetts PAMS network will be phased in over a period of five years as required in 40 CFR section 58.44. The State's PAMS SIP submittal and the EPA's technical support document are available for viewing at the EPA Region I Office as outlined under the ''Addresses'' section of this **Federal Register** document. The Commonwealth's PAMS SIP submittal is also available for viewing at the Massachusetts State Office as outlined under the ''Addresses'' section of this **Federal Register** document.

## III. Final Action

*1. Emission Inventory*

Massachusetts has submitted complete inventories containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following table:

VOC[4]

[Ozone Seasonal Emissions in Tons Per Day]

| NAA | Area source emissions | Point source emissions | On-road mobile emissions | Non-road mobile emissions | Biogenic | Total emissions |
|---|---|---|---|---|---|---|
| Springfield | 52.64 | 13.71 | 62.24 | 29.59 | 277.22 | 435.40 |

[3] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, ''Final Emission Inventory Level III Acceptance Criteria,'' October 7, 1992; and memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, ''Emission Inventory Issues,'' June 24, 1993.

VOC [4]—Continued

[Ozone Seasonal Emissions in Tons Per Day]

| NAA | Area source emissions | Point source emissions | On-road mobile emissions | Non-road mobile emissions | Biogenic | Total emissions |
|---|---|---|---|---|---|---|
| Bos-Law-Wor | 313.42 | 50.57 | 286.54 | 177.46 | 374.02 | 1202.01 |

[4] Note that these VOC inventory numbers include emissions of perchloroethylene and acetone. EPA has determined that these VOCs are photochemically non-reactive and do not significantly contribute to ozone production. Therefore, these inventory numbers have been adjusted to remove emissions of these VOCs in the proposed conditional interim approval of Massachusetts' 15 percent plan published elsewhere in today's **Federal Register**.

$NO_X$

[Ozone Seasonal Emissions in Tons Per Day]

| NAA | Area source emissions | Point source emissions | On-road mobile emissions | Non-road mobile emissions | Biogenic | Total emissions |
|---|---|---|---|---|---|---|
| Springfield | 4.40 | 19.29 | 74.48 | 19.90 | NA | 118.07 |
| Bos-Law-Wor | 28.09 | 298.77 | 332.30 | 156.28 | NA | 815.44 |

CO

[Ozone Seasonal Emissions in Tons Per Day]

| NAA | Area source emissions | Point source emissions | On-road mobile emissions | Non-road mobile emissions | Biogenic | Total emissions |
|---|---|---|---|---|---|---|
| Springfield | 7.93 | 6.70 | 484.31 | 178.22 | NA | 677.16 |
| Bos-Law-Wor | 45.51 | 33.62 | 2064.06 | 1176.46 | NA | 3319.65 |

Massachusetts has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual ozone precursor emissions in the Springfield and Boston-Lawrence-Worcester serious ozone nonattainment areas. The inventories are complete and approvable according to the criteria set out in the November 12, 1992 memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD to G. T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, AQMD. In today's final action, the EPA is approving the SIP 1990 base year ozone emission inventories submitted by the Commonwealth for the Springfield area and the Massachusetts portion of the Boston-Lawrence-Worcester nonattainment area as meeting the requirements of section 182(a)(1) of the CAA.

*2. PAMS Network*

In today's action, the EPA is fully approving the revision to the Massachusetts ozone SIP for PAMS.

The EPA is publishing these actions without prior proposal because the Agency views them as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve these SIP revisions and is soliciting public comment on them. This action will be effective September 12, 1997 unless, by August 13, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final actions. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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. If no such comments are received, the public is advised that this action will be effective Septermber 12, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

*A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the

nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*C. Unfunded Mandates*

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1997. 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 13, 1997.

**John P. DeVillars,**

*Regional Administrator, Region I.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7641q.

### Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(113) to read as follows:

**§ 52.1120 Identification of plan.**

* * * * *

(c) * * *

(113) A revision to the Massachusetts SIP regarding ozone monitoring. The Commonwealth of Massachusetts will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The Commonwealth's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) Massachusetts PAMS Network Plan, which incorporates PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS).

(ii) Additional material.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 30, 1993 submitting a revision to the Massachusetts State Implementation Plan.

3. Section 52.1125 is added to read as follows:

**§ 52.1125 Emission inventories.**

(a) The Governor's designee for the Commonwealth of Massachusetts submitted the 1990 base year emission inventories for the Springfield nonattainment area and the Massachusetts portion of the Boston-Lawrence-Worcester ozone nonattainment area on November 13, 1992 as a revision to the State Implementation Plan (SIP). Revisions to the inventories were submitted on November 15, 1993, and November 15, 1994, and March 31, 1997. The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for these areas.

(b) The inventories are for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventories covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) Taken together, the Springfield nonattainment area and the Massachusetts portion of the Boston-Lawrence-Worcester nonattainment area encompass the entire geographic area of the State. Both areas are classified as serious ozone nonattainment areas.

[FR Doc. 97–18408 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

**[FRL–5855–1]**

### Clean Air Act Final Full Approval of Operating Permits Program and Approval of Delegation of Section 112(l); State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final full approval.

**SUMMARY:** By this action the EPA grants final full approval to Iowa's Title V operating permit program for the purpose of meeting the requirements of 40 CFR Part 70. This fulfills the conditions of the interim approval granted on September 1, 1995, which became effective October 2, 1995.

**DATES:** This action is effective September 12, 1997 unless by August 13, 1997 adverse or critical comments are received. If the effective date is delayed timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the documents relevant to this action are available for

public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Comments may be submitted to Christopher Hess, EPA, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Hess at (913) 551–7213.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In a rulemaking dated September 1, 1995 (60 FR 45671–45673), the EPA granted interim approval to Iowa's Title V program. This interim approval was necessary because the state needed to submit a revised workload analysis describing how the operating permits program would be implemented at the Iowa Department of Natural Resources (IDNR). Based on the proposed rulemaking dated April 26, 1995 (60 FR 20465–20469), the state made four rule revisions and finalized its operating permit fee with only the revised workload analysis still to be completed. This analysis was submitted to the EPA in a letter dated April 3, 1997. Thus, the state has now completed each of the requirements for final full approval.

## II. Analysis of State Submission

According to the conditions of the interim approval, the state of Iowa had the option to either hire the originally forecasted amount of personnel or revise its workload analysis to demonstrate how the Title V program could be implemented with fewer personnel.

The IDNR's original program submittal forecasted approximately 520 Title V sources in Iowa. Due to creation of a Federally Enforceable State Operating Permit Program that enables sources to limit their potential to emit and thus be excused from Title V requirements, the IDNR has reduced the number of Title V sources to approximately 290.

The IDNR has a total of 75.5 personnel available for implementation of the program (including ''augmented'' personnel from the small business assistance and local agency programs). Additionally, the IDNR has six more authorized positions to fill and has requested five new positions for FY–98. This results in a total of 86.5 FTE for the program which is almost identical to the IDNR's original forecast. Thus, the EPA concludes that the state has an adequate amount of personnel to implement a Title V program and considers the state to have fulfilled the conditions necessary for final full approval.

In terms of program design, the IDNR has created five sections to include: General (includes monitoring and technical assistance); Planning and Compliance (includes modeling, permit reporting, enforcement, stack testing); Compliance and Enforcement (includes inspections of Title V sources as well as those who have permit restrictions and must be verified as not subject to Title V); Construction Permits (including preconstruction permitting, applicability determinations, and emission control reviews); and the Operating Permits Section (including Title V review and general permits).

This design and the number of personnel assigned to the various activities mirrors that of other state programs successfully implementing Title V programs.

## III. Final Action

The EPA grants final full approval to Iowa's Title V program since the state has fulfilled the conditions of the interim approval effective October 2, 1995. This meets the Federal requirements set forth in 40 CFR Part 70.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to grant final full approval should adverse or critical comments be filed. This action is effective September 12, 1997 unless, by August 13, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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. If no such comments are received, the public is advised that this action is effective September 12, 1997.

## IV. Administrative Requirements

### *A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

### *B. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

### *C. Regulatory Flexibility Act*

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act (CAA), preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

### *D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: June 24, 1997.

**U. Gale Hutton,**

*Acting Regional Administrator.*

Part 70 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for Iowa to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

* * * * *

*Iowa*

* * * * *

(b) The Iowa Department of Natural Resources submitted a revised workload analysis dated April 3, 1997. This fulfills the final condition of the interim approval effective on October 2, 1995, and which would expire on October 1, 1997. The state is hereby granted final full approval effective September 12, 1997.

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[FR Doc. 97–18250 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–300515; FRL–5731–3]**

**RIN 2070–AB78**

## Fenpropathrin; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of fenpropathrin in or on currants . This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on currants in Washington. This regulation establishes a maximum permissible level for residues of fenpropathrin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

**DATES:** This regulation is effective July 14, 1997. Objections and requests for hearings must be received by EPA on or before September 12, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP–300515], must be submitted to: Hearing Clerk (1900),Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300515], must also besubmitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300515]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Olga Odiott, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9363, e-mail: odiott.olga@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide fenpropathrin, in or on currants at 15 part per million (ppm). This tolerance will expire and is revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

### I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

## II. Emergency Exemption for Fenpropathrin on Currants and FFDCA Tolerances

The Washington Department of Agriculture availed itself of the authority to declare the existence of a crisis situation within the state on May 21, 1997, thereby authorizing use under FIFRA Section 18 of fenpropathrin to control the currant borer (*Synanthedon tipuliformes*) . Washington has also requested a specific exemption for this use of fenpropathrin. The applicant stated that the currant borer is a serious pest of currants in Washington. The currant borer adults emerge during mid May in central Washington and lay their eggs on the currant canes over a period of 4 to 5 weeks. Newly hatched larvae bore into the center of the cane and feed in the pith creating a tunnel. Borer damage increases each year when no control measures are taken. With the cancellation of parathion there are no registered pesticides that will provide adequate control. The applicant stated that presently, cane stands have dead canes ranging from 10 to 30% and if left uncontrolled, the perennial plantings will be lost. EPA has authorized under FIFRA section 18 the use of fenpropathrin on currants for control of the currant borer in Washington. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fenpropathrin in or on currants. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on currants after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether fenpropathrin meets EPA's registration requirements for use on currants or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fenpropathrin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fenpropathrin, contact the Agency's Registration Division at the address provided above.

## III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### *A. Toxicity*

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% r less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same

rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

*B. Aggregate Exposure*

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup(non-nursing infants < 1 year old) was not regionally based.

## IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of fenpropathrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fenpropathrin on currants at 15 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenpropathrin are discussed below.

1. *Acute toxicity.* An acute dietary endpoint was not identified from the toxicity studies available to the Agency; therefore this risk assessment was not required.

2. *Short - and intermediate - term toxicity.* For short- and intermediate-term toxicity endpoints were not

identified from the available data; therefore this risk assessment was not required.

3. *Chronic toxicity*. EPA has established the RfD for fenpropathrin at 0.025 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 1-year feeding study in dogs with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. The lowest observed effect level (LOEL) of 6.25 mg/kg/day was based on tremors.

4. *Carcinogenicity*. Fenpropathrin has not been classified as to its carcinogenicity by the EPA. However, studies in two species show no evidence of oncogenicity.

*B. Exposures and Risks*

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.466) for the residues of fenpropathrin, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in peanuts to 20 ppm in peanut hay. Animal commodity tolerances have been established for meat, fat, meat by-products, eggs, and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenpropathrin as follows:

*Chronic exposure and risk.* The chronic dietary risk assessment assumed 100% of currants will contain tolerance level residues and 100% of the crop will be treated. All other commodities having fenpropathrin tolerances were assumed to be 100% crop-treated, but most have received anticipated residue refinement. Thus, in making a safety determination for this tolerance, the EPA is taking into account this conservative exposure assessment. The population subgroup with the largest percentage of the RfD occupied is non-nursing infants <1 year old, at 26% of the RfD.

2. *From drinking water.* Based on available data used in EPA's assessment of environmental risk, fenpropathrin is persistent and not mobile. There are no established Maximum Contaminant Level for residues of fenpropathrin in drinking water. No health advisory levels for fenpropathrin in drinking water have been established.

*Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause fenpropathrin to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with fenpropathrin in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Fenpropathrin is currently registered for use on ornamental plants. EPA believes that this use would not fall under a chronic exposure scenario, but may constitute a short- and/or intermediate-term exposure scenario. However, no toxicological endpoints for non-dietary exposure have been identified.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Fenpropathrin is a member of the synthetic pyrethroids class of pesticides. Other members of this class include allethrin, tetramethrin, resmethrin, bioresmethrin, phenothrin, fenvalerate, permethrin, cyfluthrin, cypermethrin, flucythrinate, fluvalinate, tralomethrin, bifenthrin, tefluthrin, and lambda-cyhalothrin.

EPA does not have, at this time, available data to determine whether fenpropathrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that fenpropathrin has a common mechanism of toxicity with other substances.

*C. Aggregate Risks and Determination of Safety for U.S. Population*

*Chronic risk.* Using the partially refined ARC exposure assumptions described above, EPA has concluded that aggregate exposure to fenpropathrin from food will utilize 8% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1year old at 26% of the RfD (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenpropathrin in drinking water and

from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenpropathrin residues.

*D. Aggregate Cancer Risk for U.S. Population*

Fenpropathrin has not been classified as to its carcinogenicity by the EPA. However, studies in two species show no evidence of oncogenicity.

*E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenpropathrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to pre- and post-natal effects from exposure to the pesticide, information on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies*— *Rats*: The maternal (systemic) NOEL was 6 mg/kg/day. The maternal LOEL of 10 mg/kg/day was based on death, moribundity, ataxia, hypersensitivity, spastic jumping, tremors, convulsions, hunched posture, and squinting eyes. The developmental (fetal) NOEL was ≤10 mg/kg/day at the highest dose tested [HDT]. *Rabbits*: The maternal (systemic) NOEL was 4 mg/kg/day. The maternal LOEL of 12 mg/kg/day was based on anorexia, grooming, and flicking of the forepaws. The developmental (fetal) NOEL was ≤36 mg/kg/day at the HDT.

c. *Reproductive toxicity study— Rats*: In the 3-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 3 mg/kg/day. The parental (systemic) LOEL of 8.9 mg/kg/day was based on body tremors with spasmodic muscle twitches, increased sensitivity and maternal lethality. The developmental NOEL was 3.0 mg/kg/day. The developmental LOEL of 8.9 mg/kg/day was based on body tremors and increased mortality. The reproductive (pup) NOEL was 8.9 mg/kg/day. The reproductive LOEL of 8.9 mg/kg/day was based on increased pup loss in the F2 generation.

d. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for fenpropathrin is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 3-generation reproductive toxicity study in rats.

e. *Conclusion.* EPA concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed to protect infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of fenpropathrin ranges from 13 % for children (7-12 years old), up to 26% for non-nursing infants (< 1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenpropathrin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenpropathrin residues.

## V. Other Considerations

*A. Metabolism In Plants and Animals*

The nature of the residue in/on tree fruits is adequately understood. The residue of concern is fenpropathrin, per se, as specified in 40 CFR 180.466 .

*B. Analytical Enforcement Methodology*

Adequate enforcement methodology is available to enforce the tolerance expression. Method RM-22-4 was successfully validated by EPA on apples. The method has been submitted for inclusion in PAM II.

*C. Magnitude of Residues*

Residues of fenpropathrin per se are not expected to exceed 15 ppm in/on currants as a result of this Section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with this Section 18 use.

*D. International Residue Limits*

No CODEX MRL has been established for residues of fenpropathrin in/on currants. A CODEX MRL has been established for residues of fenpropathrin in/on the pome fruit crop group at 5.0 ppm and grapes at 5.0 ppm.

*E. Rotational Crop Restrictions.*

The results from field rotational crop studies indicate that no rotational crop restrictions or tolerances are required.

## VI. Conclusion

Therefore, a time-limited tolerance is established for residues of fenpropathrin in currants at 15 ppm.

## VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 12, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions

of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300515] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

## IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 1997.

**James Jones.**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority :** 21 U.S.C. 346a and 371.

2. Section 180.466 is amended by designating the existing text as paragraph (a) and adding a heading, by adding paragraph (b) and by adding and reserving paragraphs (c) and (d) to read as follows:

### § 180.466 Fenpropathrin.

(a) *General* . * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide fenpropathrin in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance will expire and is revoked on the date specified in the following table.

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| Currants | 15 | December 31, 1998 |

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–18560 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–5854–3]**

### National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Tri-State Plating Superfund Site from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of the Tri-State Plating Superfund Site in Indiana from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Indiana, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Indiana have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** July 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bill Bolen at (312) 353–6316 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: The Bartholomew County Health Department, 440 3rd St., Suite 303, Columbus, IN 47201–6798. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Tri-State Plating Superfund Site located in Columbus, Indiana. A Notice of Intent to Delete for this site was published May 22, 1997 (62 FR 26463). The closing date for comments on the Notice of Intent to Delete was June 21, 1997. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 24, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator, U.S. EPA, Region V.*

40 CFR part 300 is amended as follows:

### PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

### Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Tri-State Plating Superfund Site, Columbus, Indiana.''

[FR Doc. 97–17733 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–58; RM–8998]**

### Radio Broadcasting Services; Randolph, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Vixon Valley Broadcasting, allots Channel 272A to Randolph, Utah, as the community's first local aural transmission service. *See* 62 FR 07983, February 21, 1997. Channel 272A can be allotted to Randolph, Utah, in compliance with the Commission's minimum distances separation requirements without the imposition of a site restriction. The coordinates for Channel 272A at Randolph are 41–39–54 NL and 111–11–12 WL. With this action, this proceeding is terminated.

**DATES:** Effective August 11, 1997. The window period for filing applications will open on August 11, 1997, and close on September 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97–58, adopted June 18, 1997, and released June 27, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

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:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Randolph, Channel 272A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97–18294 Filed 7–11–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 961107312–7021–02; I.D. 070397E]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements and Shortraker/Rougheye Rockfish in the Aleutian Islands Subarea

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

**ACTION:** Change in recordkeeping and reporting requirements.

**SUMMARY:** NMFS has determined that Daily Production Reports (DPRs) must be submitted by operators of processor vessels that catch or receive shortraker/rougheye rockfish and shoreside processing facilities that receive shortraker/rougheye rockfish in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent further mortality beyond the total allowable catch (TAC) and potential overfishing of shortraker/rougheye rockfish in that area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 1997, through 2400 hrs, A.l.t., December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Magnuson-Stevens Act requires that conservation and management measures prevent overfishing. The 1997 overfishing level for the shortraker/rougheye rockfish in the Aleutian Islands subarea of the BSAI is established by the Final 1997 Harvest Specifications for Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 1,250 metric tons (mt) and the acceptable biological catch and the TAC as 938 mt. As of June 21, 1997, 1,182 mt of shortraker/rougheye rockfish have been caught.

Although retention of shortraker/rougheye rockfish was prohibited and several fisheries were closed to prevent overfishing of shortraker/rougheye rockfish (See 62 FR 16736, April 5, 1997; 62 FR 20129, April 25, 1997; 62 FR 26429, May 14, 1997), bycatch and discard continue to occur in fisheries still open.

Pursuant to § 679.5(j) the Administrator, Alaska Region, NMFS (Regional Administrator) is requiring operators of processor vessels that catch or receive shortraker/rougheye rockfish and shoreside processing facilities that receive shortraker/rougheye rockfish in the Aleutian Islands subarea of the BSAI to submit DPRs in addition to Weekly Production Reports.

These requirements are necessary to prevent further mortality beyond the TAC and potential overfishing of shortraker/rougheye rockfish in the Aleutian Islands subarea of the BSAI. The Regional Administrator is doing so in consideration of the potential for exceeding the overfishing level of shortraker/rougheye rockfish in the Aleutian Islands subarea of the BSAI.

DPRs must include all information required by § 679.5(j)(4) for groundfish harvested from the applicable reporting areas. Processors must submit the required information on the ''Alaska Groundfish Processor Daily Production Report'' form that was distributed to participants in the groundfish fishery with their 1997 Federal fisheries permit. The form also may be obtained from the Regional Administrator by calling Mary Furuness at 907–586–7228. Processors must transmit completed DPRs to the Regional Administrator by facsimile transmission at 907– 586-7131, no later than 12 hours after the end of the day the groundfish was processed. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0213.

Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting shortraker/rougheye rockfish in the Aleutian Islands subarea of the BSAI. A delay in the effective date is impracticable and contrary to public interest. Further delay without DPRs could result in industry's reaching the overfishing level for this species group. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 8, 1997.

**Bruce Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–18325 Filed 7–8–97; 5:02 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 62, No. 134
Monday, July 14, 1997

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1011

**[Docket No. DA–97–09]**

### Milk in the Tennessee Valley Marketing Area; Notice of Extension of Time for Filing Comments

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; extension of time for filing comments.

**SUMMARY:** This document extends the time for filing comments to the proposed termination for the Tennessee Valley Federal milk marketing order from July 10, 1997, to July 31, 1997. The Department issued the proposed termination in response to producer disapproval of the Tennessee Valley order as provided for in the May 12, 1997, final decision which proposes to amend transportation credit provisions in 4 southeastern milk orders. Southern Belle Dairy, a handler regulated under the Tennessee Valley milk order, requested the extension of time contending that the original comment period was too short to prepare a proper response.

**DATES:** Comments are now due on or before July 31, 1997.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas Memoli@usda.gov.

**SUPPLEMENTARY INFORMATION:**

Prior documents in this proceeding:

*Notice of Proposed Termination:* Issued June 30, 1997; published July 3, 1997 (62 FR 36022).

Notice is hereby given that the time for filing comments to the proposed termination is hereby extended from July 10, 1997, to July 31, 1997.

Southern Belle Dairy requested the extension of time for comments arguing that the extension was necessary in order to have sufficient time to prepare a proper response to the proposed termination. Taking into consideration other obligations by interested parties, the Department contends that the additional time is reasonable and justified.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

### List of Subjects in 7 CFR Part 1011

Milk marketing orders.

Dated: July 9,1997.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 97–18393 Filed 7–11–97; 8:45 am]

**BILLING CODE 3410–02–U**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1137

**[DA–97–02]**

### Milk in the Eastern Colorado Marketing Area; Termination of Proceeding on Proposed Suspension/Termination of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; termination of proceeding.

**SUMMARY:** This document terminates the proceeding that was initiated to consider a proposal to suspend or terminate a portion of the performance standard for regulating a distributing plant under the Eastern Colorado Federal milk marketing order. Currently, the order specifies that a distributing plant disposing of 10 percent or more of its Grade A milk receipts, or 12,000 pounds per day, whichever is less, as route disposition in the marketing area is a fully regulated distributing plant. Brown-Swiss Gillette Dairy, a handler operating a distributing plant that is partially regulated under 3 Federal milk orders, requested the suspension or termination.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address: Clifford__M__Carman@usda.gov.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 2, 1997; published April 8, 1997 (62 FR 16737).

### Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of January 1997, the milk of 426 producers was pooled on the Eastern Colorado Federal milk order. Of these producers, 323 produced below the 326,000-pound production guideline and are considered as small businesses. A majority of these producers produce less than 100,000 pounds per month. Of the total number of producers whose milk was pooled during that month, 6 were non-member producers and 420 were members of either Mid-America

Dairymen or Western Dairymen Cooperative, Inc. For January 1997, 322 cooperative members and one non-member producer met the small business criterion.

For the month of January 1997, there were 10 handlers operating 11 plants pooled or regulated under the Eastern Colorado milk order. Of these handlers, half have 500 or fewer employees and qualify as small businesses.

Brown Swiss-Gillette Dairy (Gillette) receives its milk from Black Hills Milk Producers Cooperative. During the month of January 1997, 55 of the 58 producers supplying milk to Black Hills Milk Producers Cooperative would be considered small businesses.

This document terminates the proceeding to suspend or terminate part of a provision of the Eastern Colorado marketing order which makes a distributing plant disposing of 10 percent or more of its Grade A receipts, or 12,000 pounds per day, whichever is less, as route disposition in a marketing area a fully regulated plant. The termination of this proceeding will not have a significant economic impact on a substantial number of small entities because the order will continue to function as it has with no noticeable impact on producers and will not result in any additional regulatory burden on handlers in the Eastern Colorado marketing area. Handlers in the marketing area will continue to pay the minimum order prices to producers.

**Preliminary Statement**

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Notice of proposed rulemaking was published in the **Federal Register** on April 8, 1997 (62 FR 16737) concerning a proposed suspension of part of a provision of the Eastern Colorado milk order. The proposal would have suspended or terminated a portion of the provision which specifies that a distributing plant disposing of 10 percent or more of its Grade A milk receipts, or 12,000 pounds per day, whichever is less, as route disposition in the marketing area be considered a fully regulated pool plant. Interested persons were afforded opportunity to file written data, views and arguments thereon. Five comments opposing the proposed suspension or termination were received. No supporting comments were received.

**Statement of Consideration**

This document terminates the proceeding to suspend or terminate a portion of the performance standard for regulating a distributing plant under the Eastern Colorado milk order. Currently, the order specifies that a distributing plant disposing of 10 percent or more of its Grade A milk receipts, or 12,000 pounds per day, whichever is less, as route disposition in the marketing area is a fully regulated distributing plant.

Gillette requested the termination or suspension of the 12,000-pound limitation, contending that the limitation is unreasonable when considering the plant size which must be maintained in order for Gillette to survive financially and also maintain its status as a partially regulated plant. Gillette also states that the 12,000-pound limitation is unreasonable when compared to the amount of packaged products delivered in one truckload, which greatly exceeds this limitation. Gillette states that termination or suspension will assure equity among producers and among handlers.

A comment filed on behalf of Western Dairymen Cooperative, Inc. (WDCI), a cooperative association marketing approximately 83% of the total amount of milk pooled on Order 137, opposes the proposed suspension as requested by Brown Swiss-Gillette Dairy. WDCI states that Gillette's route disposition in the Eastern Colorado marketing area is significant in the northern sections of the marketing area and contends that Gillette vigorously competes with fully regulated handlers serving the retail markets in that portion of the marketing area. Due to Gillette's partially regulated handler status that only obligates Gillette to pay into the producer-settlement fund the difference between Order 137's uniform price less $.58 and what it actually pays its producers, WDCI states that it is possible that Gillette already possesses a price advantage over fully regulated competing handlers in the Order 137 marketing area. WDCI also states that the 12,000-pound per day disposition criterion is a reasonable performance standard and any disposition in excess of this amount by a handler should result in such handler being fully regulated. WDCI opposes the proposed suspension contending that it would open the door for unequal costs among handlers and would result in harm to producers whose milk is pooled under Order 137.

Borden/Meadow Gold Dairies, Inc., an Order 137 regulated handler, which competes for sales with Gillette, also opposes the proposed suspension or termination. Borden/Meadow Gold Dairies states that the 12,000-pound per day route disposition limitation includes enough sales to cause competitive market pricing and that Gillette has a choice whether to increase their share of sales in the Eastern Colorado marketing area and become fully regulated or stay within the limitation and remain partially regulated. Furthermore, the commentor recommends that the Department should not suspend the 12,000-pound per day limitation while the Federal order reform process is under review.

Sinton Dairy Foods Company, Dairy Gold Foods, and Robinson Dairy, handlers regulated under Order 137, also submitted comments in opposition to Gillette's request. The handlers state that removal of the 12,000-pound per day limitation would allow Gillette to expand their sales without being a fully regulated handler. Additionally, the handlers maintain that all handlers should be subject to the same provisions.

The comments submitted in response to the proposed suspension or termination reveal that there is overwhelming opposition to Gillette's proposal. For January 1997, WDCI and the 4 handlers that submitted opposing comments represented a significant amount of Class I producer milk on such market. The comments indicate that the 12,000-pound per day limitation is reasonable for this market. The removal of the 12,000-pound limitation would place fully regulated handlers at a competitive disadvantage. Any handler exceeding this limitation will be competing with fully regulated handlers and should be subject to the same order provisions. Gillette will remain a partially regulated pool plant or become fully regulated according to the standards of the Eastern Colorado milk order. Therefore, the proceeding to suspend or terminate part of the pool plant definition is terminated.

**List of Subjects in 7 CFR Part 1137**

Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

Dated: July 8, 1997.

**Michael V. Dunn,**

*Assistant Secretary, Marketing and Regulatory Services.*

[FR Doc. 97–18328 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

### Abolishment of Boca Grande as a Port of Entry

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes the abolishment of the port of entry of Boca Grande, Florida, in order to obtain more efficient use of its personnel, facilities and resources and to provide better service to carriers, importers and the general public.

**DATES:** Comments must be received on or before September 12, 1997.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street, NW. Suite 4000, Washington, DC, on regular business days between the hours of 9:00 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Harry Denning, Office of Field Operations, 202–927–0196.

**SUPPLEMENTARY INFORMATION:**

#### Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is proposing to amend § 101.3(b)(1), Customs Regulations (19 CFR 101.3(b)(1)), by abolishing the port of entry of Boca Grande, Florida.

Customs wishes to eliminate the port so that Customs can make more efficient use of its personnel, facilities and resources. There is not sufficient activity at the port to maintain the facility, and there are other nearby active ports of entry such as Sarasota and Tampa which are available to handle any Customs transactions in that geographical area.

If the abolishment of Boca Grande is adopted, the list of Customs ports in 19 CFR 101.3(b)(1) will be amended accordingly.

#### Comments

Before adopting this proposal, consideration will be given to any written comments submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, 1099 14th St. NW., Suite 4000, Washington, DC 20005.

**Authority:** This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

#### Regulatory Flexibility Act

Customs establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Executive Order 12866

Because this document relates to agency organization and management, it is not subject to E. O. 12866.

#### Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**Samuel H. Banks,**

*Acting Commissioner of Customs.*

Approved: May 13, 1997.

**John P. Simpson,**

*Deputy Assistant, Secretary of the Treasury.*

[FR Doc. 97–18371 Filed 7–11–97; 8:45 am]

BILLING CODE 4820–02–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IL117–1b; FRL–5857–9]**

### Approval and Promulgation of State Implementation Plan; Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve Illinois' 15 Percent Rate-Of-Progress and 3 Percent Contingency plans for the purpose of reducing Volatile Organic Compound emissions in the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Oswego Township in Kendall County, and Aux Sable and Goose Lake Townships in Grundy County) and the Metro-East St. Louis ozone nonattainment area (Madison, Monroe, and St. Clair Counties). In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse written comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, the direct final rule will be withdrawn and all written public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments on this proposed rule must be received on or before August 13, 1997.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: July 2, 1997.

**Jerri-Anne Garl,**

*Acting Regional Administrator.*

[FR Doc. 97–18402 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MA–25–7197b; FRL–5846–9]**

## Approval and Promulgation of Implementation Plans; Conditional Interim Approval of Implementation Plans; Massachusetts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The EPA is proposing action on State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. The EPA is proposing approval of the Massachusetts 1990 base year ozone emission inventories, and also proposing approval of the establishment of a Photochemical Assessment Monitoring Stations (PAMS) network. The EPA proposes conditional interim approval of SIP revisions submitted by the Commonwealth to meet the 15 Percent Rate of Progress (ROP) Plan and Contingency plan requirements of the Clean Air Act (CAA).

The inventories were submitted by Massachusetts to satisfy a CAA requirement that those States containing ozone nonattainment areas (NAAs) classified as marginal to extreme submit inventories of actual ozone season emissions from all sources in accordance with EPA guidance. The PAMS SIP revision was submitted to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network by November 15, 1993. The 15 Percent ROP and contingency plans were submitted to satisfy CAA provisions that require ozone nonattainment areas classified as moderate and above to devise plans to reduce Volatile Organic Compound (VOC) emissions 15 percent by 1996 when compared to a 1990 baseline. EPA is proposing conditional interim approval because the 15 percent and contingency plans submitted by Massachusetts rely on the emission reductions from an automobile emission inspection and maintenance (I/M) program that in a separate action in the rules section of today's **Federal Register** is receiving a conditional interim approval.

In the final rules section of today's **Federal Register**, the EPA is fully approving the Massachusetts 1990 base year inventory, and fully approving the establishment of a PAMS network as a direct final rule without prior proposal, because the Agency views these as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for each approval is set forth in the direct final rule. The EPA is not publishing a direct final rule for the conditional interim approval of the Massachusetts 15 percent ROP and contingency plans. If no adverse comments are received on this direct final rule, no further activity is contemplated in relation to this proposed rule for these revisions. If EPA receives any material 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. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments on this proposed action must be postmarked by August 13, 1997.

**ADDRESSES:** Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, One Congress Street, Boston, Massachusetts 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Massachusetts Department of Environmental Protection, Division of Air Quality Control, One Winter Street, 7th Floor, Boston, Massachusetts, 02108–4746. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Robert F. McConnell, Air Quality Planning Unit, EPA Region I, JFK Federal Building, One Congress Street, Boston, Massachusetts, 02203; telephone (617) 565–9266.

**SUPPLEMENTARY INFORMATION:** For supplementary information regarding the Massachusetts 1990 base year emission inventory or establishment of a PAMS network, see the information provided in the direct final action of the same title which is located in the rules section of today's **Federal Register**.

### Background

Section 182(b)(1) of the CAA as amended in 1990 requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide anthropogenic VOC emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996. The Clean Air Act also sets limitations on the creditability of certain types of reductions. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990. Furthermore, the CAA does not allow credit for corrections to basic Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules (so called ''RACT fix-ups) as these programs were required prior to 1990.

In addition, sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures be included in the plan revision to be implemented if the area misses an ozone SIP milestone, or fails to attain the standard by the date required by the CAA.

There are two serious ozone nonattainment areas within Massachusetts which together encompass the entire geographic area of the Commonwealth. Massachusetts is therefore subject to the 15 Percent ROP requirements. The two areas are referred to as the Boston-Lawrence-Worcester serious area and the Springfield serious area. The Boston-Lawrence-Worcester area includes portions of counties in New Hampshire which also must demonstrate that ROP emission reduction requirements are met. Massachusetts did not enter into an agreement with New Hampshire to do a multi-state 15 percent plan, and therefore submitted a plan to reduce emissions only in the Massachusetts portion of this area. EPA is taking action today only on the Massachusetts portion of the Boston-Lawrence-Worcester 15 Percent plan. EPA will act separately on the New Hampshire portion of the 15 Percent plan for this area at a later date.

Massachusetts submitted final 15 Percent ROP plans to EPA on November 15, 1993. The plans contained adopted rules for some, but not all of the VOC control measures identified within the plan. Additionally, Massachusetts did not submit contingency plans, or a commitment to adopt contingency plans by November 15, 1994. The EPA deemed the Massachusetts 15 Percent plans incomplete by letter dated January 26, 1994, due to the lack of adopted rules for all of the control programs identified within the plans. Between January 26, 1994 and January 11, 1995, Massachusetts submitted adopted rules

for the control strategies identified within the 15 Percent plans. Revisions to the Commonwealth's 15 Percent ROP plans were submitted to the EPA on November 15, 1994 and December 30, 1994. On July 24, 1995, Massachusetts submitted contingency plans to the EPA as a SIP revision.

On March 31, 1997, Massachusetts submitted further revisions to its 15% ROP and contingency plans. The Commonwealth also submitted revisions to its post 1996 ROP plans on March 31, 1997. EPA is not proposing action on the Massachusetts post 1996 ROP plans within this notice.

The EPA has analyzed the submittals made by Massachusetts and believes that the 15 Percent plans and contingency plans can be given conditional interim approval because the Commonwealth has accurately analyzed the emission reductions needed to meet these requirements, and because the plans will strengthen the SIP by achieving reductions in emissions. These plans, however, rely to a significant extent upon the emission reductions from an automobile emission testing program. On January 30, 1997, EPA published a proposed conditional interim approval of the Massachusetts I/M program (62 FR 4505). A final conditional interim approval of the Massachusetts I/M program is being published in the rules section of today's **Federal Register**. Since the Massachusetts 15 percent and contingency plans rely to a significant extent upon the emission reductions from the I/M program, EPA is proposing conditional interim approval of these plans as well. Full approval of the 15 percent and contingency plans can be granted once the state meets the conditions outlined in the final action on the state's motor vehicle testing program. If Massachusetts does not meet those conditions, this conditional interim approval will convert a limited approval, limited disapproval. The emission reduction shortfall generated by the Commonwealth not meeting the conditions outlined in the I/M approval action will comprise the portion of the 15 percent and contingency plans which will receive limited disapproval; the remaining portions of these SIPs will receive limited approval. For a complete discussion of EPA's analysis of the Massachusetts 15 percent ROP plans and contingency plans, please refer to the Technical Support Document for this action which is available as part of the docket supporting this action. A summary of the EPA's findings follows.

**Emission Inventory**

The base from which States determine the required reductions in the 15 Percent plan is the 1990 emission inventory. The EPA is approving the Massachusetts 1990 emission inventory with a direct final action in the rules section of today's **Federal Register**. The inventory approved by the EPA exactly matches the one used in the 15 Percent ROP plan calculations.

**Calculation of Target Level Emissions**

Non-creditable reductions from the FMVCP and RVP programs must be subtracted from the base year inventory to develop what is termed the 1990 adjusted inventory. Massachusetts subtracted the non-creditable reductions from the FMVCP program from the 1990 inventory. Support documentation provided to EPA indicates that Massachusetts made this adjustment correctly.

The Commonwealth's original 15 Percent ROP plan did not include an adjustment for the RVP of gasoline sold in the state in 1990, despite the fact that Massachusetts documented that the RVP of gasoline sold during 1990 was 8.6. The revised 15 Percent ROP plan does contain an RVP adjustment within the calculation procedure used to develop the adjusted base year inventory. The Commonwealth performed this adjustment consistent with the guidance contained within the addendum to the EPA document, ''Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans.'' The adjustment consisted of a recalculation of adjusted 1996 on-road mobile source emissions using an RVP of 9.0. The net effect of the adjustments made for the FMVCP and RVP programs was that 32 tons per summer day (tpsd) of VOC were subtracted (statewide) from the 1990 baseline, anthropogenic emission estimate.

The total emission reduction required to meet the 15 Percent ROP plan requirements equals the sum of the following items: 15 percent of the adjusted inventory, reductions that occur from noncreditable programs such as the FMVCP and RVP programs as required prior to 1990, reductions needed to offset any growth in emissions that takes place between 1990 and 1996, and reductions that result from corrections to the I/M or VOC RACT rules. Table 1 summarizes these calculations for the two serious ozone nonattainment areas in Massachusetts.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS (TONS/SUMMER DAY)

| | Spring-field | Bos-Law-Wor |
|---|---|---|
| 1990 ROP Emission Inventory[1] | 153 | 795 |
| 1990 Adjusted Inventory[2] | 147 | 769 |
| 15% of Adjusted Inventory | 22 | 115 |
| Non-creditable Reductions | 10 | 39 |
| 1996 Target[3] | 122 | 640 |
| 1996 Adjusted Target[4] | 118 | 625 |
| 1996[5] Projected, Uncontrolled Emissions | 152 | 801 |
| Required Reduction[6] | 34 | 176 |

[1] Perchloroethylene and acetone emissions were subtracted from the anthropogenic inventory due to their addition to the list of photochemically non-reactive VOCs.

[2] FMVCP and RVP adjustments incorporated.

[3] 1996 Target is obtained by subtracting 15 percent of the adjusted inventory and the non-creditable reductions from the 1990 ROP inventory. Note that Massachusetts rounded its calculations to the nearest whole number, which may result in totals that appear off by one ton per summer day.

[4] 1996 adjusted target reflects subtraction of additional increment of FMVCP from 1996 to 1999, as required by December 23, 1996 guidance memorandum from Gay MacGregor and Sally Shaver to the Regional Air Directors on this topic.

[5] 1996 uncontrolled emissions for on-road mobile sources were calculated using an emission factor that reflected the level of control achieved by the FMVCP in 1996. Reductions from RACT and I/M fixups were also subtracted in deriving 1996 uncontrolled emissions.

[6] Required Reductions were obtained by subtracting 1996 adjusted target from the 1996 projected uncontrolled inventory.

**Measures Achieving the Projected Reductions**

Massachusetts has provided a plan to achieve the reductions required for its two serious ozone nonattainment areas. The following is a description of each control measure Massachusetts used to achieve emission reduction credit within its 15 percent ROP plans.

*A. Point Source Controls*

Massachusetts estimates that projected, controlled point source emission will decrease by 8 tpsd by 1996 when compared to base year point source emissions. The majority of these reductions are expected to occur from ''RACT fixups,'' and are not creditable emission reductions. Massachusetts correctly addressed the emission reductions that will occur from RACT fixups within the calculations performed to estimate the emission reduction obligations for the two serious areas.

Massachusetts has claimed approximately 1 tpsd in emission reduction credit from point sources within its ROP plans. This reduction is sought due to the implementation of ''50 ton VOC RACT'' on stationary sources with the potential to emit 50 tons/year of VOC. The Commonwealth's 15% ROP plan contains a list of the specific facilities from which emission reductions are anticipated. The list includes the quantity of emission reductions, and the relevant state rule applicable to the source. The Commonwealth has submitted the point source RACT rules to EPA for incorporation into the SIP. EPA has not approved the rules, but intends to by the time final action is taken on the Massachusetts 15 percent plans. The reductions claimed by the Commonwealth from point sources are approvable.

*B. Area Source Controls*

Automobile Refinishing

Massachusetts has adopted and submitted to the EPA an automobile refinishing regulation that will limit VOC emissions from this source category by regulating the VOC content of automotive refinishing products. The rule was submitted on January 9, 1995, and deemed complete on January 20, 1995. The rule was approved by EPA within the **Federal Register** on February 14, 1996 (61 FR 5696).

The state assumed a 40 percent control efficiency would be achieved by the automobile refinishing rule. On November 29, 1994, EPA issued a final guidance memorandum that allowed States to assume a 37 percent control level for this source category without adopting a State rule due to a pending National rule.

Although Massachusetts projected a slightly higher control efficiency than what is expected from the pending federal rule, this seems justified because the equipment standards requiring higher transfer efficiency for application equipment contained in the Massachusetts rule will generate emission reductions not expected from the federal rule, which will not have such provisions. Accordingly, EPA proposes to accept the Commonwealth's control efficiency estimate, even though it is slightly higher than what EPA has projected for its National rule.

Massachusetts projects statewide 1996 uncontrolled emissions for this source category as 31 tpsd. The rule is expected to reduce emissions to 18 tpsd, for a 13 tpsd emission reduction.

Commercial and Consumer Products

On January 9, 1995, Massachusetts submitted an adopted rule regarding commercial and consumer products to the EPA as a SIP revision. The rule, entitled, ''Best Available Controls for Consumer and Commercial Products,'' was deemed complete on January 15, 1995. The EPA approved the rule as part of the Massachusetts SIP on December 19, 1995 (60 FR 65240). EPA agrees with the 7 tpsd emission reduction calculated by Massachusetts for this source category.

Architectural Coatings

The consumer and commercial products rule adopted by Massachusetts and approved by EPA that is discussed above also contains emission limits for architectural and industrial maintenance (AIM) coatings. The Commonwealth projected an overall control efficiency of 20 percent for architectural and industrial maintenance coatings.

In a memo dated March 22, 1995, EPA provided guidance on the expected reductions from a pending national rulemaking on AIM coatings. The memo projects that emissions would be reduced by 20 percent for both architectural coatings and industrial maintenance coatings. Massachusetts has claimed a similar amount of credit from its rule. The 20 percent emission reduction of 10 tpsd expected from this rule is approvable.

*C. On-Road Mobile Source Controls*

(1) Vehicle Inspection and Maintenance

On March 27, 1996, Massachusetts submitted a revised vehicle I/M program pursuant to the National Highway Systems Designation Act (NHSDA) of 1995. The Commonwealth's program includes provisions requiring inspection and maintenance of heavy duty gasoline vehicles.

Section 182(b)(1) of the CAA requires that States containing ozone nonattainment areas classified as moderate or above prepare plans that provide for a 15 percent VOC emission reduction by November 15, 1996. Most of the 15 percent SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most States experienced substantial difficulties with these enhanced I/M programs, only a few States are currently actually testing cars using the original enhanced I/M protocol.

In September, 1995, the EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs. Subsequently, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides States with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded States that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many States upon enhanced I/M programs to help achieve the 15 percent VOC emission reduction required under CAA section 182(b)(1), and the recent NHSDA and regulatory changes regarding enhanced I/M programs, the EPA recognized that it is no longer possible for many States to achieve the portion of the 15 percent reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15 percent SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15 percent plans, even though the emission reductions from the I/M program will occur after November 15, 1996.

Specifically, the EPA will propose approval of 15 percent SIPs if the emission reductions from the revised, enhanced I/M programs, as well as from the other 15 percent SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable. To make this ''as soon as practicable'' determination, the EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15 percent level is achieved. The EPA does not believe that measures meaningfully accelerate the 15 percent date if they provide only an insignificant amount of reductions.

In the case of the Springfield and the Massachusetts portion of the Boston-Lawrence-Worcester serious nonattainment areas, Massachusetts has submitted 15 percent SIPs that would achieve the amount of reductions needed from I/M using an evaluation date of January, 2000. Massachusetts has submitted 15 percent SIPs that achieve all other reductions by November, 1996.

The EPA proposes to determine that these SIP revisions contain all measures, including enhanced I/M, that achieve the required reductions as soon as practicable.

The EPA proposes to determine that the I/M program for the Springfield nonattainment area and the Massachusetts portion of the Boston-Lawrence-Worcester area achieves reductions as soon as practicable.

The EPA has examined other potentially available SIP measures to determine if they are practicable for the two Massachusetts ozone nonattainment areas, and if they would meaningfully accelerate the date by which the area reaches the 15 percent level of reductions. The EPA proposes to determine that these SIPs contain the appropriate measures. The rationale for this determination is outlined within the technical support document available in the docket for this action. In summary, several area source measures exist which could conceivably be implemented prior to November 1999. However, these measures would not achieve the same level of emission reductions expected from the Commonwealth's I/M program, and additionally, would not meaningfully accelerate the achievement of the required reductions.

Massachusetts provided support documentation outlining the derivation of emission reductions anticipated from the automobile I/M program. The support documentation included a demonstration that the 15 percent reduction will be met assuming the Commonwealth's program achieves emission reduction levels reflective of an I/M 240 type program. Massachusetts also submitted a demonstration that the 15 percent reduction would be met assuming, more conservatively, that the I/M program achieves emission reductions reflective of an acceleration simulation mode type program. EPA has reviewed the Commonwealth's calculations and finds the estimates acceptable. As stated in the rule conditionally approving the I/M program in today's **Federal Register**, the Commonwealth's assumptions about the level of emission reductions from its I/M program are all consistent with commitments DEP has given EPA about how it will implement that program. The ultimate issue of how much emission reduction credit Massachusetts can claim for its I/M program will be determined as part of the program evaluation provided for under the National Highway Act, as described in EPA's conditional interim approval of the I/M program in today's **Federal Register**.

(2) Reformulated Gasoline (RFG)

Section 211(k) of the Clean Air Act requires that after January 1, 1995, reformulated gasoline be sold or dispensed in the nine nonattainment areas with the highest ozone design value with a population above 250,000. This gasoline is reformulated to burn cleaner and produce fewer evaporative emissions. The Commonwealth of Massachusetts was not subject to the CAA's reformulated gasoline requirement. However, on August 14, 1991 a letter from Governor Weld was submitted to EPA requesting that the Massachusetts serious ozone nonattainment areas participate in the reformulated fuels program. This request was published in the **Federal Register** on November 15, 1991, 56 FR 57986. The EPA enforces this program so the emission reductions are fully enforceable. For purposes of its 15 percent ROP plans, Massachusetts used the MOBILE5a model to calculate the emission reductions due to the implementation of the reformulated gasoline program.

(3) Tier I Federal Motor Vehicle Control Program

The EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR 25724 (June 5, 1991)). Since the standards were adopted after the Clean Air Act amendments of 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. For purposes of its 15 percent ROP plans, Massachusetts calculated these reductions using the MOBILE5a model.

(4) California Low Emission Vehicle Program

Massachusetts has adopted a regulation requiring that all new 1995 and subsequent model year passenger cars and light duty trucks sold, leased or registered in Massachusetts meet California's motor vehicle emission standards. This regulation, found at 310 CMR 7.40, was adopted by the Commonwealth in January 1992, and approved by EPA on February 1, 1995, (60 FR 6027). Massachusetts included the MOBILE5a runs in Appendix B of its 15 percent ROP plan. The MOBILE5a runs done to determine the emission reduction credit from the California Low Emission Vehicle program indicate that the reductions were calculated in accordance with EPA guidance.

(5) Stage II Vapor Recovery

Massachusetts has adopted and submitted to EPA a Stage II vapor recovery regulation that will limit VOC emissions from this source category. On November 13, 1992, Massachusetts submitted a formal request to EPA to amend the Massachusetts SIP. This SIP revision contained amendments to the Commonwealth's Stage II vapor recovery rule, entitled ''Dispensing of Motor Vehicle Fuel'' located at 310 CMR 7.24(6), which are required to satisfy sections 182(b)(3) and 184(b)(2) of the CAA. On February 17, 1993, Massachusetts submitted the adopted version of the revised Stage II regulation along with additional documentation regarding the effective date of this rule. EPA approved this Stage II regulation as a revision to the Massachusetts SIP in a **Federal Register** notice published on September 15, 1993, 58 FR 48315. The Massachusetts 15 Percent ROP plans contain the MOBILE 5a runs done to determine the emission reduction credit from the Stage II vapor recovery program. These MOBILE 5a runs indicate that the reductions were calculated in accordance with EPA guidance.

*D. Non-Road Mobile Source Controls*

Reformulated Gasoline in Non-Road Engines

On August 18, 1993, EPA's Office of Mobile Sources issued a guidance memorandum regarding the VOC emission reduction benefits for non-road equipment which are in a nonattainment area that uses Federal Phase I reformulated gasoline. Massachusetts has correctly used the guidance to determine that the VOC emission reductions from the use of RFG in non-road engines will be approximately 6 tpsd statewide.

*New Federal Non-Road Engine Standards*

The revised 15 Percent ROP plan submitted by Massachusetts on December 30, 1994, and further revised by a submittal made on March 31, 1997, contained emission reductions that will occur due to new federal non-road engine standards. These emission reduction credits claimed are consistent with guidance issued by EPA dated November 28, 1994, and amount to a 7 tpsd reduction in VOC emissions across the State.

15 Percent ROP Plan Summary

Table 2 summarizes the emission reductions contained within the Massachusetts 15 Percent ROP plans. Massachusetts allocated between the two nonattainment areas the anticipated reductions from statewide control measures using the same methodology

that determined the allocation of its 1990 base year inventory emissions.

TABLE 2.—SUMMARY OF EMISSION REDUCTIONS: MASSACHUSETTS SERIOUS OZONE NONATTAINMENT AREAS (TONS/DAY)

| Nonattainment area | Springfield | Bos-Law-Wor |
|---|---|---|
| Required Reduction | 34 | 176 |
| Creditable Reductions: | | |
| Point Source VOC RACT | 0 | 1 |
| Automobile Refinishing | 2 | 11 |
| Commercial and Consumer Products | 1 | 6 |
| AIM Coatings | 1 | 9 |
| Reform, On-road | | |
| Auto Emissions Testing | | |
| Tier I | | |
| California LEV | | |
| Stage II: | | |
| Subtotal, On-Road Mobile Strategies | 33 | 143 |
| Reform, Off-road | 1 | 5 |
| New Off-road Standards | 1 | 6 |
| Total | 39 | 181 |

**Contingency Measures**

Ozone nonattainment areas classified as serious or above must submit to the EPA, pursuant to sections 172(c)(9) and 182(c)(9) of the CAA, contingency measures to be implemented if an area misses an ozone SIP milestone or does not attain the national ambient air quality standard by the applicable date. The General Preamble to Title I (57 FR 13498, (April 16, 1992)) states that the contingency measures should, at a minimum, ensure that an appropriate level of emission reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. The EPA interprets these provisions of the CAA to require States with serious and above ozone nonattainment areas to submit sufficient contingency measures so that upon implementation of such measures, additional emission reductions of three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified (57 FR at 13511). States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

**Analysis of Contingency Measures**

The contingency plans submitted by Massachusetts indicate that the Commonwealth, consistent with EPA guidance dated August 23, 1993, has chosen to meet a part of its contingency measure obligation by using $NO_X$ emission reductions. The 3 percent total contingency measure reduction will consist of a 1.5 percent VOC reduction, and a 1.5 percent $NO_X$ reduction. As required by the EPA's $NO_X$ substitution guidance, the 1.5 percent VOC reduction is a reduction from the adjusted base year VOC inventory and the 1.5 percent $NO_X$ reduction is a reduction from the adjusted base year $NO_X$ inventory. The calculation of the required reductions is shown in the table below:

| Area | Adj. Inv. (VOC) | Adj. Inv. ($NO_X$) | Conting. (VOC) | Conting. ($NO_X$) |
|---|---|---|---|---|
| Springfield | 147 | 105 | 2 | 2 |
| Bos-Law-Wor | 769 | 772 | 12 | 12 |

Massachusetts made a minor error in determining the VOC contingency obligations in that the values were derived from the adjusted inventory which used January 2000 as the mobile source emission evaluation date. The Commonwealth's calculations yielded a contingency obligation of 11 tpsd for the Bos-Law-Wor area instead of 12 tpsd. The appropriate values are shown in the above table.

The Massachusetts contingency plans consist of a demonstration that projected, controlled emissions in 1998 will be below the emission target levels calculated for those years with the assumption that the contingency measure obligation has been triggered. In other words, the Commonwealth has shown that emission levels will have fallen 18 percent in addition to the non-creditable reductions discussed previously in this document. The rationale for this is based on the fact that if a State fails to meet its 15 percent VOC emission reduction milestone and therefore has to implement its contingency plan, the emission reductions from the contingency measures must occur by May of 1998 (see August 23, 1993 EPA guidance memorandum regarding contingency measures.)

Additionally, the Commonwealth's SIP contains elements that achieve emission reductions beyond those required by the CAA, and these programs achieve emission reductions that satisfy the Commonwealth's VOC and $NO_X$ emission reduction obligations. The non-CAA mandatory programs cited by Massachusetts are VOC control regulations adopted by the Commonwealth on consumer and commercial products, autobody refinishing, and architectural and industrial maintenance coatings, and for $NO_X$, the Massachusetts $NO_X$ RACT rule. Although the Commonwealth was required to adopt a $NO_X$ RACT rule, the Massachusetts rule contains emission limits which are more stringent than required. Pursuant to EPA guidance contained within a November 8, 1993 memorandum from D. Kent Berry to the Regional Air Directors, the increment of emission reductions generated due to the more stringent limits of the Commonwealth's $NO_X$ RACT rule can be considered to be non-CAA mandatory reductions.

The EPA Regional office performed an analysis of the emission reductions generated by the Commonwealth's $NO_X$ RACT rule, and determined that the rule achieves approximately 11 tpsd more emission reductions than otherwise required due to its more stringent limits. Although this amount is short of the 14 tpsd $NO_X$ contingency obligation, the Commonwealth's demonstration that 1998 projected, controlled emission levels will be below 1998 target levels that were calculated with the contingency obligation triggered reveals a surplus emission reduction in both nonattainment areas. A summary of the Commonwealth's contingency demonstration is provided below:

| Springfield | VOC | $NO_X$ |
|---|---|---|
| 1998 Target (Adj. for contingency) | 116 | 100 |
| 1998 Projected, Controlled Emissions | 112 | 98 |

| Boston-Lawrence-Worcester | VOC | $NO_X$ |
|---|---|---|
| 1998 Target (Adj. for contingency) ..... | 614 | 723 |
| 1998 Projected, Controlled Emissions ..... | 611 | 714 |

The demonstration submitted by Massachusetts showed that projected, controlled VOC and $NO_X$ emissions will be below target levels for 1998 that were calculated with contingencies triggered.

*Transportation Conformity Budgets*

In recognition of the proposed approval of the 15 percent ROP plan, EPA also proposes approval of motor vehicle emission budgets for VOCs. Final approval of the 15 percent plan will eliminate the need for the transportation conformity emission reduction tests, which are the build/no build test and the less than 1990 emissions test, for VOCs. These tests will still be required for $NO_X$ emissions, since the 15 percent plan does not establish a $NO_X$ emission budget.

A control strategy SIP is required to establish a motor vehicle emission budget which places a cap on emissions that cannot be exceeded by predicted highway and transit vehicle emissions. The Commonwealth of Massachusetts did not provide a break down of the 1996 projected inventory denoting transit emissions as an individual category. Therefore EPA is proposing to utilize the on-road mobile emissions provided in the SIP submittal as the motor vehicle emission budget for transportation conformity purposes. The on-road mobile VOC emissions are 137 tons per summer day, and 27 tons per summer day for the Eastern and Western Ozone nonattainment areas respectively. EPA recommends that the Commonwealth of Massachusetts submit a specific motor vehicle emission budget for conformity purposes that includes both the highway and transit components. If such a submittal is made, EPA will address the revised motor vehicle budget within the final rulemaking on the Commonwealth's 15 percent plan.

The 1996 VOC motor vehicle emission budgets for the two nonattainment areas within Massachusetts are 137 tpsd for the Massachusetts portion of the Bos-Law-Wor area, and 27 tpsd for the Springfield area. EPA notes that the Commonwealth derived these emission values using the assumption that the Massachusetts motor vehicle I/M program will achieve emission reductions equivalent to the reductions achievable from an enhanced I/M program. The validity of that assumption will be reviewed when the Commonwealth submits to EPA the required evaluation of its I/M program.

**Proposed Action**

The EPA has evaluated these submittals for consistency with the CAA, EPA regulations, and EPA policy. The Massachusetts 15 Percent ROP plans will achieve enough reductions to meet the 15 percent ROP requirements of section 182(b)(1) of the CAA. In addition, the Massachusetts contingency plans will achieve enough emission reductions to meet the three percent reduction requirement under sections 172(c)(9) and 182(c)(9) of the CAA. However, the ability of these plans to achieve the indicated quantity of emission reductions depends in large part on the successful implementation of an automobile emission testing program. In the final rules section of today's **Federal Register**, EPA is issuing a final interim conditional approval of the Massachusetts automobile emission testing program. Therefore, the EPA is proposing a conditional interim approval of the Massachusetts 15 Percent plans and Contingency plans submitted in final form on March 31, 1997, as a revision to the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA regional office listed in the **ADDRESSES** section of this action.

EPA is proposing to grant conditional, interim approval of the Massachusetts 15 percent and contingency plans. The outstanding issues with these SIP revisions concern the ability of the Massachusetts automobile emission testing program to achieve the level of emission reductions anticipated. For this reason, EPA is proposing to grant conditional, interim approval to these SIP revisions provided that the Commonwealth complies with the conditions outlined in the final action on the automobile emission testing program, which is being published in the rules section of today's **Federal Register**.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment as described in the preceding paragraph. If the State fails to do so, this action will become a limited approval, limited disapproval 1 year from the date of final action on the Commonwealth's I/M program. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a limited approval, limited disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the Massachusetts I/M program. If EPA disapproves the Massachusetts I/M program, the 15 percent and contingency plans will receive limited approvals, limited disapprovals at that time. If EPA approves the Massachusetts I/M program, the 15 percent and contingency plans will be fully approved in their entirety and replace the conditionally approved program in the SIP.

If EPA determines that it must issue a limited disapproval rather than a final conditional approval, or if the conditional approval is later converted to a limited approval, limited disapproval, such action will trigger EPA's authority to impose sanctions under section 179(a) of the CAA at the time EPA issues the final limited approval, limited disapproval or on the date the Commonwealth fails to meet its commitment. In the latter case, EPA will notify Massachusetts by letter that the conditional approval has been converted to a limited approval, limited disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the federal implementation plan (FIP) requuirement under section 110(c).

**Administrative Requirements**

*A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C sections 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the Commonwealth's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

*C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the actions proposed in this notice do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes approval of pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Reporting and recordkeeping, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: June 13, 1997.

**John P. DeVillars,**

*Regional Administrator, EPA Region I.*

[FR Doc. 97–18409 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

**[FRL–5855–2]**

### Clean Air Act Proposed Final Full Approval of Operating Permits Program and Approval of Delegation of Section 112(l); State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant final full approval of Iowa's Title V operating permit program to meet the requirements of 40 CFR part 70. In the final rules section of the **Federal Register**, the EPA is approving the state's program as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. An explanation 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 the 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. The EPA will not institute a second comment period on this document. Any parties interested in commenting should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by August 13, 1997.

**ADDRESSES:** Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Hess at (913) 551–7213.

**SUPPLEMENTARY INFORMATION:** The EPA granted interim approval to Iowa's Title V program in an action effective October 2, 1995. The state was responsible to make certain revisions within two years of that date in order to receive final full approval. Iowa has made the necessary revisions and now meets the criteria for final full approval. For additional information, please refer to the summary provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 24, 1997.

**U. Gale Hutton,**

*Acting Regional Administrator.*

[FR Doc. 97–18251 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 80

**[PR Docket No. 92–257; FCC 97–217]**

### Maritime Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has adopted a *Second Further Notice of Proposed Rule Making* in PR Docket No. 92–257 which seeks to simplify the licensing process and introduce additional flexibility for public coast stations. Specifically, the Commission has proposed rules to designate geographic licensing regions for very high frequency (VHF) public coast stations, and assign all currently unassigned VHF public correspondence channels on a geographic basis by competitive bidding. The Commission has proposed rules to eliminate the required channel loading showing for high seas public coast stations, and implement competitive bidding procedures for mutually exclusive initial applications on a case-by-case basis; and to eliminate

the current emission restrictions and channel plan, increase the permitted power levels for point-to-point communications, and streamline licensing procedures for Automated Maritime Telecommunications System (AMTS) coast stations. The Commission also seeks comment on allowing private coast stations to share public coast station frequencies in the medium frequency (MF) and high frequency (HF) bands.

**DATES:** Interested parties may file comments on or before August 25, 1997, and reply comments on or before September 9, 1997.

**ADDRESSES:** Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Scot Stone, Wireless Telecommunications Bureau, Public Safety & Private Wireless Division, (202) 418–0638 or via E-mail to ''sstone@fcc.gov''.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Further Notice of Proposed Rule Making* in the *Second Report and Order and Second Further Notice of Proposed Rule Making,* PR Docket No. 92–257, FCC 97–217, adopted June 17, 1997, and released June 26, 1997, with Commissioner Ness issuing a statement. The full text of this *Second Report and Order and Second Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, N.W., Washington, D.C. 20037, telephone (202) 857–3800.

*Summary of the Second Further Notice of Proposed Rule Making in the Second Report and Order and Second Further Notice of Proposed Rule Making*

1. The Commission initiated the instant proceeding to update the Maritime Service rules to promote the use of new, spectrally efficient radio communications techniques. The Commission concluded in the *Second Further Notice of Proposed Rule Making* that it was in the public interest to simplify the license process for VHF public coast stations and to reconsider its treatment of high seas and AMTS public coast stations.

2. First, the Commission proposes to designate ten licensing regions, based on Coast Guard Districts, and authorize a single licensee for all currently unassigned VHF public correspondence channels on a geographic basis, in lieu of the site-based approach presently used. Geographic area licensing provides significant advantages over site-based licensing for entities providing subscriber-based services because of the greater operational flexibility it gives licensees and the greater ease of administration for the Commission. Coast Guard Districts provide a sufficient amount of contiguous coastline to foster local as well as regional coast station systems, and they reflect regional trading and vessel movement patterns.

3. The Commission proposes to permit the continued operation of incumbent VHF public coast station licensees and private land mobile radio (PLMR) licensees sharing marine spectrum in inland regions indefinitely, and to require incumbents and geographic licensees to afford interference protection to one another. Under the proposal, incumbent licensees will be allowed to renew, transfer, assign, and modify their license in any manner so long as such modifications do not extend the incumbent's service area; proposed modifications that would extend an incumbent's service area or request additional frequencies would be contingent upon an agreement with each affected licensee. If an incumbent fails to construct, discontinues operations, or otherwise has its license terminated, its authorization would automatically revert to the regional licensee.

4. The Commission proposes to authorize a single regional licensee to operate on all unassigned public correspondence frequencies within its District for a ten-year license term. The Commission proposes to permit each regional licensee to place stations anywhere within its region to serve vessels or units on land, so long as marine-originating traffic is given priority and incumbent operations are protected. Base stations and land units would be blanket licensed under the regional license, except that individual licensing would be required for base stations that require submission of an Environmental Assessment under 47 CFR 1.1307 or international coordination, or would affect the radio frequency quiet zones described in 47 CFR 80.21.

5. The Commission seeks comment on whether the current construction requirement for VHF public coast stations (i.e., that the station be placed in operation within eight months of the license grant) should be retained, or replaced with a requirement that the station provide substantial service within ten years (or some lesser level of service within a shorter time). The Commission proposes to permit partitioning and disaggregation of the geographic licenses, with partitionees and disaggregatees to hold their licenses for the remainder of the original licensee's term and to have a renewal expectancy.

6. Second, the Commission proposes to eliminate the required showing of channel loading for high seas public coast stations. Like the now-eliminated VHF band loading criteria, these requirements were intended to prevent channel warehousing and ensure efficient use of the maritime spectrum, but continuing to impose loading requirements on high seas public coast stations could unfairly impair the ability of providers to compete. Efficient use of high seas public coast station spectrum is more appropriately monitored through construction requirements. The Commission proposes extending the construction requirement from eight months to twelve months.

7. Third, the Commission proposes to introduce additional flexibility for AMTS coast stations. The Commission proposes extending the construction requirement from eight months to two years for new systems and from eight months to one year for subsequently licensed stations that extend the geographic area served by the system; and eliminating the current emission restrictions and channel plan. The Commission seeks comments concerning ways to streamline licensing and regulatory procedures while continuing to protect television reception from interference, and concerning increasing the permitted power levels for AMTS point-to-point communications.

8. Fourth, the Commission proposes to use competitive bidding procedures to resolve mutually exclusive initial applications for VHF geographic licenses and for high seas and AMTS public coast station licenses, in light of its previous determination that public coast stations provide a commercial mobile radio service and, thus, public coast station licenses are auctionable, pursuant to 47 U.S.C. 309(j). The Commission seeks comments regarding the establishment of a ''small business'' definition for the public coast service, and on what small business provisions, i.e., installment payment plans and bidding credits, should be offered to public coast small business applicants.

9. Finally, the Commission proposes allowing private coast stations to share public coast station frequencies in the MF/HF bands, and seeks comments regarding how the channels would be shared and how to resolve mutually

exclusive initial applications for such frequencies.

10. In order to permit the orderly and effective resolution of the issues in this proceeding, the *Second Further Notice of Proposed Rule Making* suspends the acceptance of public coast station applications to use VHF spectrum, and PLMR applications proposing to share that spectrum, for new licenses, amendments to such new license applications, applications to modify existing licenses, and amendments thereto; except applications involving renewals, transfers, assignments, and modifications that propose neither to expand a station's service area nor to obtain additional public coast VHF band spectrum. This suspension applies to applications received on or after June 17, 1997, and is effective until March 17, 1998, provided that the Commission has not taken any action in this proceeding before that time.

11. Public coast station applications to use VHF spectrum that were filed prior to the deadline stated above and which are pending will be processed provided that they are not mutually exclusive with other applications as of the deadline stated above, and the relevant period for filing competing applications has expired as of the deadline stated above. Previously filed public coast station applications to use public coast VHF spectrum not meeting these criteria will be held in abeyance until the conclusion of this proceeding. Previously filed PLMR applications to use such spectrum will be processed.

**Regulatory Flexibility Act**

*Initial Regulatory Flexibility Analysis*

12. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in the *Second Further Notice of Proposed Rule Making.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this *Second Further Notice of Proposed Rule Making* provided in the item.

13. Need for and Objectives of the Proposed Rule. The purpose of this item is to determine whether it is in the public interest, convenience, and necessity to amend our rules to simplify our licensing process for VHF public coast stations, to reconsider our treatment of high seas public coast stations, and to introduce additional flexibility for AMTS public coast stations. These proposals include: (1) Converting licensing of VHF public coast station spectrum for which the principal use will involve, or is reasonably likely to involve, ''subscriber-based'' services, from site-by-site licensing to geographic area licensing, (2) simplifying and streamlining the VHF public coast spectrum licensing procedures and rules, (3) increasing licensee flexibility to provide communication services that are responsive to dynamic market demands, and (4) employing competitive bidding procedures (auctions) to resolve mutually exclusive applications for public coast spectrum for which the principal use will involve, or is reasonably likely to involve, ''subscriber-based'' services. In addition, we temporarily suspend the acceptance and processing of certain public coast spectrum applications, with the exception of applications in a few noted categories. These proposed rules and actions should increase the number and types of communications services available to the maritime community. Additionally, these proposals should improve safety of life and property at sea.

14. Legal Basis. Authority for issuance of this item is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

15. Description and Estimate of the Number of Small Entities to Which Rule Will Apply. The proposed rules would affect licensees using public coast spectrum. The Commission has not developed a definition of the term ''small entity'' specifically applicable to public coast station licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radiotelephone service providers. This definition provides that a small entity is any entity employing less than 1,500 persons. See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Comission was unable to request information regarding the number of small entities that may choose to provide public coast services and is unable at this time to make a meaningful estimate of the number of potential public coast service providers which are small businesses.

16. The size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of public coast station licensees which are small businesses. Therefore, we used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.

17. We seek comment on the number of small entities that use public coast station spectrum. Further, we seek comment on the number of small entities that are likely to apply for licenses under the various proposals described herein. Because any entity that is capable of providing radiotelephone service is eligible to hold a public coast license, the proposals herein could prospectively affect any small business in the United States. In other words, the universe of prospective or possible public coast spectrum users is all small businesses.

18. Reporting, Recordkeeping, and Other Compliance Requirements. Again, we note that we have requested comment regarding the establishment of a small business definition for public coast spectrum. If we use competitive bidding to award licenses, as proposed, and also establish a small business definition for the purpose of competitive bidding, then all small businesses that choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under part 1, subpart Q of the Commission's Rules, 47 CFR part 1, subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the small business is in fact small.

19. If this occurs, prior to auction each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. The estimated time for filling out an FCC Form 175 is 45 minutes. In addition to filing an FCC Form 175, each applicant must submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information which demonstrates that a small business wishing to qualify for installment payments and bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have

chosen to employ attorneys prior to filing an application to participate in an auction, the rules are proposed so that a small business working with the information in a bidder information package can file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 494 (common carrier) which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the system's design.

20. Federal Rules That May Duplicate, Overlap, or Conflict with the Proposals. None.

21. Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. The *NPRM* solicits comment on a variety of alternatives set forth herein. Any significant alternatives presented in the comments will be considered. As noted, we have requested comment regarding the establishment of a small business definition for the public coast service. We also seek comment generally on the existence of small entities in the public coast service and how many total entities, existing and potential, would be affected by the proposed rules in the *NPRM*. Finally, we request that each commenter identify whether it is a ''small business'' under the SBA definition of employing fewer than 1,500 employees.

22. IRFA Comments. We request written public comment on the foregoing IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in the item.

**Ex Parte Rules**

23. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

**Paperwork Reduction Act**

24. This *Second Further Notice of Proposed Rule Making* does not contain either a proposed or modified information collection.

**Comment Filing Procedures**

25. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. You also may file informal comments by electronic mail. You should address informal comments to ''mayday@fcc.gov''. You must put the docket number of this proceeding (''PR Docket No. 92–257'') on the subject line. You must also include your full name and Postal Service mailing address in the text of the message. Formal and informal comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

**List of Subjects in 47 CFR Part 80**

Communications equipment, Radio, Vessels.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Rule Changes**

47 CFR Part 80 is proposed to be amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.25(b) is revised to read as follows:

**§ 80.25 License term.**

* * * * *

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal.

* * * * *

3. Section 80.49 is revised to read as follows:

**§ 80.49 Construction and regional service requirements.**

(a) *Public coast stations.* Each VHF public coast station licensee must demonstrate that it is providing substantial service within its region or service area (subpart P) within ten years of the initial license grant. For LF, MF, and HF band and AMTS public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(b) *Public fixed stations.* When a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within twelve months from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

4. Section 80.215(h)(5) is revised to read as follows:

**§ 80.215 Transmitter power.**

* * * * *

(h) * * *

(5) The transmitter power, as measured at the input terminals to the station antenna, must be 50 watts or less.

* * * * *

5. Section 80.303(b) is revised to read as follows:

**§ 80.303 Watch on 156.800 MHz (Channel 16).**

* * * * *

(b) A coast station is exempt, by rule, from compliance with the watch requirement when Federal, State, or Local Government stations maintain a watch on 156.800 MHz over 95% of the coast station's service area. Each licensee exempted by rule must notify the appropriate Coast Guard District office at least thirty days prior to discontinuing the watch, or in the case of new stations, at least thirty days prior to commencing service.

* * * * *

6. Section 80.357(b)(2)(ii) introductory text is revised to read as follows:

**§ 80.357 Morse code working frequencies.**

* * * * *

(b) * * *

(2) * * *

(ii) Frequencies above 5 MHz may be assigned primarily to stations serving the high seas and secondarily to stations serving inland waters of the United States, including the Great Lakes, under the condition that interfrence will not be caused to any coast station serving the high seas.

* * * * *

**§ 80.361 [Amended]**

7. Section 80.361 is amended by redesignating paragraph (a)(1) as paragraph (a) and removing paragraph (a)(2).

8. Section 80.371 is amended by removing paragraph (b)(4) and revising paragraph (c) introductory text to read as follows:

**§ 80.371 Public correspondence frequencies.**

* * * * *

(c) *Working frequencies in the marine VHF 156–162 MHz band.* The frequency pairs listed below are available for assignment to a single licensee in each of the following ten regions: the First, Fifth, Seventh, Eighth, Ninth, Eleventh, Thirteenth, Fourteenth, and Seventeenth United States Coast Guard Districts, as they are defined in 33 CFR part 3. Each regional licensee may place stations anywhere within its region so long as it provides protection to co-channel incumbent licensees, as defined in subpart P. For purposes of this section, co-channel incumbent licensees include public coast stations and Industrial and Land Transportation stations authorized under part 90 of this chapter on a primary basis. Each regional licensee may also operate on offset frequencies in areas where the regional licensee is authorized on both frequencies adjacent to the offset frequency. Regional licensees that share a common border may either distribute the available frequencies upon mutual agreement or request that the Commission assign frequencies along the common border. Operation along international borders is subject to coordination with foreign administrations.

* * * * *

**§ 80.374 [Amended]**

9. Section 80.374 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

10. Section 80.481 is added to read as follows:

**§ 80.481 Alternative technical parameters for AMTS transmitters.**

In lieu of the technical parameters set forth in this part, AMTS transmitters may utilize any modulation or channelization scheme so long as emissions are attenuated, in accordance with 47 CFR 80.211, at the band edges of each station's assigned channel group or groups.

[FR Doc. 97–18292 Filed 7–11–97; 8:45 am]

BILLING CODE 6712–01–P

# Notices

**Federal Register**

Vol. 62, No. 134

Monday, July 14, 1997

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

### Research, Education, and Economics

### Notice of Strategic Planning Task Force Meeting

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

**SUPPLEMENTARY INFORMATION:** The Strategic Planning Task Force on Research Facilities which consists of 15 members, have scheduled to meet for the second of eight planned meetings. The meeting is scheduled to be held at the Holiday Inn-University Park in Ft. Collins, Colorado, beginning at 1 p.m. on August 25 and concluding at 4 p.m. on August 27. The meeting will focus on what has transpired since the initial meeting on May 28–30, 1997, in Ames, Iowa, and what has been accomplished since. One day of the meeting will be spent touring various ARS, FS, and APHIS research facilities. At the first meeting, a draft agenda on ways to implement the charge of the Secretary was introduced and a format for subsequent meetings established.

**TIMES AND DATES:** August 25, 1997, 1 p.m.—8 p.m.; August 26, 1997, 8 a.m—8 p.m.; and August 27, 1997, 8 a.m.—4 p.m.

**PLACE:** Holiday Inn—University Park, 425 W. Prospect Avenue, Ft. Collins, CO 80526.

**TYPE OF MEETING:** Open to the public.

**COMMENTS:** The public may file written comments before or after the meeting with the contact person listed below.

**FOR FURTHER INFORMATION CONTACT:** Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 212–W, Jamie L. Whitten Building, USDA, 1400 Independence Avenue, S.W., Washington, D.C. 20250. Telephone (202) 720–3803.

Done at Washington, D.C. this 8th day of July 1997.

**Catherine E. Woteki,**

*Acting Under Secretary, Research, Education, and Economics.*

[FR Doc. 97–18384 Filed 7–11–97; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Notice of Intent to Extend a Currently Approved Information Collection

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995(Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44977, August 29, 1995), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for three years for a currently approved information collection in support of programs administered by CSREES's Higher Education Programs (HEP) unit.

**DATES:** Comments on this notice must be received by September 17, 1997 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240; Telephone: (202) 401–1766; E-mail: OEP@reeusda.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* CSREES/Higher Education Grants Program.

*OMB Number:* 0524–0030.

*Expiration Date of Current Approval:* September 30, 1997.

*Type of Request:* Intent to extend a currently approved information collection for three years.

*Abstract:* The HEP unit of USDA/CSREES administers several competitive, peer-reviewed research and teaching programs, under which grants of a high-priority nature are awarded. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 et seq.), section 1417(b)(1) for the Challenge Grants Program (7 U.S.C. 3152), section 1417(b)(4) for the Capacity Building Grants Program (7 U.S.C. 3152), section 1455 for the Hispanic-Serving Institutions Education Grants Program (7 U.S.C. 3241), and the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 et seq.) for the Tribal Colleges Education Equity Grants Program.

The Challenge Grants Program is intended to assist colleges and universities in the United States in providing high quality educational programs in the food and agricultural sciences. The Capacity Building Grants Program is intended to strengthen the teaching and research capabilities of the sixteen 1890 historically black Land-Grant Institutions and Tuskegee University. The Hispanic-Serving Institutions Education Grants Program is intended to promote and strengthen the ability of Hispanic-Serving Institutions to carry out educational programs. The Tribal Colleges Education Equity Grants Program is intended to support projects that strengthen academic programs at the 1994 Land-Grant Institutions. All of these programs will, in turn, attract outstanding students and produce graduates capable of strengthening the Nation's food and agricultural scientific and professional work force.

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research or teaching efforts, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

Each year, HEP solicitations are issued requesting proposals for various

research and teaching areas targeted for support. Applicants submit proposals for these targeted research and teaching areas following the format outlined in the proposal application guidelines accompanying each solicitation. These proposals are evaluated by peer review panels and awarded on a competitive basis.

These programs have been using forms that have been approved in an OMB-approved collection of information package (OMB No. 0524–0030).

Forms CSREES–662, ''Assurance Statement(s);'' CSREES–663, ''Current and Pending Support;'' CSREES–708, ''Summary Vita—Teaching Proposal;'' CSREES–710, ''Summary Vita—Research Proposal;'' CSREES–711, ''Intent to Submit a Proposal;'' CSREES–712, ''Higher Education Proposal Cover Page;'' and CSREES–713, ''Higher Education Budget'' are mainly used for proposal evaluation and administration purposes. While some of the information will be used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of the application to Federal agencies which support basic and applied scientific research.

The following information has been collected and will continue to be collected:

Form CSREES–662—*Assurances:* Provides required assurances of compliance with regulations involving the protection of human subjects, animal welfare, and recombinant DNA research.

Form CSREES–663—*Current and Pending Support:* Provides information for active and pending projects an applicant may have.

Form CSREES–708—*Teaching Credentials:* Identifies key personnel contributing substantially to the conduct of a teaching project and provides pertinent information concerning their backgrounds.

Form CSREES–710—*Research Credentials:* Identifies key personnel contributing substantially to the conduct of a research project and provides pertinent information concerning their backgrounds. Currently, the only program using this form is the Capacity Building Grants Program.

Form CSREES–711—*Intent to Submit:* Provides names, addresses, and phone numbers of project directors and authorized agents of applicant institutions and general information regarding potential proposals.

Form CSREES–712—*Proposal Identification:* Provides names, addresses, and phone numbers of project directors and authorized agents of applicant institutions and general information regarding the proposals.

Form CSREES–713—*Budget:* Provides a breakdown of the purposes for which funds will be spent in the event of a grant award.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 6.75 hours per response.

*Respondents:* Non-profit institutions, individuals, businesses, Federal Government, and State, Local, or Tribal Governments.

*Estimated Number of Responses per Form:* 200 for Form CSREES–710; 400 for Form CSREES–708; and 600 each for Forms CSREES–662, CSREES–663, CSREES–711, CSREES–712 and CSREES-713.

*Estimated Total Annual Burden on Respondents:* 3,450 hours, broken down by: 150 hours for Form CSREES–662 (one-quarter hour per 600 respondents); 150 hours for Form CSREES–663 (one-quarter hour per 600 respondents); 400 hours for Form CSREES–708 (one hour per 400 respondents); 200 hours for Form CSREES–710 (one hour per 200 respondents); 150 hours for Form CSREES–711 (one-quarter hour per 600 respondents); 1,800 hours for Form CSREES–712 (3 hours per 600 respondents); 600 hours for Form CSREES–713 (one hour per 600 respondents).

*Frequency of Responses:* Annually.

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES; Telephone: (202) 401–1302; E-mail: OEP@reeusda.gov.

*Comments:* Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240; Telephone: (202) 401–1766; E-mail: OEP@reeusda.gov. Comments also may be submitted directly to OMB and should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502.

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

Done at Washington, D.C., this 8th day of July, 1997.

**B.H. Robinson,**

*Administrator, Cooperative State Research, Education, and Extension Service .*

[FR Doc. 97–18299 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–22–P

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Foreign Market Development Cooperator Program—FY 1998 Program Announcement

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of funds for the Fiscal Year 1998 Foreign Market Development Cooperator (Cooperator) Program.

**DATES:** All applications must be received by 5:00 p.m. Eastern Daylight Savings Time, August 13, 1997.

**ADDRESSES:** U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., S.W., Washington, D.C. 20250–1042.

**FOR FURTHER INFORMATION CONTACT:** The Marketing Operations Staff at (202) 720–4327.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

The Foreign Agricultural Service (FAS) announces that applications are being accepted for participation in the Fiscal Year 1998 Cooperator Program. The Program is intended to create, expand and maintain foreign markets for United States agricultural commodities and products. The Foreign Agricultural Service (FAS) administers the Cooperator Program and provides cost share assistance to eligible trade organizations to carry out approved market development activities. Financial assistance under this program will be made available on a competitive

basis and applications will be reviewed against the evaluation criteria contained in this announcement.

On May 16, 1997, FAS published a notice in the **Federal Register** requesting comments on the proposed method and criteria for evaluating proposals and allocating funds among applicants. FAS received 10 letters from various U.S. trade association in response to the notice. Following is a summary of the comments and FAS' responses to these comments. General comments relating to the value of a competitive process and non-substantive comments have been omitted.

*Comment:* We question how Past Demand Expansion Performance will be used in the criteria. Our understanding of this criteria is that a U.S. commodity that accounted for 100% of the world market for that commodity would receive a higher weighting in the funding formula than a commodity that accounted for only 40%. This seems to make little sense. A very high existing market share would suggest relatively less need for aggressive market development since competition does not exist or has been largely eliminated. At the other extreme, a low market share may suggest that the U.S. cannot be competitive and may warrant limited or no market development efforts. The midrange of market shares, 25%–75%, most likely would occur for those commodity markets which are extremely competitive (but where the U.S. is having some success) and would benefit most from market development investments.

*Comment:* In calculating past export performance and past demand expansion performance, Cooperators will be awarded for activities carried out in targeted markets that are steady, reliable customers (where market development may not be as critical) rather than in markets that are just beginning to develop for U.S. suppliers or in markets that are declining and market development is being used to try to keep the market viable. Program funds should be available to help Cooperators leverage their market development activities in targeted markets that may not be at their peak.

*Comment:* In the discussion of past export performance, reference is made to the ''share of the value of exports.'' How is this calculated?

*Comment:* In the discussion of the contribution level criteria, reference is made to ''share of contributions.'' What does this mean?

*Comment:* Throughout the description of the allocation criteria, reference is made to ''shares'' instead of actual values. We found this confusing and request that FAS take another look at the proposed methodology for making the calculations for each of the criteria.

*Response:* From the above comments it appears that there is some confusion and perhaps, in some cases, misunderstanding of how and why some of the allocation criteria will be calculated and used in the allocation process. The following should help to clarify these issues. First, the general philosophy behind selecting and using these criteria is to balance export performance and market potential with the limited amount of program resources that are available. It is our expectation that in using these objective criteria—combined with the other factors identified under the Review Process section of this notice—that this overall objective will be met. Second, the criteria and the manner in which they will be used as designed to ensure that the appropriate level of resources are allocated for both market maintenance and market potential, or growth objectives. Third, will regard to the meaning of the word ''share'' as used in several of the allocation criteria, this term refers to a percent, not market share. Using the past export performance criterion as an example, ''share'' refers to the applicant's percent of the total export value of products promoted by all applicants under the program compared to the applicant's percent of total available Cooperator Program resources.

*Comment:* Why did FAS decide to ask for six years of data for calculating the allocation criteria? By asking for so many years, FAS is complicating the process of developing proposals and encouraging applicants to spend time on data generation and presentation that could more profitably be used by developing that part of the proposal that explains the link between activities and the applicant's marketing strategy.

*Response:* The Cooperator Program is a long-term market development program designed to address long-term foreign import constraints such as infra-structural market impediments and limited processing capabilities. Given these types of constraints, it typically takes several years before any returns on investment are realized. For this reason, FAS believes it is necessary to analyze data spanning a longer time period in order to obtain an accurate assessment of a long-term strategic marketing plan. Also, by using data spanning several years, we are able to mitigate the impact of year-to-year fluctuations in trade caused by factors external to the program, e.g., changes in price and production levels.

*Comment:* In the discussion of past demand expansion performance, reference is made to the ''total value of world imports.'' Why did FAS decide to base this calculation on import rather than export statistics.

*Response:* FAS chose to use imports rather than exports for this factor because a primary objective of the Cooperator Program is to increase worldwide demand for U.S. agricultural commodities.

*Comment:* Please explain the choice of the year 2003 as the basis for the future demand expansion goals criterion.

*Response:* The calculations for contribution levels, past export performance, past demand expansion performance and future demand expansion goals are based on 6 years of data, to the extent such data is available. The first year for which data will be available for the future demand expansion goals criterion will be 1998, followed by 6 years of projections to the year 2003.

*Comment:* Since the weight factor will almost always be less than 1.00, the implication of this formula is that FMD applicants will always receive something less than the commodity division recommends. This gives the commodity division incentive to inflate its funding recommendation.

*Response:* While the sum of all the factor weights is 1.00, the position, or scoring, of one applicant relative to all other applicants is more important. The ability of the commodity divisions to inflate the recommendations is constrained by the amount of available funds. The ability to 'game' this process is quite limited because allocations are ultimately based on contribution levels and performance.

*Comment:* We believe that the weighting factors for two of the proposed allocation criteria should be revised. We believe that the overall formula is weighted too heavily toward an applicant's contribution level. The 40 percent weighting, we believe, would have a tendency to reward larger well-financed participants and unfairly limit or punish the small-to-medium sized applicants. Conversely, we feel that the proposed weighting percentage given for past export performance (20 percent) is too low. To better reflect the efforts of an applicant, we recommend that the percentage weighting for these two criteria be reversed or at least equalized. We feel that our members should be rewarded for the volume and value of their exports which make a sizable contribution to the positive agricultural trade balance.

*Response:* FAS assigned a 40 percent weight to the contribution criterion because we believe that the contribution level reflects an industry's commitment to its international marketing efforts. The formula does not necessarily disadvantage smaller applicants with fewer resources to contribute to the program because each applicant's contribution level is compared to its Cooperator marketing plan budget, i.e. a ratio is established. FAS also places importance on export performance and demand expansion when evaluating applications as reflected in four of the five allocation criteria. Collectively, this criteria account for 60 percent of the allocation formula.

*Comment:* The wording of the last sentence in the draft notice is unclear to us. Reference is made to a ''total weight factor,'' but we can find no earlier reference to this factor in the text of the notice.

*Response:* The total weight factor is simply the sum of the percentage weight factors of the four allocation criteria which will be used for each applicant this year.

*Comment:* Under the proposed weighting described in section (b) past export performance, we are concerned about how the foreign overhead provided for co-location within a U.S. agricultural trade office will be calculated. In a number of cases, the FMD cooperator has not had a choice in whether or not to co-locate within an ATO in a target market, and does not have direct control over the level of expenditure used to support that ATO.

*Response:* FAS will calculate the dollar value of space provided for co-location within a U.S. agricultural trade office. This value will be based on the square footage occupied by the applicant in the office and the actual rent cost paid by FAS. Since the value represents a level of resources being provided by the U.S. Government, it should be included in the allocation formula.

*Comment:* In calculating proposed contribution levels, past export performance, and past demand expansion performance, the collection of targeted markets over the six year time period should remain unchanged in order to obtain accurate data. Under our limited budget, for example, targeted markets move in and out of each year's marketing plan based on expected or forecast export activity and availability of program funds.

*Response:* The accuracy of the data collected will not be impacted by changes in the targeted markets. For any given year that Cooperator funds are spent in a market, the applicant will be required to provide six years of data. Again, FAS believes it is necessary to analyze data spanning a longer time period in order to obtain an accurate assessment of a long-term strategic marketing plan.

*Comment:* Our organization seems to qualify for all usual and customary factors used by FAS when reviewing proposed projects, e.g, U.S.-based staff, contributions, etc. However, the calculations—6 year averages—for contributions, past export performance, past demand expansion performance, future demand expansion goals and accuracy of past demand expansion projections seem to be intertwined with existing MAP provisions and performance. Our organization has no MAP history. Does this therefore disqualify our organization from FMD consideration?

*Response:* An applicant need not have previously participated in the MAP or Cooperator Program to receive consideration for funding. For those applicants that have no MAP history, calculations for the allocation criteria will be based on Cooperator Program data, as available.

*Comment:* We believe that in developing a method to evaluate the relative merits of different proposals for the purpose of determining appropriate funding levels, an exemption or different method of evaluation should be given to small cooperators. Time and resources available to applicants to prepare ''meritorious proposals'' will be a significant factor. Special consideration should be given to cooperators whose proposed marketing plan budgets fall within a ''*de minimis*'' range or less than 0.5%, 1%, or 2% of all Cooperator marketing plan budgets.

*Response:* FAS does not intend to exempt or apply a different method of evaluation to any applicant as this would undermine the competitive nature of the allocation process. FAS has also considered the time and resources needed to prepare an application for the Cooperator Program and we do not believe this competitive process will impose any additional burden on applicants.

*Comment:* We request that any proposed program regulation acknowledge that due to the diverse makeup of the applicants in terms of membership that the allocation of FMD funding take into consideration the nature of the industry. That is, any calculation of an industry's ability to develop contributions, and the wherewithal to collect industry contributions, should be counterbalanced by that industry's contribution to the economy, in particular, the export economy.

*Response:* FAS recognizes that not all applicants have the same ability to generate industry funding and contributions to the program. FAS also recognizes that an industry's contribution to the economy as a whole is very important. However, for this allocation process, it would be too difficult and too time consuming to identify, quantify, and verify the appropriate variables for measuring the benefits to the economy.

**Background**

Under the Cooperator Program, FAS enters into Market Development Project Agreements with nonprofit U.S. trade organizations or associations of State Departments of Agriculture. FAS enters into agreements with those nonprofit U.S. trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Program participants may not, during the term of their agreement with FAS, make export sales of the agricultural commodity being promoted or charge fees for facilitating an export sale if promotional activities designed to result in that specific sale are supported by Cooperator Program funds.

Market Development Project Agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Approved activities contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as:

—Reducing infra-structural or historical market impediments;
—Improving processing capabilities;
—Modifying codes and standards; and
—Identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

**Authority**

The Cooperator Program is authorized by Title VII of the Agricultural Trade Act of 1978, 7 U.S.C. 5721, *et seq.* Program regulations appear at 7 CFR part 1550.

**Application Process**

To be considered, an applicant must submit to FAS information related to the allocation criteria considered by FAS as described in this notice. All applications must be submitted in

triplicate from (an original and two copies). Handbooks are available to assist applicants in developing an application and marketing plan. To receive a handbook, contact the Marketing Operations Staff at (202) 720–4327 or visit the FAS home page at http://www.fas.usda.gov.

**Review Process**

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion or maintenance of foreign markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indictors are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan, consistent with the strategic objectives of the United States Department of Agriculture's Long-term Agricultural Trade Strategy, and address the performance measurement objectives of the GPRA.

FAS considers a number of factors when reviewing proposed projects. These factors include:

—The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision and execution of the proposed project;

—The organization's willingness to contribute resources including cash and goods and services of the U.S. industry and foreign third parties;

The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;

—The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets; and

—The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects.

*(1) Phase I—Sufficiency Committee Review*

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications.

*(2) Phase 2—FAS Divisional Review*

Applications which meet the application procedures will then be further evaluated by the applicable FAS Commodity Division. The Divisions will recommend funding levels for each applicant based on a review of the applications and marketing plans against the factors described above. The purpose of this review is to identify meritorious proposals and to suggest an appropriate funding level for each application based upon these factors.

*(3) Phase 3—Competitive Review*

Meritorious applications will then be passed on to the office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following evaluation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculation for contribution levels, past export performance and past demand expansion performance will cover not more than a 6 year period, to the extent such data is available.

**Allocation Criteria**

Meritorious proposals will compete for funds on the basis of the following allocation criteria (the numbers in parentheses represent a percentage weight factor). Data used in the calculations for contribution levels, past expert performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is available.

*(a) Contribution Level (40)*

- The applicant's 6-year average share of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share of all Cooperator marketing plan budgets.

*(b) Past Export Performance (20)*

- The 6-year average share of the value of exports promoted by the applicant across Cooperator Program targeted markets compared to
- The applicant's 6-year average share of all Cooperator marketing plan budgets plus a 6-year average share of Market Access Program (MAP) program ceiling levels and a 6-year average share of foreign overhead provided for co-location within a U.S. agricultural trade office in those targeted markets.

*(c) Past Demand Expansion Performance (20)*

- The 6-year average share of the total value of world imports of the commodities promoted by the applicant across Cooperator Program targeted markets compared to
- The applicant's 6-year average share of all Cooperator marketing plan budgets plus a 6-year average share of MAP program ceiling levels and a 6-year average share of foreign overhead provided for co-location within a U.S. agricultural trade office in those targeted markets.

*(d) Future Demand Expansion Goals (20)*

(The criterion will receive a weight of 10 beginning with the year 2000 program.)

- The total dollar value of the applicant's projected increase in world imports of the commodities being promoted by the applicant for the year 2003 across all Cooperator Program targeted markets compared to
- The applicant's requested funding level.

*(e) Accuracy of Past Demand Expansion Projections*

(Since the information is not currently available, this criterion will be used beginning with the year 2000 program and will receive a weight of 10).

- The actual dollar value share of world imports of the commodities being promoted by the applicant for the year 1998 across all Cooperator Program targeted markets compared to
- The applicant's past projected share of world imports of the commodities being promoted by the applicant for the year 1998, as specified in the 1998 Cooperator Program application.

The Commodity Divisions' recommended program levels for each applicant are converted to a percent of the total Cooperator Program funds available and multiplied by the total weight factor to determine the amount of funds allocated to each applicant.

**Closing Date for Applications**

Applications must be received by 5:00 p.m. Eastern Daylight Savings Time August 13, 1997, at the following address:

*Hand Delivery (including Federal Express, DHL, etc.):* U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Ave., S.W., Washington, D.C. 20250–1042.

*U.S. Postal Delivery:* Marketing Operations Staff, STOP 1042, 1400

Independence Ave., S.W., Washington, D.C. 20250–1042.

Dated: July 7, 1997.

**August Schumacher, Jr.,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 97–18383 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–10–M

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Quarterly Summary of State, and Local Tax Revenue.

*Form Number(s):* F–71, F–72, F–73.

*Agency Approval Number:* 0607–0112.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 6,057 hours.

*Number of Respondents:* 6,006.

*Avg Hours Per Response:* 15.1 minutes.

Needs and Uses: State and local government tax collections amount to about 700 billion dollars annually and represent almost half of all governmental revenues. Quarterly measurement of and reporting on these massive fund flows provides valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how state and local governments fund their public sector obligations. These data are used in the National Income and Product Account quarterly estimates developed by the Bureau of Economic Analysis and are widely used by state revenue and tax officials, academicians, media representatives, and others.

This program formerly included federal as well as state and local government tax data. We eliminated the federal data since this information is available elsewhere. However, the respondent burden remains unchanged because we obtained the federal data from public records.

Most of the data for this program are gathered by mail canvass of appropriate state and local government offices. In some instances, data are compiled by trained representatives of the Bureau of the Census from official records.

*Affected Public:* State, local or tribal government.

*Frequency:* Quarterly.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 USC, Section 182.

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–18427 Filed 7–11–97; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1997 Business Expenditures Survey.

*Form Number(s):* B–450(S), 451(S), 151(S), 151A(S), 151D(S), 153(S), 153D(S), 500(SA), 500(SE).

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 72,100 hours in FY 1998.

*Number of Respondents:* 57,700.

*Avg Hours Per Response:* 1.25.

*Needs and Uses:* The Census Bureau plans to conduct the 1997 Business Expenditures Survey (BES), previously known as the Assets and Expenditures Survey (AES), as part of the 1997 Economic Censuses. This information collection will supplement basic economic statistics produced by the 1997 Censuses of Wholesale Trade, Retail Trade, and Service Industries with estimates of operating expenses. It will also provide measures of value produced for wholesale trade and retail trade. This survey is the sole source of expense input data for domestic merchant wholesale, retail, and service businesses. Detailed inquiries on fixed assets and capital expenditures, included in the 1992 survey, have been dropped.

Data will be collected only from employer businesses included in the business current sample surveys (BSR–97) database. This information will be used by the Bureau of Economic Analysis to benchmark national economic accounts such as the input-output account, and to derive economic measures of value produced, such as value added. Other government agencies, private industry, and academia also will use these data for policymaking, market and economic research, and planning.

*Affected Public:* Businesses or other for-profit, Not-for-profit institutions.

*Frequency:* One time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., Sections 131, 193, 195, and 224.

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–18428 Filed 7–11–97; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–815]**

### Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review

July 8, 1997

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Administrative Review.

**SUMMARY:** On January 10, 1997 the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1994—1995 administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A–583–815). This review covers one

manufacturer/exporter of the subject merchandise during the period December 1, 1994 through November 30, 1995.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in our preliminary results of review.

**EFFECTIVE DATE:** July 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

*Applicable Statute and Regulations:* Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the 1995 regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

**SUPPLEMENTARY INFORMATION:**

## Background

On December 30, 1992, the Department published in the **Federal Register** the antidumping duty order on welded stainless steel pipe (WSSP) from Taiwan (57 FR 62300). On December 4, 1995, the Department published the notice of ''Opportunity to Request Administrative Review'' for the period December 1, 1994 through November 30, 1995 (60 FR 62070). In accordance with 19 CFR 353.22(a)(1) (1995), respondent Ta Chen Stainless Pipe Co., Ltd. and its wholly-owned U.S. subsidiary, Ta Chen International (collectively, Ta Chen), requested that we conduct a review of its sales. On February 1, 1996, we published in the **Federal Register** our notice of initiation of this antidumping duty administrative review covering the period December 1, 1994 through November 30, 1995 (61 FR 3670).

We published the preliminary results of this review in the **Federal Register** on January 10, 1997 (Certain Welded Stainless Steel Pipe From Taiwan; Notice of Preliminary Results of Administrative Review, 62 FR 1435 (Preliminary Results)). Because it was not practicable to complete this review within the normal time frame, on February 27, 1997, we published in the **Federal Register** our notice of extension of time limits for these final results (62 FR 11825). The Department held a hearing on April 28, 1997; at petitioners' request, a portion of this hearing was held in camera. Because we determined that the case briefs filed by both parties, and petitioners' rebuttal brief, contained new factual information, we returned these documents to the parties. As instructed, both parties timely submitted corrected versions of their case briefs, and petitioners resubmitted their rebuttal brief.

Furthermore, on June 11 and 12, 1997, the Department conducted a verification of Ta Chen's U.S. sales data at the premises of Ta Chen International. Due to our findings during that verification we have amended our application of facts available for these final results (see ''Results of Verification,'' below). The full results of our verification are detailed in the Department's verification report. A public version of this, and all public information referenced in this notice, is on file in Room B–099 of the Main Commerce Building.

The Department has now completed this review in accordance with section 751 of the Tariff Act.

## Scope of the Review

The merchandise subject to this administrative review is certain welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.04.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

The period for this review is December 1, 1994 through November 30, 1995. This review covers one manufacturer/exporter, Ta Chen.

## Results of Verification

On June 11 and 12, 1997, the Department conducted a verification of Ta Chen's U.S. sales data at the headquarters of Ta Chen International (TCI) in Long Beach, California. In discussing its U.S. sales process with the Department's verifiers, Ta Chen revealed for the first time that some of its sales to one U.S. customer (not the ''Company B'' discussed later) were, in fact, to another person, with the reported U.S. customer acting as a commissionaire. The actual, final customer is not among those listed in Ta Chen's U.S. sales data nor did Ta Chen previously identify the named customer as a commissionaire. In addition, no commission amounts were reported for these sales. Therefore, as a result of our findings at verification, we have concluded that Ta Chen misreported an unknown number of sales to this customer. We find that Ta Chen failed to act to the best of its ability in reporting its U.S. sales to these persons and, in fact, by its own admission withheld the identity of the second person until six months after our preliminary results of review. Because Ta Chen's data do not permit us to identify which sales were made to which person, we cannot segregate the misreported sales for purposes of our final margin calculation. Therefore, we have determined to apply adverse facts available to all of Ta Chen's sales made to this customer, pursuant to section 776(b) of the Tariff Act. For further discussion of this issue, see the public version of the Department's final analysis memorandum.

## Analysis of Comments Received

We received case briefs from Ta Chen and petitioners on April 10, 1997. Ta Chen and petitioners timely filed rebuttal briefs on April 24, 1997. We returned both parties' case briefs and petitioners' rebuttal brief and asked that the parties remove certain information inappropriate for the record of this review. Both parties complied with our request; our analysis addresses the issues raised in these revised briefs below.

Many of the comments that follow concern two of Ta Chen's U.S. customers, referred to here as Company A and Company B. According to Ta Chen, prior to June 1992, Ta Chen had sold pipe from the U.S. inventory of its subsidiary, TCI. In June 1992, TCI and Company A (a U.S. company established in 1988 by the president of another Taiwanese firm), signed an agreement whereby Company A would purchase all of TCI's U.S. inventory and would effectively replace TCI as the principal distributor of Ta Chen pipe products in the United States. Company A also committed itself to purchasing substantial dollar values of Ta Chen products over the next two years. According to Ta Chen, in September 1993, a member of Ta Chen's board of directors sold all of his Ta Chen stock, severed all ties with Ta Chen, and incorporated a new entity, Company B. This new Company B purchased all of Company A's assets, including inventory, and assumed all of Company A's obligations regarding its lease of space from Ta Chen's president, purchase commitments, credit arrangements, etc. The Department cited Ta Chen's affiliation to Company B, and Ta Chen's failure to report sales made by Company B to the first unaffiliated customer in the United States as grounds for the use of adverse facts available as to these sales in our Preliminary Results for the instant period of review (62 FR 1435, January 10, 1997). A more detailed discussion of these issues, which necessitates extensive reference to business proprietary information, is included in the Department's Final Results Analysis Memorandum, a public version of which is on file in Room B–099 of the Main Commerce Building.

*Comment 1:* Ta Chen asserts that since the events of the third period of review (POR) took place prior to enactment of the URAA, ''fundamental fairness'' demands that the Department use the statutory and regulatory provisions in force at that time (*i.e.*, in 1994). Because its sales to Company B pre-dated enactment of the URAA, Ta Chen argues, application of the URAA's definition of affiliation through control represents an unfair, retroactive application of a new statutory provision. Ta Chen notes that all of its sales to Company B in this third POR occurred in August 1994 and were subject to this third review only because the merchandise did not enter the United States until after December 1, 1994 (*i.e.*, after the start of the third POR). Therefore, Ta Chen argues, its August 1994 sales should be examined under the statutory provisions in effect at the time of the sales. Ta Chen insists that under the pre-URAA statute, two parties could only be deemed related if common equity ownership were found. Ta Chen further argues that its actions during the third review were based on its best understanding of U.S. antidumping law then in force. The retroactive application of statutory revisions which came into effect four months after the sales at issue is, Ta Chen believes, manifestly unfair.

Ta Chen further insists that Company B is not a ''related party'' as defined by the pre-URAA statute which was in effect at the time of all of Ta Chen's sales to Company B. First, Ta Chen maintains that under the 1994 statute, section 771(13) of the Tariff Act defines an ''exporter'' as including ''the person by whom or for whose account the merchandise is imported into the United States, and the exporter, manufacturer, or producer owns or controls * * * any interest in the business conducted by such person * * *''. Under this statutory framework, Ta Chen argues, the inquiry should focus upon whether Ta Chen as the foreign exporter and Ta Chen International (TCI) as the importer of record are related, not whether Ta Chen and TCI's customer, Company B, are related. This latter question ''is not relevant for purposes of U.S. dumping law.'' According to Ta Chen, TCI, not Company B, is the person ''by whom'' the subject merchandise was imported. Because Company B is not ''the person by whom or for whose account the merchandise is imported into the United States,'' Ta Chen claims that a threshold condition for application of the related-party provisions of the pre-URAA statute has not been met. See Ta Chen's Case Brief at 3.

Further, Ta Chen maintains that Ta Chen and Company B cannot be considered related because Ta Chen did not own or hold any part of Company B, nor did Company B own any part of Ta Chen, nor did the two firms share common directors or officials. Ta Chen cites Dynamic Random Access Memories from Korea; Final Results of Administrative Review, 58 FR 15467 (March 23, 1993) (DRAMs), and Disposable Pocket Lighters from Thailand; Final Results of Administrative Review, 60 FR 14263, 14268 (March 16, 1995) as supporting its contention that, under the pre-URAA statute, two parties cannot be considered related absent common stock ownership. Ta Chen also notes to the Department's findings in several cases that despite the close operational control of parties linked through a Japanese keiretsu, these parties were not related for purposes of the statute. See Ta Chen's Case Brief at 6, citing Cellular Mobile Telephones and Subassemblies from Japan, 54 FR 48011, 48016 (November 20, 1989).

Ta Chen also notes judicial precedent supporting its interpretation of the related-party provision of the pre-URAA statute, including the Court of International Trade's (the Court's) decision in *Zenith* v. *United States* 606 F. Supp. 695, 699 (CIT 1985), aff'd *Zenith* v. *United States*, 783 F. 2d. 184 (Fed. Cir. 1986) (Zenith). There, the Court found that ''the requirements of our law are satisfied when (the Department) investigates whether there is any financial relationship * * *. The discernment of relationships which do not find expression in concrete financial terms is not something which can be posited as a mandatory duty, and is not required by [the statute].'' Ta Chen's Case Brief at 5. And, Ta Chen maintains, in *Torrington Company* v. *United States,* Slip Op. 97–29 (CIT March 7, 1997), the Court found there was no requirement for the Department to look beyond the statute's ''bright-line test for defining related parties.''

Ta Chen argues that its interpretation of the related-party provisions of the pre-URAA statute is further supported by the Statement of Administrative Action (SAA) which accompanied the URAA. In explaining the need for refining the statutory definition of affiliated persons, Ta Chen continues, the SAA stressed that ''including control in the definition of 'affiliated' will permit a more sophisticated analysis which better reflects the realities of the marketplace.'' Ta Chen's Case Brief at 7, quoting the SAA at 78; see also Large Newspaper Printing Presses and Components Thereof From Japan; 61 38139 (July 23, 1996) and Engineering Process Gas Turbo-Compressor Systems from Japan, 61 FR 65013 (December 10, 1996).

Further, Ta Chen argues that when the pre-URAA statute refers to related parties controlling, through stock ownership, directly or indirectly, ''any interest'' in the business of the other, the interest referred to is stock ownership. According to Ta Chen, the Department has consistently defined an ''interest'' as representing ''no less than five percent ownership.'' Ta Chen's Case Brief at 10, quoting from a February 1, 1996 Concurrence Memorandum in Certain Fresh Cut Flowers from Colombia. Ta Chen maintains that petitioners' cites to pre-URAA determinations are not on point; each of these cases involved either equity ownership or common directors. For

example, in Roller Chain, Other Than Bicycle Chain, From Japan, 57 FR 43697 (September 22, 1992), Ta Chen claims that the parties were related through common directors, and, in fact, through common ownership by the respondent of 60 percent of the related firm's stock. Ta Chen avers that petitioners' reliance on Fresh Cut Flowers from Colombia (61 FR 42833, 42861 (August 19, 1996)) (Flowers) is also misplaced. While the Department found in that case that control was sufficient to establish affiliation, Ta Chen stresses that the control at issue consisted of common board members controlling voting power in both entities, a situation which, Ta Chen asserts, does not obtain in the instant review.

As to the proper statutory provisions governing this administrative review, petitioners suggest that ''Ta Chen's assertions are inconsistent with the plain language of the statute and must be rejected.'' Petitioners note that section 291 of the URAA mandates that this review be conducted according to the Tariff Act, as amended by the URAA, since the review was initiated after January 1, 1995 (the effective date for the changes mandated by the URAA). Further, petitioners aver that all administrative reviews conducted pursuant to U.S. law involve the retrospective examination of sales made; the URAA did not alter this aspect of the antidumping statute. Petitioners also note that Ta Chen requested the instant administrative review in December 1995, or nearly a year after the URAA took effect; Ta Chen was ''on full notice'' as to the applicable statutory provisions.

Finally, petitioners maintain that since Ta Chen is both an ''affiliated person'' under section 771(33) of the URAA-amended statute and a ''related party'' in accordance with section 771(13) of the pre-URAA statute, Ta Chen's complaint about fairness is infirm. Petitioners note that the definition of ''exporter'' for purposes of determining U.S. price found at section 771(13) of the pre-URAA statute refers explicitly to one person controlling ''through stock ownership or control or otherwise'' any interest in the business conducted by the other person. Petitioners' Rebuttal Brief at 29, quoting section 771(13)(B) and (C) of the Tariff Act. Thus, petitioners assert, under ''the plain terms'' of the pre-URAA statute, ''stock ownership was not the *sine qua non* to finding parties to be related for purposes of identifying the U.S. party as an 'exporter.'''

Petitioners further assail Ta Chen's ''quest to prove that Ta Chen was not related to (Company B) by virtue of its control over (Company B's) activities under the pre-1995 law.'' According to petitioners, the focus of the related-party definition of ''exporter'' is not solely upon the person by whom the merchandise is imported into the United States, but also upon the person ''for whose account'' the merchandise is imported. In the instant case, petitioners argue, Company B was the person ''for whose account'' subject WSSP was imported during the POR. Additionally, Ta Chen's own representations during this review that TCI was a mere ''facilitator'' for its U.S. sales is, petitioners believe, further proof that TCI was not the party ''for whose account'' the merchandise was imported.

As to the need for an equity ownership to demonstrate two parties are related, petitioners concede that in the past the Department has focused primarily upon stock ownership in rendering its related-party determinations. However, petitioners aver that Ta Chen's interpretation ''carefully omits the statutory reference to control outside equity ownership.'' Petitioners' Rebuttal Brief at 31. According to petitioners, the reference to control of a company other than through stock ownership makes clear that equity ownership was not the sole prerequisite to finding two parties related.

Petitioners cite to past Departmental and judicial determinations as supporting a conclusion that parties may be found to be related absent equity ownership. Petitioners point to Flowers, where the Department ''recognized that section 771(13) ''establishes a standard for relationship based on association, ownership or control.' '' Petitioners' Case Brief at 32. Petitioners also cite to the Court's decision in *E.I. DuPont de Nemours & Co.* v. *United States (*841 F. Supp. 1237, 1248 (CIT 1993)) wherein the Court found that ''[t]he ITA is not constrained to examine only financial relationships in making the determination,'' and that ''[t]he requirements of U.S. law were satisfied when the ITA investigated both financial and non-financial connections.'' Id.; see also *Sugiyama Chain Co., Ltd.* v. *United States*, 852 F. Supp. 1103, 1110 (CIT 1994).

*Department's Position:* We agree with petitioners that the Tariff Act, as amended by the provisions of the URAA, clearly governs this third administrative review. As the URAA and its accompanying SAA make clear, ''amendments to the (Tariff) Act will apply to investigations and reviews based on petitions or requests received after the WTO Agreement enters into force with respect to the United States,'' *i.e.*, January 1, 1995. See SAA at 225. Therefore, the Department has no discretion to apply selectively the amendments effected by the URAA. As petitioners note, Ta Chen was the sole party to request this administrative review, which it did on December 12, 1995, or nearly one year after the URAA took effect. Thus, any argument that Ta Chen is being subjected to an unfair, retroactive application of the statute is clearly without merit.

Furthermore, we have preliminarily determined in the first and second administrative reviews of this order, conducted under the pre-URAA Tariff Act, that Ta Chen is, in fact, related to Company A and Company B, using the definition of ''related'' found in Section 771(13) of the old statute. See Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Reviews, 62 FR 26776 (May 15, 1997); see also Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Preliminary Results of Administrative Review, 62 FR 26773 (May 15, 1997). As we note in those reviews, section 771(13) of the Tariff Act defines the ''exporter'' as including the ''person by whom or for whose account the merchandise is imported into the United States if * * * the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business conducted by such person.'' Section 771(13)(C) of the 1994 Tariff Act (emphasis added). Thus, the plain language of the statute clearly authorizes the Department to consider relationships other than those arising through direct equity ownership. Our preliminary determination in the first and second reviews of WSSP is that Company B should properly be included as the ''person by whom or for whose account'' the merchandise was imported into the United States during the relevant periods of review.

In addition, Ta Chen's reliance on the Court's finding in Zenith is misplaced. There, the Court found that there was no statutory requirement that the Department examine ''relationships which do not find expression in concrete financial terms.'' Nowhere in its decision, however, did the Court suggest that the Department was statutorily barred from an examination of such non-financial relationships. Nor could it be so barred, as the statute expressly permits such an examination.

Ta Chen also exaggerates the changes in the statutory treatment of ''related parties'' versus ''affiliated persons'' under the URAA. As Ta Chen notes, the

SAA stresses that subparagraph (G) of the new section 771(33) provides for situations wherein one person ''controls'' another, and explains that this addition ''will permit a more sophisticated analysis which better reflects the realities of the marketplace.'' Contrary to Ta Chen's argument, however, subparagraph (G) of section 771(33) does not represent a fundamental change in the statute's intent. Rather, this subparagraph merely reinforces the old statute's definition of parties being ''related'' when one ''controls, directly or indirectly, through stock ownership or control or otherwise'' an interest in the other. This comports with past Departmental precedent on this issue. For example, in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al., we noted that we could find parties related if ''the nature of their relationship allows the possibility of price and cost manipulation.'' 60 FR 10900, 10945 (February 28, 1995). Likewise, in Certain Iron Construction Castings From Canada, we stated explicitly that our related party determinations were ''not based solely on the extent of [the parties'] financial relationships.'' 60 FR 9009 (February 16, 1995); see also Final Determination of Sales at Less Than Fair Value; Coated Groundwood Paper From Finland, 56 FR 56363, 56369 (November 4, 1991).

*Comment Two:* Ta Chen maintains that, even if the URAA-amended Tariff Act controls this administrative review, the Department nevertheless erred in concluding that Ta Chen and Company B are ''affiliated persons.'' Ta Chen insists that the Department's preliminary determination that ''Ta Chen effectively exercised operational control over this putatively unaffiliated customer'' is contrary to the record evidence, the statute, the Department's regulations, and Departmental practice on this issue. Citing the Department's proposed regulations, Ta Chen notes four factors the Department will consider in determining affiliation. These are: (i) Corporate or family groupings; (ii) Franchise or joint venture agreements; (iii) Debt financing; and (iv) Close supplier relationships. See Notice of Proposed Rulemaking, Section 351.102, 61 FR 7308, 7310 (February 27, 1996). Ta Chen insists that the first two are irrelevant, as the Department has not suggested that Ta Chen and Company B are constituents of a single corporate or family group. Likewise, Ta Chen argues, Company B is not a franchisee of Ta Chen, nor has it entered into a joint venture arrangement with Ta Chen. Ta Chen dismisses the third point, stating that Ta Chen did not finance any debt of Company B. Thus, Ta Chen maintains, only the last indicium, close supplier relationships, is relevant in this review, and this factor, as it is commonly interpreted by the Department, also does not support the preliminary finding of affiliation.

Ta Chen argues that in the instant case the Department's concern is whether one party enjoys ''the ability to exercise restraint or direction over another party's pricing, cost, or production decisions.'' 61 FR 7308, 7310 (February 27, 1996). Because Company B is a pipe distributor, Ta Chen avers, control over cost and production decisions is not at issue; therefore, the Department's present inquiry focuses solely upon control over pricing. Ta Chen claims that the Department did not explain in its Preliminary Results any such control exercised by Ta Chen over Company B. According to Ta Chen, the ''lack of an adequate connection between a crucial determination and the record evidence renders the determination unlawful.'' Ta Chen's Case Brief at 18; see also *Daewoo Electronics Co., Ltd.* v. *United States* 760 F.Supp. 200 (1991). Ta Chen maintains that the Department's *dictum*, without sufficient explanation, that Ta Chen's control of Company B was ''clearly evident'' runs counter to past judicial instruction. *Id.* at 19, citing *NACCO Materials Handling Group* v. *United States*, 932 F.Supp. 304, 312 (CIT June 18, 1996), and FAG Kugelfischer Georg Schafer KGaA v. United States, Slip Op. 96–108 (CIT July 10, 1996).

Ta Chen further argues that the factors which the Department does cite in its Preliminary Results do not support a finding of affiliation. For example, Ta Chen maintains that, contrary to our preliminary determination, Ta Chen did not control the disbursements of Company B. Ta Chen claims that physical custody of Company B's signature stamp did not constitute control over Company B's disbursements. Rather, Ta Chen argues, custody of the signature stamp merely permitted Ta Chen's bookkeeper, with prior authorization from Company B, to sign checks for Company B when its executives were ''otherwise occupied.'' According to Ta Chen, Company B could, and did, write checks without first seeking Ta Chen's permission, nor could Ta Chen prevent such disbursements. Thus, Ta Chen insists, physical custody of the signature stamp permitted Ta Chen to monitor, not control, Company B's disbursements.

Ta Chen also avers that its credit monitoring ''is typical of that found between unaffiliated parties.'' Pointing to statements provided by Ta Chen on the record of this review, Ta Chen insists that pipe distributors typically allow their unaffiliated suppliers complete and unfettered access to every aspect of their business operations. Ta Chen further argues that the published literature on the Uniform Commercial Code makes clear that creditors often employ monitoring of a debtor's activities as ''the only effective mechanism'' for uncovering misfeasance by the debtor which would harm the creditor's interests. Besides, Ta Chen concludes, the Department ''has never found credit monitoring relevant for purposes of determining if parties are affiliated.'' Ta Chen's Case Brief at 23.

Ta Chen also disagrees with the Department's preliminary finding that Ta Chen's computer monitoring of Company B constituted an element of control over this customer. Ta Chen avers that as it extends ''substantial credit'' to Company B, it is necessary for Ta Chen to institute such monitoring to ''provide early warning of cash flow problems which could adversely affect ability to pay debt.'' Ta Chen's Case Brief at 28, citing to Ta Chen's January 13, 1997 submission. Further, according to Ta Chen, such access facilitated ''just-in-time'' deliveries of merchandise. Ta Chen claims that Ta Chen's monitoring of Company B's inventory did ''not provid[e] any information that is not publicly provided in the metals industry anyway.'' And the ''just-in-time'' delivery arrangements have never been grounds for finding two parties affiliated, Ta Chen argues, citing to Steel Wheels From Brazil, 54 FR 21456, 21457 (1989), and Polyethylene Terephthalate Film, Sheet, and Strip From Japan, 56 FR 16300 (1991). Finally, such computer links do not constitute control of prices, and are, in Ta Chen's view, irrelevant.

As to shared sales department personnel, Ta Chen states that ''Ta Chen and Company B had no common employees, at any time.'' *Id.* Ta Chen asserts that its assistance to Company B was limited to ''clerical assistance,'' performed for Ta Chen's benefit and only incidentally for Company B's benefit. Furthermore, Ta Chen argues, such assistance is not sufficient grounds for finding parties affiliated. Ta Chen cites the following examples of the assistance these parties provided for each other: clerical assistance, training, use of office equipment, answering inquiries and forwarding messages, accounting training and assistance, suggestions on working with customs

brokers, training on shipping procedures, data entry, and ''other clerical book-keeping type [sic] assistance.'' *Id.* at 24. According to Ta Chen, ''the Department has never found such cooperation is control.'' *Id.*, citing Large Newspaper Printing Presses and Components Thereof From Japan, 61 FR 38139, 38156 (1996). Ta Chen asserts that for the Department to find affiliation, the common employees must ''share in the day-to-day management.'' In fact, the Department's standard antidumping questionnaires asks respondents to address ''computer, legal, accounting, audit and or business system development assistance, personnel training, personnel exchange and manpower assistance'' in making level-of-trade determinations; this indicates the Department's recognition that respondents will provide such services to unaffiliated persons.

With respect to the participation of Ta Chen's president in negotiating prices between Company B and its subsequent customers, Ta Chen argues that ''a distributor's credibility significantly depends upon its customers' belief that the mill supports the distributor.'' Ta Chen's Case Brief at 30. In that capacity, Ta Chen asserts, Ta Chen officials would meet with Company B's customers. Ta Chen also states that ''Ta Chen officials knew the prices which would be accepted by Ta Chen's distributor,'' (*i.e.*, Company B). According to Ta Chen, if the distributor's customer indicated interest in purchasing Ta Chen products at prices it knew were acceptable to Company B, the Ta Chen official would instruct the customer to prepare a purchase order for Company B. See Ta Chen's Case Brief at 30, citing to its January 13, 1997 submission. In these contacts, Ta Chen insists, Ta Chen was acting solely on its own behalf, as was Company B. Such activities as cited, Ta Chen argues, do not ''constitute negotiation or control of prices.'' Ta Chen maintains that there are no Departmental determinations on this point pursuant to the URAA statute. Old-law precedent, Ta Chen suggests, favors Ta Chen's interpretation. In Certain Residential Door Locks From Taiwan, for example, the Department concluded that despite one party's ability to exercise control over prices, the entities were unrelated because they operated as ''separate and distinct entities,'' and were ''separately owned and operated.'' *Id.*

As to the debt financing arrangement, Ta Chen claims that ''(Company B) did not offer its accounts receivable and inventory as security for a loan obtained by TCI. Rather, Ta Chen requested, and (Company B) agreed to grant, a UCC security interest in (Company B's) accounts receivable in addition to the inventory which was the subject of the credit arrangement.'' Ta Chen's Case Brief at 33. Ta Chen argues that the fact that the lien was intended to secure TCI's debt ''is not relevant to these proceedings.'' According to Ta Chen, the UCC recognizes the assignability of security interests by contract. Ta Chen further argues that Company B's assigning its inventory to TCI's creditor had the same effect as if TCI had exercised its right to assign its security interests to the bank. Furthermore, Ta Chen insists, such assignments ''occur between, and are consistent with the actions of, unaffiliated parties.'' *Id.* Under the URAA-amended statute, the Department has not held that a respondent's loans to a customer make the parties affiliated for purposes of the Tariff Act.

Furthermore, as to close supplier relationships, Ta Chen argues that while Company B may have relied exclusively upon Ta Chen as a supplier of WSSP, it was free to do business with other companies. Ta Chen asserts that under the URAA, the Department has never found an exclusive-supplier relationship sufficient to deem the supplier and customer affiliated. See Ta Chen's Case Brief at 40, citing Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea, 61 FR 51882, 51885 (October 4, 1996) (Carbon Steel Flat Products); Open-End Spun Rayon Singles Yarn From Austria, 62 FR 14399, 14403 (March 26, 1997) (Rayon Yarn); Melamine Institutional Dinnerware From Indonesia, 62 FR 1719, 1726 (January 13, 1997) (Melamine Dinnerware). With respect to old-law precedent, Ta Chen argues that, *a fortiori,* exclusive-supplier relationships do not render two parties related. Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (1983); Certain Residential Door Locks From Taiwan, 54 FR 53153 (Comment 18) (1989).

Finally, Ta Chen notes that its audited financial statements do not treat Company B as a related party, and that its prices to Company B were ''always less than its net ex-factory price to other U.S. customers.'' *Id.* at 43 (emphasis in original). Ta Chen continues: ''[i]f Ta Chen had wanted to use an affiliated party to manipulate its dumping margin, * * * Ta Chen would have charged that party more than the average. It did not.'' *Id.* at 44.

Petitioners maintain that the Department correctly determined that Ta Chen and Company B were affiliated during the third administrative review, arguing that the evidence of affiliation presented by Ta Chen in its November 12, 1996 supplemental questionnaire response is ''clear and overwhelming.'' Petitioners' Case Brief at 3. Petitioners assert that Company B ''was not at liberty to act in any meaningful commercial sense apart from Ta Chen,'' and that the record evidence demonstrates that Ta Chen, in fact, ''completely directed (Company B's) operations.'' *Id.* Petitioners note that Ta Chen's attempts to buttress its assertion that its ties to Company B are common in the welded stainless steel pipe trade consist solely of ''statements'' from various individuals; each of these statements lack any examples demonstrating where other unaffiliated companies were so inextricably linked. Thus, the Department should treat these ''statements'' as ''baseless *ipse dixits*'' and should continue to treat Ta Chen and Company B as affiliated persons. *Id.* at 4. According to petitioners, Ta Chen has failed to show how any of the circumstances cited by the Department in its Preliminary Results as indicia of Ta Chen's affiliation to Company B are typical practices in the stainless steel pipe industry; in fact, petitioners maintain, these practices are not typical. Rather, petitioners charge, Ta Chen continues to dissemble in arguing that all of its U.S. sales in this review were to unaffiliated persons.

Furthermore, petitioners aver, the Department's conclusion that Ta Chen and Company B are affiliated persons is supported by the plain language of the Tariff Act and the SAA which accompanied the URAA. According to petitioners, Ta Chen, in referring to the four indicia of control cited in the SAA (see above), does violence to the actual meaning of that passage by omitting the words ''for example.'' Thus, the four factors listed are ''not intended to identify the only means by which control could occur.'' Petitioners' Rebuttal Brief at 23. Rather, petitioners contend, the statute and SAA direct the Department to base its determinations of affiliation on the specific facts of each case, with an emphasis upon whether one person was ''legally or operationally in a position to exercise restraint or control over the other person.''

Petitioners also take issue with Ta Chen's characterization of the affiliated persons provisions of the Tariff Act. Contrary to Ta Chen's assertions, petitioners argue, the statute does not require a demonstration that one person set prices or costs for the other, but only that one person be ''in a position'' to control prices or costs. Evidence of this operational control, petitioners contend, is clear in Ta Chen's exclusive-supplier

relationship with Company B, in its control over Company B's disbursements through physical custody of Company B's signature stamp, in the two entities' shared sales department personnel, in Ta Chen's complete access to Company B's computer system, in Ta Chen's direct participation in negotiating subsequent resales by Company B, and in Company B's assigning its inventory and accounts receivable to TCI's creditor. Petitioners aver that these ties ''establish[ ] a degree of control that is un-paralleled, to petitioners'' knowledge, in any other case.'' Petitioners' Rebuttal Brief at 27. Even where the Department previously has found any one of these ties insufficient to establish affiliation, petitioners conclude, ''in no case has there ever been this collection of activities demonstrating operational control by a supplier over its customer.'' *Id*. (original emphasis). Petitioners suggest that this combination of factors ''more than satisfies the statutory requirement that Ta Chen be in a position to exercise legal or operational control over (Company B).'' *Id*.

*Department's Position:* We disagree with Ta Chen's analysis of the affiliated persons provisions of section 771(33) of the Tariff Act. Ta Chen, through selective quotes from the SAA and our Notice of Proposed Rulemaking attempts to posit a bright-line standard to which the Department must adhere in analyzing the relationships between entities. However, as the Notice of Proposed Rulemaking makes clear, the Department has deliberately refrained from establishing any precise thresholds for a finding of control:

> some indicia of the ability to exercise restraint or direction over another party's pricing, cost, or production decisions may not lend themselves to the use of simple black-and-white thresholds. Therefore, the Department intends to apply this new definition on a case-by-case basis considering all relevant factors including the indicia included in the regulatory definition. Mere identification of the presence of one or more of these or other indicia of control does not end our task. We will examine these indicia in light of business and economic reality to determine whether they are, in fact, evidence of control.

Notice of Proposed Rulemaking at 61 FR 7310 (emphases added).

Thus, it is clear that neither the statute, the SAA, nor the Department's proposed regulations restrict the Department's inquiry to four specific factors. Rather, these were listed as illustrative examples of the types of relationships which might lead to a determination that two or more parties are affiliated within the meaning of section 771(33) of the Tariff Act. This is borne out by the limited corpus of Departmental precedent under the 1995 statute. Thus, in Certain Cut-to-Length Carbon Steel Plate From Brazil (62 FR 18486, 18490 (April 15, 1997)) we stated the statute requires the Department ''to base its findings of control on several factors, not merely the level of stock ownership.'' And in Large Newspaper Printing Presses and Components Thereof From Japan, after noting that close supplier relationships could be sufficient evidence of control, we stated that the Department would make its affiliated party determinations after taking ''into account all factors which, by themselves, or in combination, may indicate affiliations.'' 61 FR 38139 (July 23, 1996); see also Notice of Final Determination; Engineered Process Gas Turbo-Compressor Systems From Japan, 62 FR 24394, 24403 (May 5, 1997).

In addition, as we explained in the Preliminary Results, we conclude that the record evidence amply supports our determination that Ta Chen was affiliated with Company B. In reviewing the record, the Department finds no evidence of any distinct operational personality for Company B apart from Ta Chen and Ta Chen International: Company B was established at Ta Chen's behest, by current or former managers and officers of Ta Chen; was staffed entirely by current or former Ta Chen employees; and distributed only Ta Chen products in the United States.

With respect to Ta Chen's physical custody of Company B's signature stamp, Ta Chen's custody of this stamp is *prima facie* evidence that it either exercised, or was in a position to exercise, control over Company B's disbursements. Ta Chen has not presented any evidence to the contrary.

As for the credit monitoring of Company B by Ta Chen, we agree that it is common for a creditor to obtain reports regarding the status of a debtor's business activities. See, e.g., Nassberg, Richard T. The Lenders Handbook, American Law Institute, American Bar Association Committee on Continuing Professional Education, Philadelphia, 1994 at Chapter 7. However, we reject Ta Chen's claim that its dedicated computer connection to Company B represented a common example of such monitoring. Rather, the full-time and unlimited access to Company B's computer system afforded Ta Chen a far more invasive mechanism for monitoring than would be expected between unaffiliated parties. We note further that Ta Chen officials stated at the Department's recent verification at TCI that Company B maintained no security system or passwords with which to limit or terminate Ta Chen's access to its records; Ta Chen's access to Company B's accounting system was complete.

With respect to common employees, in its case brief Ta Chen attempts to minimize this sharing of personnel. However, in its November 12, 1996 supplemental questionnaire response, Ta Chen stressed that Company A and Company B had no experience or knowledge regarding the U.S. market for WSSP. Ta Chen also claimed that ''TCI provided [Company A] with assistance from its personnel and, from time to time, the use of TCI office equipment,'' and noted that TCI ''could help fill any gaps in the know how or experience of the back-office personnel,'' dealing with such vital activities as billing, invoicing, accounts receivable, assistance in Customs matters, ''and other clerical functions.'' Ta Chen's November 12, 1996 Response at 51 and 53. We also note the movement of Ta Chen's former sales manager among Ta Chen, Company A, and Company B. Given the longstanding and intimate business dealings between this individual and the president of Ta Chen, we must question the degree of operational autonomy of Company A and Company B while under this individual's stewardship. We also note that this individual received substantial compensation from Ta Chen well after his claimed severance date of 1992. Further, Ta Chen's president met with Company B's customers, and participated directly in the negotiation of prices for Company B's subsequent resales of WSSP. Ta Chen's statement that it ''knew the prices which would be accepted by Ta Chen's distributor'' raises additional questions about the extent to which Company B was free to act in its own interest.

With respect to debt financing (an indicium specifically mentioned in the SAA and Notice of Proprosed Rulemaking), whether Company B can be said to have ''offered'' its accounts receivable and inventory as collateral for a bank loan to TCI, or that TCI ''requested'' and Company B ''agreed'' to take such a step is not germane to our analysis. Either way, as we stated in our Preliminary Results, Company B ''placed its continued ability to operate in the hands of a putatively unaffiliated party.'' Preliminary Results at 1436. Despite the statements of various individuals which Ta Chen has placed on the record of this review, neither Ta Chen nor any of these individuals is able to cite to a single case where an unaffiliated party would accept this risk. We also disagree with Ta Chen's claim that Company B's pledging its

accounts receivable and inventory to TCI's bank was essentially akin to TCI securing a lien upon Company B and, in turn, assigning its rights to the bank. We note that the actual transaction involved a significant qualitative difference. In the latter case, TCI's security interest would be limited to the amount Company B owed against purchases of inventory. In the former case, Company B unilaterally, and without consideration, assigned its entire inventory and accounts receivable directly to TCI's bank to facilitate a loan for TCI. That Company B would accept this risk without any consideration—without even a written agreement memorializing the terms and duration of the agreement—does not comport with the commercial realities of dealings between unaffiliated companies. Nor has Ta Chen offered convincing evidence that this arrangement is, in fact, commonplace. As a final note, Ta Chen itself undermines the stated reason for this arrangement: to ensure payment by Company B to Ta Chen for purchases of stainless steel products. In its November 12, 1996 submission, Ta Chen asserts that the risk of default by Company B ''was not significant, since bad debt has not been a problem.'' The absence of a genuine credit risk would, in fact, attenuate the need for this extraordinary financial relationship. See Ta Chen's November 12, 1996 Supplemental Response at 81.

The existence of close supplier relationships is another factor specifically mentioned in the SAA. Here, too, our examination of Ta Chen's role as supplier to Company B supports a finding of affiliation. While Ta Chen claims that Company B was free to purchase stainless steel pipe from other suppliers, Ta Chen has not provided evidence to suggest that Company B ever looked to any producer other than Ta Chen as its supplier. In fact, Ta Chen has allowed that ''to the best of its knowledge'' (which we must presume was extensive, given Ta Chen's computer access and custody of the signature stamp), Ta Chen was the exclusive supplier of stainless steel pipe products to Company B. Furthermore, the cases Ta Chen cites on this point are inapposite. In each case, we did not conclude that a close supplier relationship was insufficient grounds for a finding of affiliation; rather, we concluded that no close supplier relationship of any kind existed. In Carbon Steel Flat Products, for example, we found that no exclusive supplier relationship existed between the respondents and the named entities. See Final Results of Administrative Review, 62 FR 18404, 18417 (April 15, 1997). Likewise, in Rayon Yarn and Melamine Dinnerware, the Department found that, unlike in the instant review, there were no close supplier relationships. Furthermore, the Department has stated explicitly that it may consider close supplier relationships sufficient basis for a finding of affiliation. See Large Newspaper Printing Presses and Components Thereof From Japan, 61 FR 38139 (July 23, 1996).

*Comment Three:* Ta Chen maintains that the Department's use of adverse facts available was unlawful. Ta Chen insists that it cooperated fully with the Department throughout these proceedings and responded immediately to each of the Department's requests for information. The new information Ta Chen provided in its November 12, 1996 Supplemental Response was in direct response to the Department's request, made for the first time, that Ta Chen explain ''all relationships'' between Ta Chen and Company B. Ta Chen cites to the Department's verification reports issued in the first administrative review as evidence of its complete cooperation with the Department; ''[n]o verifier question went unanswered.''

Furthermore, Ta Chen submits, even if the Department concludes that Ta Chen and Company B were affiliated during this third review, Ta Chen had a reasonable basis for believing that no such affiliation existed under the law in effect at the time of the relevant sales to Company B (*i.e.*, in August 1994). In four separate verifications the Department limited its related party inquiries to common equity ownership or shared directors. Thus, Ta Chen argues, it had ''well-founded and reasonable'' grounds for believing that Ta Chen and Company B were unaffiliated for purposes of the Tariff Act.

As to the Department's choice of facts available, Ta Chen avers that Ta Chen's current cash deposit rate (from the less than fair value [LTFV] investigation) would provide ''sufficient motivation'' for Ta Chen to cooperate fully with the Department. Ta Chen reasons that it requested the three pending administrative reviews in order to lower its antidumping liabilities; if the Department continued its imposition of its existing cash deposit rate of 3.27 percent, ''Ta Chen's purpose in participating in these reviews will have been completely undermined.'' Ta Chen's Case Brief at 48. Ta Chen draws a distinction between the pending reviews of WSSP and other cases wherein a respondent is required to participate in an administrative review sought by a petitioner; in the latter case, Ta Chen argues, the threat of a higher margin suggested by petitioner serves to induce respondents' cooperation. In light of these facts, Ta Chen argues, use of the 31.90 percent margin from the Preliminary Results is entirely inappropriate.

In addition to being unduly punitive, Ta Chen continues, use of adverse facts available is especially unwarranted where ''novel, vague issues are involved.'' Ta Chen insists that adverse facts available would be called for only if three conditions had been met: (i) the respondent could reasonably have been expected to know that the data it did not provide had been requested by the Department, (ii) the requested data were not a new requirement of the 1995 statute, nor a new concept under the statute, and (iii) the questionnaire was not vague. See Ta Chen's Case Brief at 43, citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al. (AFBs From France) 62 FR 2081, 2088, 2090 (January 15, 1997); Fresh Cut Flowers From Colombia 62 FR 16772 1776 (1997). Pointing to the Court's decision in *Daewoo Electronics Co., Ltd.* v. *U.S.* 712 F. Supp. 931, 945 (CIT 1989), Ta Chen maintains that the Department must engage in ''clear and adequate communication'' with a respondent before applying facts available. Ta Chen stresses that prior to the Department's issuance of its Preliminary Results Ta Chen could not foresee that the Department would consider Ta Chen and Company B to be affiliated persons. Thus, Ta Chen argues, it had no reason to report Company B's sales to its customers, rather than Ta Chen's sales to Company B.

Ta Chen argues that the Department has applied ''cooperative'' facts available in another case involving the failure properly to report subsequent U.S. sales made by an affiliated person. See Ta Chen's Case Brief at 51, citing Certain Small Business Telephones From Taiwan, 59 FR 66912 (December 28, 1994) and Certain Fresh Cut Flowers From Colombia, 59 FR 15159 (March, 31, 1994). Despite the respondents in these cases having clear knowledge that they were related, and failing to report properly their U.S. sales, the Department responded with ''second-tier'' BIA. Here too, Ta Chen argues, the Department should treat Ta Chen with non-adverse facts available.

Ta Chen also maintains that the judicial precedents cited by petitioners do not support the use of adverse facts available. In *Sugiyama Chain* v. *United States,* 852 F. Supp. 1105, 1111 (CIT 1994), for example, Ta Chen notes that

the Department applied cooperative BIA to a respondent in six of the seven administrative reviews at bar, despite the Department's belief that the respondent ''attempted to intentionally deceive the Department.'' Ta Chen's Case Brief at 54. The application of non-cooperative BIA in the seventh review was based on the respondent's failure at verification, and refusal to supply other requested information (including the subsequent home market sales to unrelated customers). Ta Chen holds that none of these conditions exists here. At worst, Ta Chen submits, it ''mischaracterized the situation'' with respect to Company B; it did not ''misrepresent the situation.'' *Id.* at 55 (original emphasis).

In addition, Ta Chen notes that while petitioners cite to Certain Stainless Steel Wire Rod From India (58 FR 54110, 54111 (October 20, 1993)) (Steel Wire Rod) as supporting the use of adverse facts available, petitioners do not mention the respondent's numerous shortcomings in that review. In that case Ta Chen points out that the respondent Mukand initially and repeatedly denied any relationship with the related customer, claimed that the customer was free to purchase from others and later retracted that claim, first denied control over the customer and later admitted the same, contradicted almost all of the information in its earlier submissions, and failed to state initially that one of its officials ran the customer's day-to-day business operations. Furthermore, the same Mukand official certified as correct certain inconsistent and contradictory responses.

Petitioners, on the other hand, ask that the Department look beyond the ''factually unsubstantiated and legally unsound'' arguments presented in Ta Chen's case brief, and look instead to the chronology of events unfolding throughout the five-year history of this case. According to petitioners, this chronology demonstrates that Ta Chen repeatedly and deliberately lied to the Department regarding its sales in the United States; this pattern of dissembling warrants assignment of total adverse facts available. Petitioners dismiss Ta Chen's suggestions in its case brief that this review involves ''novel, vague issues,'' and that the Department itself is struggling to interpret the affiliated persons provisions of section 771(33) of the Tariff Act. Petitioners also contend that, contrary to Ta Chen's arguments, Ta Chen ''has been on notice at least since verification ... in October 1994 of the Department's intense interest in Ta Chen's relationship with certain customers in the United States.'' Petitioners' Rebuttal Brief at 2. Therefore, petitioners aver, it is ''farcical'' for Ta Chen to insist that it ''had absolutely no reason to think the Department would consider Ta Chen and [certain U.S. customers] affiliated parties.'' *Id.*, (quoting from Ta Chen's Case Brief). Rather, petitioners claim, the unique facts of this case permit no doubt that Ta Chen is affiliated with these U.S. customers, which were, for all intents and purposes, ''Ta Chen's alter ego and tool.'' *Id.*

Petitioners assert that the Department's interest in Ta Chen's affiliated entities in this review is evident from the Department's initial antidumping questionnaire, which quotes from section 771(33) of the Tariff Act in defining ''affiliated person.'' Petitioners also note that the Department's questionnaire queries the respondent specifically as to affiliations ''through means other than stock ownership,'' thus leaving no doubt that the Department did not define affiliation as being limited to, *per se*, an equity interest in the other person.

Furthermore, petitioners maintain, the Department's intense scrutiny of these specific customers was clearly evident during the still-pending first and second reviews, as well. According to petitioners, the Department's reports on the verifications of Ta Chen and TCI, conducted in October 1994, detail at length the extraordinary attention focused by the Department on these customers. Therefore, petitioners argue, it is absurd for Ta Chen to profess, as it has in its case brief, that Ta Chen had no indication that the Department might consider these U.S. customers as ''affiliated persons.'' Rather, petitioners insist, Ta Chen's grudging disclosure of information, and its active efforts to misrepresent the information it has disclosed, are indicative of a pattern of ''fraudulent deception.'' *Id.* at 6.

For example, petitioners continue, Ta Chen concealed the significant role of Company A in Ta Chen's activities during the first review until petitioners uncovered Company A's existence and insisted on a full discussion of its relationships with Ta Chen. And, petitioners observe, just three weeks after petitioners' disclosure of Company A's existence, the firm's corporate charter was dissolved, and Company A was effectively replaced by Company B.

Furthermore, petitioners argue that Ta Chen has consistently withheld vital information from the Department, disclosing piecemeal its affiliations only under duress. Petitioners maintain that, rather than volunteering key information concerning its relationships with U.S. customers, Ta Chen has instead divulged this information only following petitioners' allegations that Ta Chen was related to, or affiliated with, these parties. According to petitioners, ''Ta Chen has quickly reacted to cover its fraud and thereby has compounded its fraud ... . In essence, the same group of individuals ... have simply used different corporate names to conduct their common business, jettisoning one name and moving on to the next whenever their charade was in jeopardy of being uncovered.'' Petitioners' Rebuttal Brief at 11.

Were Ta Chen genuinely cooperating with the Department, petitioners argue,

- Ta Chen would have volunteered the existence of Company A and its ''dba''s, rather than waiting until petitioners ferreted out this information on their own;
- Ta Chen would have provided a truthful explanation concerning Company A and its ''dba''s, rather than claiming, falsely, that the ''dba'' names were prior customers of Ta Chen's;
- Ta Chen would have ''had Company A come forth and answer questions ... as Ta Chen has asked others ... to do,'' rather than dissolving Company A's corporate charter roughly two weeks after petitioners' first calling attention to Company A's existence;
- Ta Chen would not have precipitously rerouted its business away from Company B, with sales to this customer dropping sharply between the second and third periods of review. As with Company A's dissolution, petitioners maintain, the shifts in Ta Chen's U.S. sales pattern were ''undoubtedly reactions by Ta Chen'' to petitioners'' allegations concerning Company A, its ''dba''s, and Company B;
- Ta Chen would have volunteered information at the October 1994 verification in the first review concerning its extensive commercial and financial ties to Company B, which were clearly relevant to that extraordinary verification. Likewise, Ta Chen would have volunteered this information in the body of its second and third review questionnaire responses. Petitioners aver that Ta Chen did not do so.

Petitioners' Case Brief at 9 and 10.

According to petitioners, the record before the Department with respect to Ta Chen is so replete with inconsistencies, unsubstantiated claims, ''gaps in logic,'' and the withholding of accurate information, that the only proper course for the Department is to apply total adverse facts available. Petitioners assert that Ta Chen's U.S.

sales database is ''both incomplete and untrustworthy,'' and that Ta Chen's protestations that it has cooperated with the Department are ''unpersuasive.'' *Id.* at 11. Petitioners claim that the situation in the instant review is akin to that of respondent Nippon Pillow Block Sales (NPB) in Antifriction Bearings From France, 62 FR 2081, 2086 (January 15, 1997). In that review the Department applied facts available to NPB for its failure to report accurately all home market and U.S. sales of subject merchandise. Because of omissions by NPB in its sales listings the Department determined that NPB's questionnaire responses were unreliable *in toto* and disregarded all of NPB's sales data. Further, the Department concluded that NPB had not acted to the best of its ability in reporting the relevant sales data and, thus, applied an adverse inference in choosing the facts otherwise available.

Petitioners also object to Ta Chen's efforts to ''maintain the fiction'' that the extraordinary ties detailed in the Department's preliminary results are commonplace between unaffiliated persons. With respect to TCI's physical custody of certain customers' signature stamps, dedicated modem lines to the customers' computerized accounting systems, shared sales department personnel, TCI's direct negotiations with these distributors' subsequent customers, and the distributors' pledging of their inventory to secure TCI's debts, petitioners insist that these practices ''are not common and do not exist,'' nor has Ta Chen been able to point to a single instance of such intimate ties between unaffiliated entities. Petitioners suggest that Ta Chen's arguments are ''laughable'' and ''ludicrous.'' Petitioners' Rebuttal Brief at 14. Petitioners suggest that the reason the Department has never found parties to be affiliated based on these facts is not because these ties are insufficient to establish affiliation but, rather, because the Department has never before been confronted with a similar fact pattern. Petitioners brand as ''specious'' Ta Chen's ''discrete parsing'' of the Department's preliminary finding of affiliation. Petitioners assert that Ta Chen's interpretation is thrice-flawed in its assumptions that (i) Ta Chen's ties with certain U.S. customers, including Company B, are common in the industry, (ii) Ta Chen has cooperated with the Department in all three administrative reviews, and (iii) Ta Chen's unsubstantiated and unsupported claims establish that it had no affiliation with Company B. Petitioners claim that Ta Chen's statement that physical custody of distributors' signature stamps does not indicate control over these distributors' disbursements is ''nonsense.'' Similarly, Ta Chen's claim that its computer access to these distributors' financial records is common is not supported by any other instance of unaffiliated parties being so linked. Furthermore, in response to Ta Chen's argument that Ta Chen had no control over these distributors' prices, petitioners note that Ta Chen has stated that ''Ta Chen officials knew the prices which would be accepted by Ta Chen's distributor.'' Petitioners' Rebuttal Brief at 17 (quoting Ta Chen's Case Brief). ''Arm's-length companies do not and are not supposed to operate in this manner.'' *Id.* at 18. Further, Ta Chen has not provided a single instance of these distributors rejecting the price Ta Chen established for subsequent re-sales of WSSP.

Finally, petitioners assail Ta Chen's characterization of its credit arrangements as ''absurd.'' Asserting that the pledging of one's inventory and accounts receivable ''are not normal between arm's-length parties,'' petitioners point to Ta Chen's failure to provide any documentation of an agreement establishing these arrangements and conclude that the suggestion that an unaffiliated party would voluntarily accept such an obligation is ''preposterous in itself.'' *Id.* at 19.

*Department's Position:* In this third review Ta Chen concealed relevant information pertaining to its sales to Company B, and only revealed other relevant information concerning sales to another U.S. customer when the Department opted to verify Ta Chen's U.S. questionnaire responses. Furthermore, this is a respondent which has on three occasions made substantial changes to its U.S. sales operations (in 1992, 1993 and 1994); Ta Chen has acknowledged that it made many of these changes as a direct result of the order. Given the sophistication of its behavior and its legal arguments before the Department, we find unpersuasive Ta Chen's assertion that it ''had absolutely no reason to think the Department would consider Ta Chen'' and certain of its U.S. customers as affiliated persons.

We also disagree with Ta Chen's suggestion that this review addresses ''novel, vague issues.'' The governing statutory provisions for this review took effect on January 1, 1995. Our Notice of Proposed Rulemaking, with its exhaustive commentary and analysis, appeared in February, 1996, or fully two months prior to Ta Chen's initial questionnaire response in this review. Thus, the affiliated party provisions of section 771(33), as well as the Department's proposed interpretation of these provisions, had been comprehensively vetted before Ta Chen submitted any factual information in this third review. Further, the Department's February 13, 1996 questionnaire specifically asked Ta Chen to report its first sales to unaffiliated customers in the United States. Appendix I of the questionnaire provided the new definition of ''affiliated person'' found at section 771(33) of the Tariff Act, including the new emphasis on affiliation through ''control.'' See the Department's questionnaire at Appendix I–1. The request to provide the first U.S. sales to unaffiliated customers imposed no new reporting burden upon Ta Chen. Finally, as noted above, there was no ambiguity in the questionnaire's language as to which sales the Department sought.

We also find that Ta Chen's citations to past Departmental determinations in support of using cooperative, non-adverse facts available are not on point. In Fresh Cut Flowers From Colombia, for example, the respondent's related entities had either gone out of business entirely, or were in the process of liquidation, and thus the firms were unable to provide sales data to the Department. Similarly, in Certain Small Business Telephones From Taiwan, the affiliated U.S. customer of respondent Bitronics was out of business. We concluded that ''(s)ince Bitronics made substantial attempts to submit information to the Department,'' second-tier, or cooperative, BIA would be most appropriate. See Certain Small Business Telephones From Taiwan; Final Results of Administrative Review, 60 FR 16606 (March 31, 1995). In the instant case, despite the 1995 sale of Company B to another party, Ta Chen has never indicated any such difficulty in accessing Company B's records, and has even submitted Company B's federal income tax returns in the record of this review.

As to Ta Chen's argument that it merely ''mischaracterized'' (as distinguished from ''misrepresented'') its sales to Company B, Ta Chen's distinction is without a difference. The facts remain that Ta Chen misled the Department as to the nature of its transactions with Company B and that it failed to report properly Company B's sales to the first truly unaffiliated person in the United States.

With respect to the precedent set in Steel Wire Rod, we disagree with Ta Chen's interpretation of this case. In fact, we find a number of similarities between Ta Chen's summary of the

Department's findings in that case and the facts of the instant review. Like Mukand in Steel Wire Rod, Ta Chen initially and repeatedly denied any relationship with Company B, claimed that Company B was free to purchase from others but later acknowledged that it never attempted to do so, and submitted certain contradictory information. All of this information was certified as accurate by the same official, the president of Ta Chen. While we cannot state authoritatively that a Ta Chen official ran Company B, as was the case with Mukand in Steel Wire Rod, the individual who did run Company B formerly worked for Ta Chen and continued to have intimate business ties to Ta Chen before and after his employment with Company B. Unlike Mukand in Steel Wire Rod, however, Ta Chen has never admitted any control over Company B, nor has it attempted to correct its earlier misreporting of its U.S. sales data.

We also disagree with petitioners' argument that the record evidence supports use of total adverse facts available for Ta Chen's margin. We verified Ta Chen's U.S. sales questionnaire responses after issuing the Preliminary Results and examined Ta Chen's customer relationships in detail. While we did find misreported sales to one previously-unnamed customer, we did not find evidence to suggest that Ta Chen is affiliated in a fashion similar to the relationships between Ta Chen and Companies A and B with any of its other U.S. customers in this review. Therefore, while we have applied adverse facts available to those misreported sales, we have not based Ta Chen's margin on total adverse facts available. We agree with petitioners, however, that there is an issue concerning the reliability and consistency of the information supplied by Ta Chen dating back to the first administrative review (see Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Reviews, 62 FR 26776 (May 15, 1997)). Accordingly, we will address the specific circumstances surrounding Ta Chen's relationships with Company A and Company B within the context of the ongoing reviews which cover periods predating this POR. In addition, we intend to closely scrutinize this issue within the context of the pending fourth review of this order.

*Comment Four:* Ta Chen argues that the margin used as adverse facts available in the Preliminary Results ''is not relevant, calculated or corroborated, and thus is unlawful.'' According to Ta Chen, the Department's proposed regulations and the SAA both call for the Department, when using facts available which are based on secondary information, to corroborate these facts as such information ''may not be entirely reliable because, for example, as in the case of a petition, it is based on unverified allegations, or * * * it concerns a different timeframe than the one at issue.'' Ta Chen's Case Brief at 58, quoting the SAA at 870. Ta Chen insists that the Department has already ''verified'' that the facts available margin is wrong. In the underlying LTFV investigation, Ta Chen argues, the Department calculated a margin of 3.27 percent for Ta Chen, based on data which were subject to verification. Ta Chen maintains that the 31.90 percent margin (the ''all others'' rate from the LTFV investigation) resulted from the Department's rejection of one respondent's data in favor of best information available.

In addition, Ta Chen argues that the facts available margin was applied to producers other than Ta Chen and is, thus, ''irrelevant and unlawful.'' Ta Chen cites to an antidumping case from Canada wherein Canada's International Trade Tribunal noted Ta Chen's lower margins (and the refusal of other Taiwanese respondents to participate in the proceeding) as indicative of a pattern of lawful and cooperative behavior by Ta Chen which resulted in lower dumping margins.

Ta Chen also faults the 31.90 percent facts available margin as being unrepresentative of current conditions in the stainless steel pipe market. Ta Chen insists that the Department must use the most up-to-date information as facts available as it carries greater probative value. In addition, Ta Chen notes what it sees as significant changes in the U.S. market since publication of the antidumping duty order. According to Ta Chen, Ta Chen is no longer forced to compete against other Taiwanese producers of WSSP, who largely withdrew from the U.S. market after the imposition of antidumping duties. In support of this contention, Ta Chen quotes from a 1996 determination by the Canadian International Trade Tribunal which concludes that ''Taiwanese producers other than Ta Chen have been excluded from the U.S. market.'' Ta Chen's Case Brief at 63. Ta Chen also insists that the health of the U.S. industry has improved markedly since the original investigation in this case. *Id.* at 64, citing Welded Stainless Steel Pipe From Malaysia, ITC Pub. No. 2744 (March 1994).

According to Ta Chen, the Department erred by disregarding independent sources for more probative dumping margins for use as facts available. Ta Chen suggests that petitioners in the investigation of welded stainless steel pipe from Malaysia testified to the International Trade Commission that the imposition of antidumping duties on WSSP from Taiwan had effectively eliminated dumping by Taiwanese producers. See ITC Pub. No. 2744 (Final) (March 1994). In a similar vein, Ta Chen cites the testimony of an official of Bristol Metals, a U.S. producer of WSSP, insisting that ''Taiwan imports have been checked by the antidumping laws.'' Ta Chen's Case Brief at 67, quoting from Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, ITC Pub. No. 2900 (June 1995). Ta Chen argues that these statements offered by representatives of the U.S. pipe industry ''support a [zero] percent dumping finding for Ta Chen.'' *Id.* at 68. Furthermore, Ta Chen suggests that these statements, coming after the original petition in this case, are more indicative of present market conditions. Ta Chen also cites to statements submitted by Ta Chen into the record of this review, one from the same individual from Bristol Metals, and another by a U.S. purchaser of WSSP and stainless steel butt-weld pipe fittings, both claiming that Ta Chen was not dumping at 31.90 percent margins through Company A and Company B.

Ta Chen also suggests that the failure of petitioners in this case to request a review of Ta Chen for the first three PORs is indicative of petitioners' belief that Ta Chen is not dumping WSSP into the U.S. market. ''By reason of their failure to act, it is a fair inference that the [petitioners] do not believe that Ta Chen is dumping in the USA beyond the previously found dumping margin( ) of 3.27%.'' Ta Chen's Case Brief at 69.

Ta Chen next turns to what it views as ''other independent sources'' for Ta Chen's dumping margins. Ta Chen notes that for its remaining U.S. sales, the Department's preliminary margin calculation found dumping margins of zero percent. Ta Chen submits that similar analysis in the first two PORs will, likewise, result in margins of zero percent. Finally, Ta Chen suggests, the Department could turn to antidumping proceedings in other countries as evincing Ta Chen's ''proclivity not to dump.'' Ta Chen cites to a margin of 3.5 percent found in an Australian investigation of WSSP, and zero percent margins found in similar investigations conducted by Canada and the European Union. Further, in its investigation of Class 150 Pound Fittings From Taiwan, Ta Chen notes, the Department found a

zero-percent margin for Ta Chen. Ta Chen suggests using these margins to determine the facts available margin to apply in this third administrative review.

Further, Ta Chen argues, since it is a fungible, commodity product, the market for A–312 WSSP is driven primarily by price. Had Ta Chen been dumping through Company B at 31.90 percent margins, Ta Chen reasons, ''there would have been a ''giant sucking sound,'' as all the business went to Company B. There was no such sound.'' Ta Chen's Case Brief at 75. Finally, Ta Chen asserts that petitioners have consistently overestimated the actual margins in cases involving Taiwan. As proof of this, Ta Chen notes that the final margins published in the Department's LTFV determination were consistently much lower than those originally presented in the petition. Therefore, a margin drawn from the petition should not serve as the basis for facts available in the instant review.

Petitioners counter that the URAA ''expressly approves of the use of data from the petition and an original investigation's final determination for facts available,'' and note that the LTFV investigation is the only source of margins for use as facts available. Petitioners maintain that ''[t]he Department is not required to conduct an economic analysis of the industry whenever it determines that dumping margins should be based on facts available,'' and argues that Ta Chen's citations to ITC testimony in an unrelated case, and to antidumping proceedings in other nations, are ''not relevant.'' Noting that the Department has not completed either the first or second administrative reviews in this case, petitioners aver that the Department has little choice but to turn to the highest margin from the original LTFV investigation (*i.e.*, 31.90 percent) as adverse facts available. Petitioners also dismiss Ta Chen's argument that petitioners themselves have concluded that Ta Chen was not selling merchandise at dumped prices during the instant POR. Ta Chen's argument, petitioners insist, is based upon statements made before the ITC in an injury investigation concerning pipe from Malaysia; that proceeding had nothing to do with calculating dumping margins with respect to sales of WSSP from Taiwan.

Petitioners also dismiss Ta Chen's argument that the 31.90 percent margin is flawed because this margin is significantly higher than the calculated rates for respondents during the LTFV proceeding. Petitioners aver that ''cooperative respondents that timely and completely submit verifiable data are entitled to whatever rates result,'' whereas in the instant case, Ta Chen has ''lie(d) to the Department and * * * fraudulently pose[d] as being cooperative.'' Where, as here, the Department has determined that the withholding of information is deliberate, petitioners stress, the Department has '' 'heavily favored using alternative ''best information available'' least favorable to a respondent.' '' Petitioners' Rebuttal Brief at 48 (quoting from *Chinsung Industries Co., Ltd.* v. *United States*, 705 F. Supp. 598, 600 (CIT 1989)). Furthermore, petitioners argue, use of the highest margin from the LTFV investigation is fully consistent with the Department's longstanding practice of applying a two-tiered BIA methodology whereby an uncooperative respondent will receive a higher margin than would a respondent who genuinely cooperated with the Department but failed to timely submit requested factual information. Finally, petitioners argue that in the absence of rates issuing from any administrative review the highest margin from the LTFV investigation stands as ''most probative of current conditions.'' Reliance upon Ta Chen's own rate from the original investigation, petitioners maintain, would ''essentially reward Ta Chen for withholding information from the Department.'' *Id.* at 49.

*Department's Position:* We agree with petitioners and disagree, in part, with Ta Chen. We cannot accede to Ta Chen's suggestion that we apply its existing cash deposit rate as adverse facts available, as this would amount to rewarding Ta Chen for its failure to disclose essential facts to the Department and to report the proper body of its U.S. sales. Were we to consider Ta Chen's existing margin, which was calculated in a segment of these proceedings wherein Ta Chen was deemed cooperative and its responses fully verified, as adverse facts available, we would effectively cede control of this review to Ta Chen. The respondent would be free to submit selective, misleading, or inaccurate information, secure in its knowledge that the worst fate it could expect would be to receive its existing cash deposit rate as facts available. See *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565, 1571 (Fed. Cir. 1990). As the Court stated in *Industria de Fundicao Tupy, et al.* v. *United States* 936 F. Supp 1009 (CIT 1996), ''the Court will not allow respondent to cap its antidumping rate by refusing to provide updated information to the (the Department).'' Similarly, margins from other Departmental proceedings or from Canadian or European antidumping cases, wherein Ta Chen cooperated fully, are likewise irrelevant to this third administrative review where Ta Chen impeded our investigation. Contrary to Ta Chen's suggested approach, our aim in selecting facts available for non-cooperative respondents is to choose a margin which is sufficiently adverse ''to induce respondents to provide (the Department) with complete and accurate information in a timely fashion.'' See *National Steel Corp., et al.*, v. *United States*, 13 F. Supp 593 (CIT 1996).

We also reject Ta Chen's assertion that the 31.90 percent facts available margin is inappropriate because it was drawn from an earlier segment of these proceedings. In *Mitsuboshi Belting Corp., Ltd.* v. *United States*, the Court, relying upon the findings in *Rhone Poulenc Inc.* v. *United States* (899 F.2d 1185 (Fed Cir. 1990)), found that the Department's use of a margin drawn from a LTFV investigation was reasonable and, further, that ''best information'' doesn't necessarily mean ''most recent information.'' The Court also rejected plaintiff's claim that the Department's choice of BIA was unreasonably harsh:

> to be properly characterized as ''punitive,'' the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions. Here, the agency only presumed that the highest prior margin was the best information of current margins. * * * We believe a permissible interpretation of the statute allows the agency to make such a presumption and that the presumption is not ''punitive.'' Rather, it reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.

*Mitsuboshi Belting Ltd. and MBL (USA) Corp.* v. *United States.*, Court No. 93–09–00640 (CIT March 12, 1997).

Likewise, in *Sugiyama Chain Co., Ltd. et al.*, v. *United States*, the defendant contested our selection of best information available as having no probative value concerning Sugiyama's current margins because the rate taken from the LTFV investigation had ''only a tenuous link to Sugiyama Chain's margins in the instant review.'' The Court approved of our use of the highest prior margin as BIA, noting that the Department ''can make a common sense inference —indeed, there is a rebuttable presumption—that the highest prior margin is the most probative evidence indicative of the current margin.'' *Sugiyama Chain Co., Ltd., et al.* v.

*United States,* 13 CIT 218; see also *Rhone Polenc, Inc., et al.* v. *United States,* 710 F. Supp. 341 (CIT 1989) (''There is no mention in the statute or regulations that the best information available is the most recent information available.''). Furthermore, our use of a margin drawn from data supplied by the petitioners comports fully with section 776(b) of the 1995 Tariff Act.

In addition, we note that in the instant review we have calculated individual transaction margins for Ta Chen which are comparable to the 31.90 percent, which was chosen from the LTFV investigation as facts available. See the Department's Final Margin Program, ''Minimum and Maximum Margins.'' Thus, we have available contemporaneous and calculated margins, based on Ta Chen's own third POR data, which serve to corroborate the petition margin, and which reflect Ta Chen's practices during this third administrative review. For the purpose of these final results, therefore, we have continued to use 31.90 percent as adverse facts available.

As to Ta Chen's comments regarding the present state of the market for Taiwanese stainless steel pipe, we find these comments irrelevant in this review. Ta Chen stresses its claim that the antidumping duty order has driven other Taiwanese pipe producers from the playing field, eliminating the need for Ta Chen to sell WSSP at less than normal value. However, Ta Chen's continued presence in the United States market cannot be seen as indicative that it has not engaged in dumping of WSSP in this country.

We also find inapposite Ta Chen's argument that, since petitioners did not request this third review, petitioners are satisfied with Ta Chen's existing cash deposit rate. Whether or not petitioners requested this review is, at this point, irrelevant, and cannot be construed in any way as evidence of Ta Chen's present dumping activities, or lack thereof. Furthermore, any number of factors may lead a domestic industry to eschew the administrative review process, including, for example, insufficient resources to participate in a review, or a belief that it cannot ''prevail'' in an administrative review.

Finally, as to ''Ta Chen's proclivity not to dump,'' Ta Chen could best have demonstrated such proclivity by extending its full cooperation in the first three reviews of this antidumping duty order. We can only conclude in this third review, as we have preliminarily determined in the first and second reviews, that Ta Chen's refusal to provide the complete body of appropriate U.S. sales, as requested, is because these sales represent significant dumping margins. As it is, the Department has no choice but to make the negative inference specifically called for by the facts available provisions of the Tariff Act.

*Comment Five:* Petitioners argue that if the Department continues to use the bulk of Ta Chen's sales data for its final results of review, the Department must adjust its cost-of-production (COP) test to account for import duties paid by Ta Chen on its imports of stainless steel coil (the raw material used in the production of A–312 welded stainless steel pipe). According to petitioners, the Department in its preliminary results increased U.S. price by the amount of home market import duties rebated or not collected by reason of exportation of the finished WSSP to the United States. This was necessary, petitioners suggest, because Ta Chen's home market prices were inclusive of import duties. However, Ta Chen's COP data were reported exclusive of import duties, because Ta Chen's mill is a customs bonded facility. The Department, therefore, compared COP amounts which do not include import duties to home market prices which do. This had the effect, petitioners conclude, of ''understating the extent that Ta Chen's home market sales were made at prices that were below the cost of production.'' Petitioners' Case Brief at 14. Petitioners suggest that the Department either deduct home market import duties from home market sales prices, or add these duties to Ta Chen's reported COP prior to conducting our cost test.

In rebuttal, Ta Chen confirmed that it paid import duties on imports of stainless steel coil, and that its home market prices include these import duties.

*Department's Position:* We agree with petitioners. In conducting our cost test, we inadvertently compared net home market prices inclusive of import duties on stainless steel to COP totals exclusive of these duties. We have adjusted our calculation of the net home market price used in our COP test to deduct the amount of the import duties.

*Comment Six:* Ta Chen urges the Department to correct two ''clerical errors'' in the preliminary results margin program. The first involves the Department's calculation of Ta Chen's COP. Ta Chen suggests that the Department inadvertently double-counted Ta Chen's indirect selling expenses in calculating total COP. The preliminary margin program includes two variables, ISELCOP and INDSELEX, both of which represent indirect selling expenses. At different points in the preliminary margin program, Ta Chen notes, the Department added both to Ta Chen's COP, thereby overstating these expenses.

Ta Chen also argues that the Department double-counted Ta Chen's U.S. packing expenses by subtracting these expenses from U.S. price while adding them to foreign unit price in dollars (FUPDOL). Ta Chen suggests altering the calculation of net U.S. price to eliminate the deduction for U.S. packing expenses.

*Department's Position:* We agree with Ta Chen on both points. With respect to indirect selling expenses, we inadvertently double-counted these expenses in calculating Ta Chen's COP. As for packing expenses, we erroneously subtracted these from U.S. price while simultaneously adding them to FUPDOL. We have corrected both errors for these final results of review.

*Comment Seven:* Ta Chen maintains that it has not been dumping for three consecutive periods of review and, therefore, requests that the Department revoke Ta Chen from the antidumping duty order covering welded stainless steel pipe from Taiwan.

Petitioners, in a footnote in their rebuttal brief, maintain that, ''viewed overall,'' Ta Chen's behavior throughout these proceedings demonstrates that Ta Chen is not entitled to revocation from the antidumping duty order.

*Department's Position:* Given the existence of a calculated margin for Ta Chen in these third review final results, we determine that Ta Chen has not met the requirements of three consecutive years of zero (or *de minimus*) margins as called for in section 19 CFR 353.25 of the Department's regulations. Therefore, we cannot consider a partial revocation of the antidumping duty order as to Ta Chen at this time.

*Comment Eight:* Ta Chen, noting the three ongoing administrative reviews of WSSP, asks that the Department use the final results dumping margin from the third administrative review to establish Ta Chen's cash deposit rate for future entries of subject merchandise. Ta Chen cites the Department's approach in Silicon Metal From Brazil, where the Department issued final results of several ongoing reviews simultaneously, using the margins calculated for the most recent POR as the respondents' new cash deposit rates.

Petitioners argue that the Department should assign Ta Chen a margin in all three administrative reviews of 31.90 percent as total adverse facts available, thus obviating the need to address the issue of which final results margin should establish Ta Chen's new cash deposit rate.

*Department's Position:* Consistent with past Departmental practice, we will use as Ta Chen's new cash deposit rate the weighted-average dumping margin found in these final results of the third POR. Our practice is to adopt the dumping margin from the final results for the most recent POR to serve as a respondent's new cash deposit rate.

**Final Results of Review**

Based on our review of the arguments presented above, for these final results we have made changes in our margin calculations for Ta Chen. After comparison of Ta Chen's EP to normal value (NV), we have determined that Ta Chen's weighted-average margin for the period December 1, 1994 through November 30, 1995 is 6.06 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of WSSP from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Ta Chen will be the rate established in the final results of this administrative review;

(2) For previously reviewed or investigated companies other than Ta Chen, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.84 percent. See Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan, 57 FR 62300 (December 30, 1992).

All U.S. sales by the respondent Ta Chen will be subject to one deposit rate according to the proceeding. The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, we will use the entered value of the subject merchandise to determine the appraisement rate.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 8, 1997.

**Robert S. LaRussa,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97–18448 Filed 7–11–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## National Voluntary Laboratory Accreditation Program (NVLAP), NVLAP Information Collection System

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Vanda R. White, National Voluntary Laboratory Accreditation Program, Building 820, Room 282, National Institute of Standards and Technology, Gaithersburg, MD 20899; phone, (301) 975–3592; fax (301) 926–2884; e-mail, vanda.white@nist.gov.

**SUPPLEMENTAL INFORMATION:**

**I. Abstract**

This information is collected from all laboratories, testing and calibration, that apply for NVLAP accreditation. Applicants provide the minimum information necessary to evaluate the competency of laboratories to carry out specific tests or calibrations or types of tests or calibrations. The collection is mandated by 15 CFR 285.

**II. Method of Collection**

An application for accreditation is provided to each applicant laboratory. The laboratory completes the written application, providing such information as name, address, phone and fax numbers and contact person, and selects the test methods or parameters for which it is seeking accreditation. The application must be signed by the Authorized Representative of the laboratory, committing the laboratory to comply with NVLAP's accreditation criteria. The completed application is mailed to NVLAP.

**III. Data**

*OMB Number:* 0693–0003.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Testing and calibration laboratories, including commercial (for-profit), not-for-profit institutional, and federal, state and local government laboratories.
*Estimated Number of Respondents:* 1,000.
*Estimated Time Per Response:* Ranges between 15 minutes for respondents verifying information on a preprinted form and 3 hours for those providing an initial application.
*Estimated Total Annual Burden Hours:* 2,750.
*Estimated Total Annual Cost to Respondents:* There are no capital or start-up costs to respondents.

**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 a 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) way 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 will also become a matter of public record.

Dated: July 2, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–18430 Filed 7–11–97; 8:45 am]

**BILLING CODE: 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Weather Service Modernization and Associated Restructuring

**AGENCY:** National Weather Service (NWS), NOAA, Commerce.

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The NWS is publishing proposed certifications for the consolidation, automation, and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Casper, WY Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Riverton, Cheyenne, and Rapid City Weather Forecast Offices (WFOs);

(2) Huron, SD WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Sioux Falls and Aberdeen WFOs;

(3) Rochester, MN WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future La Crosse and Minneapolis WFOs;

(4) Waterloo, IA WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Des Moines, Quad Cities and La Crosse WFOs; and

(5) Yakima, WA WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Pendleton WFO.

In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation, automation, and closure certifications.

**DATES:** Comments are requested by September 12, 1997.

**ADDRESSES:** Requests for copies of the proposed consolidation, automation and closure packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

**FOR FURTHER INFORMATION CONTACT:** Julie Scanlon at 301–713–1698, ext 151.

**SUPPLEMENTARY INFORMATION:** In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations, automations, and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation, automation, and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable);

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an inplace supplementary data program at the responsible WFO(s);

(8) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(9) An Air Safety Appraisal for offices which are located on an airport; and

(10) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, 1997 MTC meeting the Committee stated that its endorsement of certifications is ''subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the

modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service;

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan.'' It is expected that these qualifications can be met for the above proposed certifications. If these qualifications cannot be met prior to the September MTC meeting, these proposed certifications may or may not be presented to the Committee. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to consolidating, automating, and closing these offices.

Dated: July 8, 1997.

**Robert S. Winokur,**

*Acting Assistant Administrator for Weather Services.*

[FR Doc. 97–18413 Filed 7–11–97; 8:45 am]

**BILLING CODE 3510–12–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Weather Service Modernization and Associated Restructuring

**AGENCY:** National Weather Service (NWS), NOAA, Commerce.

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The NWS is publishing a proposed certification for the closure of Yuma, AZ Weather Service Office (WSO), with services being provided by the future Phoenix Weather Forecast Office (WFO).

In accordance with Public Law 102–567, the public will have 60-days in which to comment on this proposed closure certification.

**DATES:** Comments are requested by September 12, 1997.

**ADDRESSES:** Requests for copies of the proposed closure package should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

**FOR FURTHER INFORMATION CONTACT:** Julie Scanlon at 301–713–1698 ext 151.

**SUPPLEMENTARY INFORMATION:** In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that this closure will not result in any degradation of service to the affected area of responsibility and must publish the proposed closure certification in the FR. The documentation supporting this proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition to Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(7) An Air Safety Appraisal for an office which is located on an airport; and

(8) A letter appointing the liaison officer.

This proposed certification does not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification package because it is too voluminous to publish. Copies of the certification package and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, 1997 MTC meeting the Committee stated that its endorsement of certifications is ''subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service;

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan.'' It is expected that these qualifications can be met for the above proposed certification. If these qualifications can not be met prior to the September MTC meeting, this proposed certification may or may not be presented to the Committee. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to closing this office.

Dated: July 8, 1997.

**Robert S. Winokur,**

*Acting Assistant Administrator for Weather Services.*

[FR Doc. 97–18412 Filed 7–11–97; 8:45 am]

**BILLING CODE 3510–12–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Weather Service Modernization and Associated Restructuring

**AGENCY:** National Weather Service (NWS), NOAA, Commerce,

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The NWS is publishing proposed certifications for the automation and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Colorado Springs, Co Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Pueblo, Denver/Boulder, and Goodland Weather Forecast Offices (WFO);

(2) Dubuque, IA WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Quad Cities and Milwaukee WFOs;

(3) Residual Des Moines, IA WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Des Moines WFO;

(4) Evansville, IN WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Paducah, Central Illinois, Indianapolis, and Louisville WFOs;

(5) Residual Minneapolis, MN WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Minneapolis WFO;

(6) Elkins, WV WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Charleston, Pittsburgh, and Baltimore/Washington WFOs;

(7) Residual Fresco, CA which will be automated at FAA Weather Observation Service Level A and with services being provided by the future San Joaquin Valley WFO;

(8) Residual Las Vegas, NV WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Las Vegas WFO;

(9) Residual Portland, OR WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Portland WFO;

(10) San Francisco, CA WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future San Francisco Bay Area WFO; and

(11) Residual Spokane, WA WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Spokane WFO.

In accordance with Public Law 102–567, the public will have 60-days in which to comment on these proposed automation and closure certifications.

**DATES:** Comments are requested by September 12, 1997.

**ADDRESSES:** Request for copies of the proposed automation and closure packages should be sent to Tom Beaver Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

**FOR FURTHER INFORMATION CONTACT:** Julie Scanlon at 301–713–1698 ext 151.

**SUPPLEMENTARY INFORMATION:** In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that these automations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed automation and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of pubic comments and completion of consultation with the modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an inplace supplementary data program at the responsible WFO(s);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An Air Safety Appraisal for offices which are located on an airport; and

(9) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Public Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, 1997 MTC meeting the Committee stated that its endorsement of certifications is subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service;

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and

documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan.'' It is expected that these qualifications can be met for the above proposed certifications. If these qualifications can not be met prior to the September MTC meeting, these proposed certifications may or may not be presented to the Committee. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to automating and closing these offices.

Dated: July 8, 1997.

**Robert S. Winokur,**

*Acting Assistant Administrator for Weather Services.*

[FR Doc. 97–18414 Filed 7–11–97; 8:45 am]

**BILLING CODE 3510–12–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 063097D]**

### Endangered Species; Permits

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

**ACTION:** Issuance of modification 6 to permit 848 (P507D) and modification 1 to permit 1011 (P211J).

**SUMMARY:** Notice is hereby given that NMFS has issued modifications to permits to the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) and the Oregon Department of Fish and Wildlife at La Grande, OR (ODFW) that authorize takes of Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein.

**ADDRESSES:** The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

**SUPPLEMENTARY INFORMATION:** The modifications to permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on April 16, 1997 (62 FR 18587) that an application had been filed by WDFW (P507D) for modification 6 to scientific research/enhancement permit 848. Modification 6 to permit 848 was issued to WDFW on May 23, 1997. Permit 848 authorizes WDFW takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation hatchery program and scientific research/monitoring. For modification 6 to permit 848, WDFW is authorized takes of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with scientific research designed to answer questions on fall chinook salmon production in the lower Tucannon River. Also for modification 6, WDFW is authorized to return adult, ESA-listed, Snake River spring/summer chinook salmon carcasses from the supplementation program back to the Tucannon River for nutrient enrichment. Modification 6 is valid for the duration of the permit. Permit 848 expires on March 31, 1998.

Notice was published on April 16, 1997 (62 FR 18587) that an application had been filed by ODFW (P211J) for modification 1 to scientific research/enhancement permit 1011. Modification 1 to permit 1011 was issued to ODFW on June 20, 1997. Permit 1011 authorizes ODFW takes of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive broodstock program for Catherine Creek, upper Grande Ronde River, and Lostine River populations. For modification 1, ODFW is authorized to collect returning adult, ESA-listed, naturally-produced fish from the three watersheds in 1997 to begin a supplementation program. ODFW anticipates sufficient adult returns to these watersheds in 1997 to allow the collection of ESA-listed adults for hatchery broodstock. ODFW believes that the collection of ESA-listed adults for hatchery supplementation will increase the probability of the persistence of the populations because of the survival advantage provided by the hatchery. The collection of ESA-listed adults for broodstock is authorized in 1997 only. The incubation of eggs and the rearing of ESA-listed juveniles is authorized for the duration of the permit. Permit 1011 expires on December 31, 2000.

Issuance of the permit modifications, as required by the ESA, was based on a finding that the modifications: (1) Were requested/proposed in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: July 7, 1997.

**Nancy Chu,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–18297 Filed 7–11–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061097B]**

### Endangered and Threatened Species; Revision of Candidate Species List Under the Endangered Species Act

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

**ACTION:** Notice of modification of list of candidate species.

**SUMMARY:** NMFS identifies marine and anadromous species as candidates for possible addition to the List of Endangered and Threatened Species. NMFS is soliciting information concerning the status of these species and nominations of additional species that appear to warrant listing consideration. This notice is not a proposal for listing, and the involved species do not receive substantive or procedural protection under the Endangered Species Act of 1973 (ESA). The candidate species list serves to notify the public that NMFS has concerns regarding these species/vertebrate populations that may warrant listing in the future, and it facilitates voluntary conservation efforts. NMFS encourages Federal agencies and other appropriate parties to take these species into account in project planning.

**DATES:** Comments will be accepted until further notice (see **ADDRESSES**).

**ADDRESSES:** Comments and reliable documentation for these and any recommended additions or deletions to the candidate species list should be sent to the Chief, Endangered Species Division, NMFS, Office of Protected

Resources, 1315 East-West Highway, F/PR3, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Nancy Chu or Terri Jordan at (301) 713–1401.

**SUPPLEMENTARY INFORMATION:** The ESA requires determinations of whether species of wildlife and plants are endangered or threatened, based on the best available scientific and commercial data. ''Species'' includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature (vertebrate population). NMFS and the U.S. Fish and Wildlife Service (FWS) share responsibilities under the ESA. With some exceptions, NMFS is responsible for species that reside all or the major portion of their lifetime in marine or estuarine waters. The regulations implementing Section 4 of the ESA (49 FR 38900, October 1, 1984) define ''candidate'' as ''any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.'' As resources permit, NMFS conducts a review of the status of each candidate species to determine if it warrants listing as endangered or threatened under the ESA.

On February 28, 1996, the FWS published a revised candidate notice of review in the **Federal Register** (61 FR 7596) that candidates for listing under the ESA. The FWS noted its intention to discontinue maintaining a list of species that were previously identified as ''Category-2 candidates.'' Category-2 candidates were species for which NMFS or the FWS had information indicating that protection under the ESA may be warranted but for which they lacked sufficient information on status and threats. The FWS' new definition of candidate species is ''those species for which the FWS has on file sufficient information to support issuance of a proposed listing rule.''

NMFS intends to continue using the original definition of candidate species as defined in the joint FWS/NMFS section 4 regulations. Candidate species include unlisted species for which biological status reviews have been initiated or have been completed. NMFS believes it is important to highlight species for which listing may be warranted so that Federal and state agencies, Native American tribes, and the private sector are aware of which species could benefit from proactive conservation efforts.

In addition, NMFS has developed more specific criteria for determining which species/vertebrate populations should be included on the NMFS candidate species list. These criteria include the requirement for reliable information and the consideration of: (1) The biological status of a species or vertebrate population; and (2) the degree of threat to its continued existence in the wild.

**Biological Status**

Biological status is determined by both demography and genetic composition of the species/vertebrate population. If there is evidence of demographic or genetic concerns that would indicate that listing may be warranted, the species/vertebrate population should be added to the candidate species list.

(a) Demographic concerns would occur when there is a significant decline in abundance or range from historical levels that would indicate that listing may be warranted. This could result from overharvest, habitat degradation, disease outbreaks, predation, natural climatic conditions, and hatchery practices that lead to competition with natural stocks or depletion of natural fish for use as hatchery broodstock.

(b) Genetic concerns that would indicate that listing may be warranted include outbreeding and inbreeding depression resulting from poor hatchery practices or substantially reduced numbers of natural individuals.

**Degree of Threat**

If a species/vertebrate population is rare or in poor biological condition AND faces a high degree of threat (i.e., the threat is relatively severe, and/or imminent), then it should be added to the candidate species list.

The previous list was published on June 11, 1991, at 56 FR 26797. NMFS is removing 37 species from this list. The status of four species has been changed. While NMFS determined that the bottlenose dolphin is depleted under the Marine Mammal Protection Act on April 6, 1993, it also determined that it did not warrant listing under the ESA (58 FR 17789). The Saimaa seal was listed as endangered on July 28, 1993 (58 FR 40538). FWS listed the Delta smelt and the tidewater goby as threatened on March 5, 1993 (58 FR 12854) and February 4, 1994 (59 FR 5494), respectively. Six marine mammals, the flatback turtle, and the giant and southern giant clams are being deleted from the list because they are foreign species for which significant proactive conservation efforts are unlikely to be stimulated due to inclusion in the candidate species list. Because there are insufficient data to determine population trends for the northern bottlenose whale and the starlet sea anemone, they are removed from the list. Ten fishes are removed from the list because the information available to NMFS does not meet the more stringent standard of documentation now required for candidate status. Also, ten coral species are being deleted because the information available indicates declines in certain populations, but not throughout the species' ranges. Corals are invertebrates, and the ESA only allows invertebrates to be listed at the species level, and not at the population level.

With this notice, 15 new species for which reliable information is available to NMFS meeting the criteria stated above, are added to the list of candidate species.

Among these 15 species are six Pacific salmonids. On September 12, 1994, NMFS announced that comprehensive status reviews would be conducted for all populations of Pacific salmon and anadromous trout in California, Oregon, Washington, and Idaho (59 FR 46808). This decision effectively classified all seven salmonid species under NMFS jurisdiction—coho, chinook, pink, chum, and sockeye salmon, steelhead and sea-run cutthroat trout—as candidate species. These status reviews are at various stages of completion and have resulted in proposed or final listing determinations for several distinct population segments of Pacific salmon. The status review of pink salmon has been completed and it has been determined that listing is not warranted. During the next 12–18 months, NMFS expects to conclude all of these status reviews and make population-specific determinations regarding listing status under the ESA.

NMFS intends to consider the results of the status reviews and all data received in response to this notice to make appropriate amendments to the accompanying tables.

It is important to note that this list is limited by the information available. Therefore, it does not encompass all declining marine and anadromous species that may warrant listing in the future. Moreover, inclusion of a species on the candidate list does not create a higher listing priority for that species. As appropriate, NMFS may initiate a status review for any species or vertebrate population of concern, regardless of whether it is a candidate species, and the public may petition to list any species or vertebrate population. Inclusion in the candidate species list is intended to stimulate voluntary conservation efforts, which, if effective,

can result in a lower likelihood of an ESA listing.

In Table 1, Revised list of candidate species, the common name appears as the first entry followed by the scientific name, the family name, and the area of concern. This area denotes the general geographic boundaries of the species or the vertebrate population for which concern has been expressed. Ongoing or future Biological status reviews may narrow the geographic area or population of concern in the future.

Table 2 lists species and vertebrate populations which have been proposed for listing under the ESA. Two of these were on the previous 1991 candidate species list. As final determinations are made, these species/vertebrate populations may be determined to not warrant listing, to warrant listing, or be designated as candidate species.

Dated: July 8, 1997.

**Patricia A. Montanio,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

TABLE 1.—REVISED LIST OF CANDIDATE SPECIES

| Common name | Scientific name | Family | Area of concern [6] |
|---|---|---|---|
| *Marine Mammals* | | | |
| Beluga Whale [1] | *Delphinapterus leucas* | Monodontidae | AK (Cook Inlet population). |
| *Fishes* | | | |
| Dusky Shark* | *Carcharhinus obscurus* | Carcharhinidae | Atlantic; Gulf of Mexico; Pacific. |
| Sand Tiger Shark* | *Odontaspis taurus* | Odontaspididae | Atlantic; Gulf of Mexico |
| Night Shark* | *Carcharinus signatus* | Carcharhinidae | Atlantic; Gulf of Mexico |
| Atlantic Sturgeon | *Acipenser oxyrhynchus oxyrhynchus* | Acipenseridae | Atlantic, anadromous. |
| Alabama Shad* | *Alosa alabamae* | Clupeidae | AL, FL, anadromous. |
| Searun Cutthroat Trout*,[4] | *Oncorhynchus clarki clarki* | Salmonidae | Pacific, WA to CA, anadromous.[4] |
| Chum Salmon*,[4] | *Oncorhynchus keta* | Salmonidae | Pacific, WA, OR, anadromous.[4] |
| Coho Salmon* | *Oncorhynchus kisutch* | Salmonidae | Pacific, anadromous. Puget Sound/ Strait of Georgia, Southwest WA, Lower Columbia River, and OR Coast ESUs [2] |
| Steelhead Trout*,[5] | *Oncorhynchus mykiss* | Salmonidae | Pacific, anadromous. Middle Columbia River ESU |
| Sockeye Salmon*,[4] | *Oncorhynchus nerka* | Salmonidae | Pacific, WA, anadromous and freshwater.[4] |
| Chinook Salmon*,[4] | *Oncorhynchus tshawytscha* | Salmonidae | Pacific, WA to CA, anadromous.[4] |
| Atlantic Salmon*,[5] | *Salmo salar* | Salmonidae | Atlantic, anadromous. Kennebec River, Tunk Stream, Penobscot River, and St. Croix River DPSs. |
| Mangrove Rivulus* | *Rivulus marmoratus* | Aplocheilidae | FL, estuarine. |
| Saltmarsh Topminnow | *Fundulus jenkinsi* | Cyprinodontidae | TX, LA, MS, AL, FL. |
| Key Silverside | *Menidia conchorum* | Atherinidae | Florida Keys |
| Opposum Pipefish | *Microphis brachyurus lineatus* | Syngnathidae | Florida, Indian River Lagoon |
| Speckled Hind* | *Epinephelus drummondhayi* | Serranidae | NC to Gulf of Mexico. |
| Jewfish [1] | *Epinephelus itijara* | Serranidae | NC southward to Gulf of Mexico. |
| Warsaw Grouper* | *Epinephelus nigritus* | Serranidae | MA southward to Gulf of Mexico. |
| Nassau Grouper [1] | *Epinephelus striatus* | Serranidae | NC southward to Gulf of Mexico. |
| *Mollusks* | | | |
| White Abalone* | *Haliotes sorenseni* | Haliotidae | CA, Baja CA. |

* addition to list.
[1] research initiated as a result of being on 1991 candidate species list.
[2] ESU=evolutionarily significant unit. Pacific salmon populations can only be listed under the ESA if they are ''evolutionarily significant'', per NMFS policy (56 FR 58612).
[3] DPS=distinct population segment.
[4] under ESA status review; specific ESUs meriting candidate status will be identified in the future following status review.
[5] for this species, certain ESUs/DPSs are candidate species, while others are proposed for listing under the ESA (see Table 2).
[6] Defines the general geographic area or populations of concern for the species.

TABLE 2.—SPECIES THAT HAVE BEEN PROPOSED FOR LISTING UNDER THE ESA

| Common name | Scientific name | Family | Area under consideration |
|---|---|---|---|
| *Marine Mammals* | | | |
| Harbor Porpoise | *Phocoena phocoena* | Delphinidae | Gulf of Maine. |
| *Fishes* | | | |
| Steelhead Trout*,[1] | *Oncorhynchus mykiss* | Salmonidae | Pacific, anadromous. Lower Columbia River, OR Coast, Klamath Mountains Province, Northern CA, Central CA Coast, South/Central CA Coast, Southern CA, Central Valley, Upper Columbia River, Snake River Basin ESUs. |
| Atlantic Salmon*,[1] | *Salmo salar* | Salmonidae | Atlantic, anadromous. Dennys, E. Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot River DPS [3]. |

TABLE 2.—SPECIES THAT HAVE BEEN PROPOSED FOR LISTING UNDER THE ESA—Continued

| Common name | Scientific name | Family | Area under consideration |
|---|---|---|---|
| *Plants* | | | |
| Johnson's Seagrass | *Halophila johnsonii* | Hydrocharitaceae | FL. |

*Addition to list.
[1] Under status review.

[FR Doc. 97–18326 Filed 7–11–97; 8:45 am]
BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office (PTO)

## Deposit of Biological Materials for Patents

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce (DoC), 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)).

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert J. Spar, Patent and Trademark Office (PTO), Washington, D.C. 20231, telephone number (703) 305–9285.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

Every patent must contain a description of the invention written so as to enable a person knowledgeable in the relevant science to make and use the invention. When the invention involves a biological material, sometimes words alone cannot sufficiently describe how to make and use the invention in a reproducible or repeatable manner. In such cases, the required biological material must either be known and readily (and continually) available, or be deposited in a suitable depository to obtain a patent. When a deposit is necessary, the PTO collects information to determine whether the patent statute has been complied with including whether the public has been notified about where samples of the biological material can be obtained.

### II. Method of Collection

By mail, facsimile or hand carry when the applicant or agent files a patent application with the Patent and Trademark Office (PTO) or submits subsequent papers during the prosecution of the application to the PTO.

### III. Data

*OMB Number:* 0651–0022.
*Form Number:* None.
*Type of Review:* Renewal without change.
*Affected Public:* Individuals or households, business or other non-profit, not-for-profit institutions and Federal Government.
*Estimated Number of Respondents:* 3,500.
*Estimated Time Per Response:* One hour.
*Estimated Total Annual Burden Hours:* 3,500 hours.
*Estimated Total Annual Cost:* $350,000 to submit the information to the PTO. Capital costs include testing and storage fees. A one time/per deposit testing fee typically costs $100.00 to assess the viability of the biological material. The one time/per deposit storage fee is approximately $960.00. The sum of capital costs is $3,710,000 annually. ($1060 X 3500)

### 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, 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 or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 8, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–18429, Filed 7–11–97; 8:45 am]
BILLING CODE 3510–16–P

## COMMODITY FUTURES TRADING COMMISSION

## Coffee, Sugar & Cocoa Exchange, Inc. Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'') is granting the petition of the Coffee, Sugar & Cocoa Exchange, Inc. (''CSCE'' or ''Exchange'') for exemption from the prohibition against dual trading in its Sugar #11 futures contracts.

**DATES:** This Order is effective July 8, 1997.

**FOR FURTHER INFORMATION CONTACT:** Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, DC 20581; telephone (202) 418–5490.

**SUPPLEMENTARY INFORMATION:** On October 19, 1993, the Coffee, Sugar & Cocoa Exchange, Inc., (''CSCE'' or ''Exchange'') submitted a Petition for Exemption from the Dual Trading Prohibition for its Sugar #11 and Coffee ''C'' futures contracts. Subsequently, the Exchange submitted an amended petition on March 21, 1997.[1] Upon consideration of these petitions and other matters of record, including Exchange submissions and undertakings

[1] In its amended petition, the Exchange petitioned for the dual trading exemption for six contract markets: Coffee ''C'', Sugar #11 and Cocoa futures and futures option contracts. This Order is applicable to the Sugar #11 futures contract market, which currently is the only affected contract market at the Exchange.

in response to the November 1994 audit trail tests designed and reviewed by the Commission and conducted by the Exchange, compliance with the order ticket customer identification requirement of Commission Regulation 1.35, dual trading surveillance data required under the Commission's August 12, 1996 Audit Trail Report, and disciplinary and investigatory actions undertaken by the Exchange between September 1995 and December 1996, the Commission hereby finds that CSCE meets the standards for granting a dual trading exemption contained in Section 4j(a) of the Commodity Exchange Act (''Act'') as interpreted in Commission Regulation 155.5. [2]

Subject to CSCE's continuing ability to demonstrate that it meets applicable requirements, in particular, appropriately investigating potential trading to disadvantage a customer order and passing a Commission re-test of the performance of the Exchange's audit trail system in January 1998, [3] the Commission specifically finds that CSCE maintains a trade monitoring system which is capable of detecting and deterring, and is used on a regular basis to detect and to deter, all types of violations attributable to dual trading and, to the full extent feasible, all other violations involving the making of trades and execution of customer orders, as required by Section 5a(b) and Commission Regulation 155.5. The Commission further finds that CSCE's trade monitoring system includes audit trail and recordkeeping systems that satisfy the Act and regulations. [4] In assessing the Exchange system, the Commission has considered that system as a whole.

With respect to each required component of the trade monitoring system, the Commission finds as follows:

**1(a) Physical Observation of Trading Areas**

CSCE's trade monitoring system satisfies the requirements of Section 5a(b)(1)(A) in that CSCE maintains and executes an adequate program for physical observation of Exchange trading areas and integrates the information obtained from such observation into its compliance programs. The Exchange physically observes trading areas by conducting daily floor surveillance during the open, close, and at random times during each trading day. CSCE also performs floor surveillance when warranted by special market conditions, such as exceptional volatility or contract expirations. The Exchange uses information obtained from such surveillance in evaluating audit trail data and otherwise in executing its compliance programs.

**(b) Audit Trail System**

The Exchange's trade monitoring system satisfies the audit trail standards of Section 5a(b)(1) in that it is capable of capturing essential data on the terms, participants and sequence of transactions. The system obtains relevant data on unmatched trades, errors and outtrades as required by Section 5a(b)(1) of the Act. The Commission further finds that CSCE accurately and promptly records the essential data on terms, participants, times (in increments of no more than one minute in length) and sequence through a means that is unalterable, continual, independent, reliable and precise, as required by Section 5a(b)(3) of the Act. Consistent with the guidelines to Regulation 155.5, the Commission finds that CSCE also demonstrated the use of trade timing data in its surveillance systems for dual trading-related and other abuses.

*(1) One-Minute Execution Time Accuracy and Sequencing*

CSCE's trade timing system imputes a one-minute execution time for every trade. [5] Trade times are imputed based upon time and sequencing data entered by both buyers and sellers for customer and proprietary trades, including trading card and line order entry sequence numbers, certain execution times required to be manually entered, time and sales data and 30-minute bracket codes. [6] The manually-recorded time for the first trade on the card provides a starting reference point for each subsequent trade on that card. The ending reference point is derived from the next verified manually-recorded time following the trade, either on the same card or the first time on the next trading card.

The November 1994 audit trail tests designed and reviewed by the Commission and conducted by the Exchange involved a determination of the consistency of imputed trade execution times with all underlying audit trail records and data. Based upon that process, trade timing accuracy and sequencing rates for CSCE's imputed system were computed. The level of consistency and verifiability of imputed times with underlying documentation sorted by the computer algorithm exceeded 90 percent. Additionally, the time imputed by the system was within a window length of two minutes or less for more than 90 percent of the trades deemed accurate. [7] More recently, data

[2] The record consists of the CSCE's petition and amendment thereto and supporting and supplemental documents, the November 1994 audit trail accuracy and sequencing tests conducted by the Exchange that were designed and reviewed by the Commission, dual trading surveillance, windows data and customer identification information, and documents submitted by the Exchange in support of a rule enforcement review of the Exchange presented to the Commission on September 30, 1996.

[3] In this connection, the Commission will review the CSCE's implementation of the upgrade to its electronic Ring Reporter System to include entry of the selling broker's identity to enhance matching of time and sales prints to specific trades. Subsequent to the CSCE committing to undertake this audit trail improvement, it became one of the changes offered by the Exchange in order to be found by the Commission to be within a safe harbor with respect to the enhanced independence and sequencing requirements of Section 5a(b)(3) of the Act, which became effective in October 1995. Among other things, such an upgrade can provide improved calibration of the Exchange's imputed timing system based on independent observations of trades verifying attributed times. At the time that the Commission informed the Exchange that it qualified for a safe harbor, the Exchange had represented that it would implement the upgrade in the second quarter of 1996. The Exchange has represented in connection with updating its petition that it will commence a test pilot in July 1997.

[4] Sections 4j(a)(3) and 5a(b) of the Commodity Exchange Act and Commission Regulations 1.35 and 155.5, 17 CFR §§ 1.35, 155.5. Section 4j(a)(3) requires the Commission to exempt a contract market from the prohibition against dual trading, either unconditionally or on stated conditions, upon finding that the trade monitoring system in place at the contract market satisfies the requirements of Section 5a(b), governing audit trails and trade monitoring systems, with regard to violations attributable to dual trading at such contract market. Commission Regulation 155.5 requires a contract market to demonstrate that its trade monitoring system is capable of and is used to detect and to deter dual trading abuses and to demonstrate that it meets each element required of the components of such a system.

[5] An imputed timing system does not capture the actual trade execution time but derives a time from other timing and trade data. As the Commission previously has noted with respect to audit trail generally, its tests have focused on assessing the consistency of the underlying trade data with execution times submitted according to Commission Regulation 1.35(g) ''because there is no benchmark for determining actual execution times and sequence.'' Commission Report on Audit Trail Accuracy and Sequencing Tests at 5 (June 1995).

[6] CSCE does not use order ticket timestamp data in the processing logic for imputing times. Instead, the system attempts to obtain and use a time and sales print for all trades, extensive sequencing data (such as line numbers) and the various required manually entered times to impute trade execution times. Order ticket entry and exit times have been verified in the course of tests of the CSCE audit trail as being consistent with imputed times. CSCE's planned enhanced system would add third party confirmation of the selling broker's identity in a majority of cases, thereby further ratifying sequence information.

[7] To the extent that the time imputed by a computer algorithm is consistent with required trade documentation, time and sequence data and time and sales information for the subject trade and surrounding trades, and the imputed time falls within a two-minute level of precision as measured by the size of the final time window assigned by such algorithm, that imputed time will be

for April 1997 reflect window lengths of two minutes or less for more than 90 percent of all trades in the affected contract market. Separately, the Exchange provided the Commission with the results of four Audit Trail System reviews conducted during the period of September 1995 through December 1996 demonstrating that more than 90 percent of trade times in three different futures contracts were consistent with time and sales data during this time period.[8]

*(2) Unalterable, Continual, Independent, Reliable, and Precise Times*

The Commission finds that trade records generated by CSCE, including order tickets and trading cards, are recorded in nonerasable ink and that alterations are completely recorded. Trading card collections occur within 15 minutes after each half-hour time bracket, and members must submit trade data by one-half hour after the end of the bracket period in which the trade was executed. Trade data, therefore, are provided periodically to the Exchange at no more than hourly intervals, which is continual.

Trade times are independently obtained through a reliable means, to the extent practicable. Specifically, trade time and sequence data, which include separate entries by buying and selling brokers or traders, are entered into an electronic data base which then sorts all relevant data pursuant to a computer algorithm.[9]

*(3) Broker Receipt Time*

The Commission finds that it is not practicable at this time for CSCE to record the time that each order is received by a floor broker for execution at CSCE.

**(c) Recordkeeping System**

CSCE satisfies the requirements of Section 5a(b)(1)(B) by maintaining an adequate recordkeeping system that is capable of capturing essential data on the terms, participants, and sequence of transactions. The Exchange uses such information and information on violations of such requirements on a consistent basis to bring appropriate disciplinary actions.

CSCE conducts trading card and order ticket reviews three times a year for a representative sample of customer orders and personal trades and uses information from these reviews to generate investigations. The Commission's review of a sample of order ticket account identifiers demonstrated in excess of 95 percent compliance with the requirement that the account identifier relate back to the ultimate customer account.

**(d) Surveillance Systems and Disciplinary Actions**

As required by Sections 5a(b)(1) (C), (D) and (F), in general CSCE uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders. In addition, CSCE assesses meaningful penalties against violators and refers appropriate cases to the Commission.

On a daily basis, CSCE's different management information system programs analyze trade data to detect possible instances of dual trading-related and other trading abuses. Systems are designed to permit subjection of all relevant trade data to these reviews. The computerized exception reports generated by the Exchange are designed to identify such suspicious trading activity as accommodation trading, including direct and indirect trading against, direct and indirect trading ahead, and improper cross trading.[10] Investigators can design customized exception reports to identify certain specific trading activity to isolate suspicious trading patterns, to filter and to sort data within reports and to expand review activities.

During the period of September 1995 through December 1996, the Exchange initiated 181 investigations and/or reviews into all types of possible abuses. Based on examination of its computerized surveillance reports, CSCE initiated 87 dual trading-related investigations during that period, of which seven resulted in referrals to the BCC. With regard to disciplinary actions, CSCE assessed $65,175 in fines and ordered $1,926.40 in restitution in eleven dual trading-related cases involving 14 members.

**(e) Commitment of Resources**

The Commission finds that CSCE meets the requirements of Section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system, including automating elements of such trade surveillance system, to be effective in detecting and deterring violations and by maintaining an adequate staff to investigate and to prosecute disciplinary actions. For fiscal year 1996, CSCE committed 25 personnel to Compliance and Market Surveillance and reported its total self-regulatory costs to be $4,113,400. CSCE reported volume for this period as 11,315,979 contracts and number of trades as 2,084,916.

*Accordingly,* on this date, the Commission *hereby grants* CSCE's Petition for Exemption from the dual trading prohibition for trading in its Sugar #11 futures contract, subject to the Exchange passing a Commission re-test of its audit trail system.

For this exemption to remain in effect, CSCE must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through review of specific investigations and through its rule enforcement review program and any other information it may obtain about CSCE's program. It is the Commission's understanding that CSCE intends to complete its upgrade to its Ring Reporter System to include the entry of the selling broker's identity to enhance matching of time and sales prints to specific trades. Although the Commission has found that CSCE can meet the standards of continual provision of data, and independence to the extent practicable, and has found that it is not practicable at this time to capture a broker receipt time, the Commission reserves the ability to reconsider what is practicable as technology for order routing becomes more widely available.

The provisions of this Opinion and Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. § 12e(b)(3)(B). If other CSCE contracts become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

*It is so Ordered.*

considered to be reliable and precise under Commission test procedures.

[8] This is a less stringent measure than the full reconciliation with underlying manual information and records that will be accomplished by Commission staff during the course of the audit trail re-test.

[9] The enhanced Ring Reporter System will further improve the Exchange's level of compliance with the Act's standards of independence, continual provision of timing data and precise sequencing.

[10] On a recent date, for example, CSCE's trading ahead reviews, which isolate brokers receiving better prices than customers fairly contemporaneously, identified .493 percent of trades in all futures and futures option contracts for further review.

Dated: July 8, 1997.

**Jean A. Webb,**

*Secretary to the Commission.*

[FR Doc. 97–18370 Filed 7–11–97; 8:45 am]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Tuesday, July 29, 1997.

**PLACE:** 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Quarterly Objectives.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–18597 Filed 7–10–97; 3:32 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Tuesday, July 29, 1997.

**PLACE:** 1155 21st St. NW., Washington, DC 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–18598 Filed 7–11–97; 3:28 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:30 p.m., Tuesday, July 29, 1997.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Objectives.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–18599 Filed 7–10–97; 3:40 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 3:00 p.m., Tuesday, July 29, 1997.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule Enforcement Review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–18600 Filed 7–10–97; 3:36 pm]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and Associated Form:* Personal Check Cashing Agreement, DD Form X312, OMB Number 0730—[To Be Determined].

*Type of Request:* New Collection.

*Number of Respondents:* 450,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 450,000.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 225,000.

*Needs and Uses:* This collection of information is necessary to meet the Department of Defense's (DoD) requirement for cashing personal checks overseas and afloat by DoD disbursing activities, as provided in 31 U.S.C. 3342. The DoD Financial Management Regulation, Volume 5, allows the DoD disbursing officer or authorized agent the authority to offset the pay. The Personal Check Cashing Agreement Form is designed exclusively to help the DoD disbursing offices expedite the collection process of dishonored checks. The front of the form will be completed and signed by the authorized individual requesting check cashing privileges. By signing the form, the individual consents to the immediate collection from their current pay, without prior notice, for the face value of any check cashed, plus any charges assessed against the government by a financial institution, in the event the check is dishonored. In the event the check is dishonored, the disbursing office will complete and certify the reverse side of the form and forward the form to the applicable payroll office for collection from the individual's pay.

*Affected Public:* Individuals or Households.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 8, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–18366 Filed 7–11–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and Associated Form:* Family Support Center Information; AF Forms 2800, 2801, and 2805; OMB Number 0701–0070.

*Type of Request:* Reinstatement.

*Number of Respondents:* 10,000.

*Responses per Respondent:* 3.
*Annual Responses:* 30,000.
*Average Burden per Response:* 5 minutes.
*Annual Burden Hours:* 2,666.
*Needs and Uses:* This collection of information is necessary to obtain demographic data about individuals and family members who utilize the services offered by the Family Support Center. It is also a mechanism for tracking what services are provided and how often. The data elements in these forms are the basis for quarterly data gathering that is forwarded through Major Commands to the Air Staff. Respondents could be all those eligible for services, i.e., all Department of Defense personnel and their families.
*Affected Public:* Individuals or households.
*Frequency:* On occasion.
*Respondent's Obligation:* Voluntary.
*OMB Desk Officer:* Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
*DOD Clearance Officer:* Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 7, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–18368 Filed 7–11–97; 8:45 am]
BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Programmatic Environmental Impact Statement for the Department of Defense Range Rule

**AGENCY:** Department of Defense.
**ACTION:** Notice of Intent (NOI).

**SUMMARY:** The Department of Defense (DoD) and its predecessor agencies have long used military ranges to prepare and train men and women for the defense of this country. The testing of munitions and training in their use have occurred since pre-Revolutionary times and reached peaks during the World Wars. Munitions sometimes fail to function as intended, resulting in the presence of unexploded ordnance (UXO) on training and test ranges.

These munitions may be found on closed ranges possessed by DoD, transferred ranges (including those in the Formerly Used Defense Sites (FUDS) program, many of which were transferred following the World Wars), and ranges associated with Base Realignment and Closure (BRAC) activities and other property transfers to non-military entities.

The Department of Defense announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS) to consider the environmental impacts associated with the promulgation of the Department of Defense Rule on Closed, Transferred, and Transferring Ranges Containing Military Munitions (hereafter called the DoD range rule). The PEIS will also consider a reasonable range of alternatives to a DoD range rule.

The proposed action is to promulgate the DoD range rule. The promulgation of the proposed rule is necessary for two reasons. First, the rule is needed to ensure that public and worker safety issues are thoroughly identified and considered in the decision making process for UXO response actions. Second, the rule is needed to provide a rational, consistent, and open process that effectively consolidates the several, often disparate, authorities presently applicable to UXO response actions.

**Alternatives To Be Considered**

*Proposed DoD Range Rule*

The DoD proposes to adopt the DoD range rule. The draft proposed DoD range rule is available upon request. Please refer to the addresses section at the end of this NOI for information on how to obtain a copy. The DoD range rule would establish a process for identifying, evaluating, and choosing appropriate response actions on closed, transferred, and transferring military ranges that are or have been owned by, leased to, or otherwise possessed or used by the United States and under the jurisdiction of the Secretary of Defense. Response actions would address safety hazards as well as effects on human health and the environment. The DoD Range Rule identifies a process that: (1) Articulates DoD's statutory authority and responsibility; (2) recognizes and draws upon DoD's unique expertise and experience; (3) provides for consistency; (4) ensures response actions will adequately address safety, human health, and the environment; and (5) provides for cost-effective and efficient actions.

Response activities on ranges containing military munitions involve unique explosives safety concerns that are not normally present during typical response activities. The DoD Range Rule draws upon DoD's unique expertise and experience and is designed to provide a process that will ensure the selection of response actions that are protective of human health and the environment, consistent with these overarching, unique safety concerns.

Under the proposed DoD Range rule, regulators and the public would be provided the opportunity to participate in all site-specific decisions. The rule provides the appropriate federal and state environmental remediation regulatory agencies and American Indian Tribes with the opportunity to concur and participate in the development of the various decision documents under this rule. The rule also provides Federal Land Managers having jurisdiction, custody, or control over property on which a range response will occur, the opportunity to concur and otherwise participate. If a nonoccurrence is received, dispute resolution procedures are established by the proposed rule. Entities entitled to invoke dispute resolution procedures will be established in the final rule.

*No Action Alternative*

The no action alternative would continue the current condition or status quo, which amounts to a case-by-case discussion concerning the application of various environmental laws and regulations. The DoD's response activities, on and off ranges have been variously subject to the Defense Environmental Restoration Program (DERP), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), or a varying combination thereof. This essentially ad hoc approach has resulted in: (1) A lack of clear direction for the DoD to follow for addressing military munitions responses; and (2) this confusion contributes to public and regulator concern that military munitions are not being addressed adequately.

*RCRA Corrective Action*

It is DOD's position that UXO remaining on a closed, transferred, or transferring range does not constitute solid waste subject to RCRA's corrective action authorities. EPA has considered a contrary position but it has not yet made any determination. The RCRA corrective action process consists of a series of steps involved in the identification, evaluation, and cleanup of solid waste management units. The application of the corrective action process to closed, transferred, and transferring military

ranges will be evaluated as a possible alternative in development of the draft PEIS.

*CERCLA Process*

The implementation of the CERCLA process at closed, transferred, and transferring ranges will also be initially considered as a potential alternative in development of the draft PEIS. CERCLA provides for the identification, evaluation, and response to hazardous substances and constituents released to the environment. CERCLA, as well as the National Contingency Plan (NCP) and Executive Order 12580, identifies DoD as the lead agency with respect to release from its facilities. Other federal agencies have been delegated similar CERCLA authorities in E.O. 12580 in connection with facilities under their jurisdiction, custody, or control. With respect to the application of CERCLA to closed, transferred, and transferring ranges, DoD has identified some initial concerns. For example, confusion exists as to the extent of EPA's response authority, and the application of state applicable or relevant and appropriate requirements (ARARs).

*The Formerly Utilized Defense Sites Program*

The FUDS Program was initiated to respond to lands once owned by DoD that are now owned by other government agencies or private interests. The DoD retains responsibility for the response to expended ordnance and explosive waste on these lands. The U.S. Army Corps of Engineers is the DoD Executive Agent for response actions on FUDS. The Corps' policy has been to consider all FUDS ordnance response to be CERCLA actions and use interim DoD Defense Environmental Restoration Program guidance to develop an appropriate response action.

**Public Participation**

This notice initiates a period of public scoping that is intended to invite the participation of all interested members of the public, as well as other public agencies. Comments received during the scoping period will be used to assist the DoD in identifying significant issues of public concern regarding potential impacts on the quality of the human environment. The scoping will also assist the Department of Defense in developing a reasonable range of alternatives for consideration in the draft PEIS. The draft PEIS will be published and made available for public review and comment prior to its finalization. After review of the draft PEIS, the DoD will address public comments in a final PEIS that will be published prior to publication of a Record of Decision (ROD). The ROD will identify the action chosen for implementation based on those alternatives considered in the PEIS.

**DATES:** Written and oral comments on the proposed scope of the DoD Range Rule PEIS are invited from the public. Comments will help to identify issues of concern and to assist in development of alternatives considered in the PEIS. To ensure consideration, comments must be postmarked not later than August 13, 1997. An extension may be provided upon written request to the extent practicable.

**ADDRESSES:** Copies of the draft proposed DoD Range Rule can be requested through one of the toll free numbers below, or from the World-Wide Web address below.

Requests for information regarding the draft proposed DoD Range Rule can be requested 24 hours a day by calling the toll-free number at 1–800–870–6542. Comments may be sent via facsimile to 1–800–870–6547. A toll free number for the hearing impaired is available at 1–800–870–6557. Comments or requests regarding to DoD Range Rule may be sent via Internet e-mail to fbarrule@b–r.com. Comments regarding the PEIS may be sent via Internet e-mail to: fbarreis@b–r.com

*Internet:* World-Wide Web (WWW): http://www.acq.osd.mil/ens/ or http: http://denix.cecer.army.mil/denix/denix.htm

**FOR FURTHER INFORMATION CONTACT:** For general information on the DoD Range Rule National Environmental Policy Act (NEPA) process, please contact: DoD Range Rule Information Center, Post Office box 3430, Gaithersburg, Maryland 20885–3430, telephone 1–800–870–6542 or via Internet at fbarreis@b–r.com.

Dated: July 9, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–18361 Filed 7–11–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

**DATES:** July 29, 1997 (800 a.m. to 1600 p.m.).

**ADDRESSES:** The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Maj. Michael W. Lamb, USAF, Executive Secretariat, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328, (202) 231–4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: July 9, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–18360 Filed 7–11–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Open Systems

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Open Systems will meet in open session on July 29–31, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Marya Bavis at (703) 527–5410.

Dated: July 8, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–18367 Filed 7–11–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Performance Review Board Membership

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice.

**SUMMARY:** Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

**EFFECTIVE DATE:** July 11, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Donna R. White, Defense Finance and Accounting Service, DFAS–HQ–H, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

**SUPPLEMENTARY INFORMATION:** Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service Performance Review Boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Gary Amlin, Principal Deputy Director, Defense Finance and Accounting Service.

John Nabil, Director—Denver Center, Defense Finance and Accounting Service.

Charles Coffee, Director—Columbus Center, Defense Finance and Accounting Service.

Phyllis Hudson, Director—Cleveland Center, Defense Finance and Accounting Service.

Bruce Carnes, Deputy Director for Resource Management, Defense Finance and Accounting Service.

Teresa Walker, Deputy Director for Plans and Management, Defense Finance and Accounting Service.

Edward Harris, Deputy Director for Accounting, Defense Finance and Accounting Service.

Dated: July 8, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–18369 Filed 7–11–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Record of Decision (ROD) for Fort Ord, California, Disposal and Reuse Final Supplemental Environmental Impact Statement (SEIS)

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 and the President's Council on environmental Quality, the Army prepared a Final Environmental Impact Statement (FEIS) in June 1993 for the disposal of certain excess property at Ford Ord, California, and the establishment of the Presidio of Monterey Annex. The Record of Decision (ROD) for the FEIS was signed on December 23, 1993. Since the 1993 ROD was issued, the Army has determined that an additional 250 acres of the Annex can be made available for disposal. In addition, the Army committed in the 1993 ROD to additional environmental analysis to address the impacts of new land uses not already addressed in the FEIS. As a result of that commitment, as well as significant changes in other conditions, the Army prepared a Supplemental Environmental Impact Statement (SEIS). The ROD determines that the SEIS adequately addresses impacts of the Army's actions related to the continued disposal of property at the former Fort Ord, California. Based on consideration of the relevant factors identified in the Final SEIS, along with the public responses, the Army will proceed with the disposal of the former Fort Ord property in accordance with the approaches indicated in the FEIS, the Final SEIS, the 1993 EIS ROD, and the SEIS ROD.

**AVAILABILITY OF REVIEW COPIES:** Copies of the ROD can be obtained by contacting Mr. Bob Verkade, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922; telephone (916) 557–7423; fax (916) 557–5307; e-mail: rverkade@usace.mil. Copies of the ROD are also available at the Seaside Branch Municipal Public Library and the Monterey County libraries.

Dated: July 8, 1997.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).*

[FR Doc. 97–18353 Filed 7–11–97; 8:45 am]

**BILLING CODE 3710–08–M**

## UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Uniformed Services University of the Health Sciences.

**TIME AND DATE:** 8:30 a.m. to 4:00 p.m., August 4, 1997.

**PLACE:** Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**STATUS:** Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:**

8:30 a.m. MEETING—BOARD OF REGENTS

(1) Approval of Minutes—May 16, 1997
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Dated: July 10, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–18554 Filed 7–10–97; 12:37 p.m.]

**BILLING CODE 5000–04–M**

## DELAWARE RIVER BASIN COMMISSION

### Notice of Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Monday, July 28, 1997 at 6:00 p.m. in the Jefferson Township Municipal Building, Cortez Road in Mount Cobb, Jefferson Township, Pennsylvania.

The subject of the hearing is an application for approval of the following project: *Jefferson Township Sewer Authority D–97–6 CP.* A project to construct a 410,000 gallons per day (gpd) sewage treatment plant (STP) to serve communities in portions of Jefferson Township, Lackawanna County, Pennsylvania, including Mount Cobb, Moosic Lakes and Lake Spangenberg, and the residential developments of Happy Acres, Belair

Acres, Floral Estates, Jefferson Heights and High View Terrace. The STP will provide tertiary treatment prior to discharge to an unnamed tributary of the West Branch Wallenpaupack Creek. The STP will be situated approximately 1,000 feet south of State Route 348 and just east of Mount Cobb in Jefferson Township. An importation of wastewater of approximately 21,000 gpd is projected from the Happy Acres service area which is located in the Susquehanna River Basin. This hearing continues that of June 25, 1997.

Documents relating to this application may be examined at the Commission's offices. The Commission's preliminary docket is available upon request. Please contact Thomas L. Brand concerning docket-related questions at (609) 883–9500 ext. 221.

Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing and may be asked to limit their remarks to five minutes to enable all who wish to speak to do so.

Visit DRBC's Web Site at http://www.state.nj.us/drbc/drbc.htm

Dated: July 3, 1997.

**Susan M. Weisman,**

*Secretary.*

[FR Doc. 97–18298 Filed 7–11–97; 8:45 am]

**BILLING CODE 6360–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 12, 1997.

**ADDRESSES:** Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 8, 1997.

**Gloria Parker,**

*Director, Information Resources Management Group.*

### Office of Educational Research and Improvement

*Type of Review:* Reinstatement.
*Title:* State Library Agencies Survey, FY 1997–FY 1999
*Frequency:* Annually
*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs
*Reporting Burden and Recordkeeping:*
Responses: 51.
Burden Hours: 612.

*Abstract:* This survey is proposed as an annual data collection as part of a federal-state cooperative system of data collection. State Library Agencies (STLAs) are the official agency of a state charged by state law with the extension and development of public library services and they receive broader legislative mandates affecting libraries of all types in the states (i.e., public, academic, school, special and library systems). The data are collected entirely electronically and the survey is designed and coordinated by a federal/state cooperative system. The survey will provide state and federal policymakers with information about STLAs, their governance, allied operations, development services to libraries and library systems, support of electronic information networks, etc.

[FR Doc. 97–18340 Filed 7–11–97; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 13, 1997.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 8, 1997.

**Gloria Parker,**

*Director, Information Resources Management Group.*

### Office of Postsecondary Education

*Title:* Fulbright-Hays Seminars Abroad Program.

*Frequency:* One Time Per Application.

*Affected Public:* Individuals or households.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 600.

Burden Hours: 1,200.

*Abstract:* Application form for educators under the Fulbright-Hays Seminars Abroad program which provides opportunities for U.S. educators to participate in short-term study seminars abroad in the subject areas of the social sciences, social studies and the humanities.

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Written Request for Assistance or Application for Client Assistance Program.

*Frequency:* 3-year cycle for State Assurances or plan for CAP formula grant.

*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 57.

Burden Hours: 9.

*Abstract:* This document is used by States to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, as amended, to assist vocational rehabilitation and client applicants in their relationships with projects, programs, and facilities authorized by the Rehabilitation Act of 1973, as amended.

### Office of Educational Research and Improvement

*Type of Review:* Reinstatement.

*Title:* 1999 National Study of Postsecondary Faculty (NSOPF—99): List Collection Procedures and Institution Questionnaire.

*Frequency:* One Time.

*Affected Public:* Not-for-profit institutions.

*Reporting Burden and Recordkeeping:*

Responses: 1,550.

Burden Hours: 2,306.

*Abstract:* The third cycle of the NSOPF is being conducted in response to a continuing need for data on faculty and instructors. The study will provide information about faculty in postsecondary institutions which is key to learning about the quality of education and research in these institutions. This study will expand the information about faculty and instructional staff in two ways—allowing comparisons to be made over time and examining critical issues surrounding faculty that have developed since the first two studies. This clearance request covers field test and full scale activities for the first phase of the study—collection of lists of current faculty and instructors from sampled postsecondary institutions and a questionnaire to be filled by institution administrative officials to provide information about the context of the institution, such as hiring and promotion practices, policies on benefits, tenure, workload and salary, etc. A second clearance request will be submitted shortly covering the faculty survey materials.

[FR Doc. 97–18339 Filed 7–11–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.129A through R]**

### Rehabilitation Training: Rehabilitation Long-Term Training Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

*Purpose of Program:* The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

*Eligible Applicants:* State agencies and other public or nonprofit agencies and organizations, including Indian Tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Long-Term Training program.

*Deadline for Transmittal of Applications:* September 12, 1997.

*Deadline for Intergovernmental Review:* November 11, 1997.

*Applications Available:* July 15, 1997.

*Available Funds:* $4,600,000.

*Estimated Range of Awards:* $75,000 to $150,000.

*Estimated Average Size of Awards:* $100,000.

*Estimated Number of Awards:* 46.

**Note:** The Department is not bound by any estimates in this notice.

*Maximum Award:* In no case does the Secretary make an award greater than the amount listed in the Maximum Level of Awards column in the following chart for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

*Project Period, Maximum Number of Awards, Maximum Level of Awards, and Absolute Priorities:* The Secretary is conducting a single competition to select a total of 46 awards across 13 priority areas identified by the Commissioner of the Rehabilitation Services Administration as areas of personnel shortages related to the public rehabilitation program (section 302(b)(1) of the Rehabilitation Act of 1973, as amended). The project period and maximum level of awards to be made in

each priority area are listed in the following chart. The maximum number of awards to be made are listed in parentheses following each priority area. Applicants must submit a separate application for each area in which they are interested. Under 34 CFR 75.105 (c)(3) and 34 CFR 386.1, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that propose to provide training in one of the following areas of personnel shortages:

| CFDA No. | Priority area (maximum number of awards in parentheses) | Project period | Maximum level of awards |
|---|---|---|---|
| 84.129A3 | Rehabilitation nursing (1) | Up to 60 months | $100,000 |
| 84.129A8 | Rehabilitation medicine (5) | UP to 60 months | 100,000 |
| 84.129A9 | Prosthetics and orthotics (3) | UP to 60 months | 150,000 |
| 84.129C3 | Rehabilitation administration (2) | UP to 60 months | 100,000 |
| 84.129D4 | Physical therapy (2) | UP to 60 months | 100,000 |
| 84.129E4 | Rehabilitation technology (5) | UP to 60 months | 100,000 |
| 84.129F4 | Vocational evaluation and work adjustment (5) | UP to 60 months | 100,000 |
| 84.129H3 | Rehabilitation of individuals who are mentally ill (4) | UP to 60 months | 100,000 |
| 84.129L4 | Undergraduate education in the rehabilitation services (6) | UP to 60 months | 75,000 |
| 84.129N2 | Speech pathology and audiology (2) | UP to 60 months | 75,000 |
| 84.129P4 | Specialized personnel for rehabilitation of individuals who are blind or have vision impairment (7). | UP to 60 months | 100,000 |
| 84.129Q4 | Rehabilitation of individuals who are deaf or hard of hearing (8) | UP to 60 months | 100,000 |
| 84.129R4 | Job development and job placement services to individuals with disabilities (3) | UP to 60 months | 100,000 |

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 386.

*For Applications Contact:* The Grants and Contracts Service Team, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3317, Switzer Building), Washington, D.C. 20202–2649; or call (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting information is to FAX your request to (202) 205–8717.

*For Information Contact:* Beverly Brightly, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3327, Switzer Building), Washington, D.C. 20202–2649; telephone (202) 205–9561.

For information on a specific training priority, please contact the following: For Rehabilitation medicine and Rehabilitation nursing, contact Beverly Brightly, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3327, Switzer Building) Washington, D.C. 20202–2649. Telephone (202) 205–9561. For Rehabilitation administration, Vocational evaluation and work adjustment, Undergraduate education in the rehabilitation services, and Job development and job placement services to individuals with disabilities, contact Beverly Steburg, U.S. Department of Education, Region IV, 61 Forsythe Street, S.W. (Room 18T91), Atlanta, Georgia 30303. Telephone (404) 562–6336. For Physical therapy, prosthetics and orthotics, Rehabilitation technology, Speech pathology and audiology, Specialized personnel for rehabilitation of individuals who are blind or have vision impairments, and Rehabilitation of individuals who are deaf or hard of hearing, contact Sylvia Johnson, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3320, Switzer Building), Washington, D.C. 20202–2649. Telephone (202) 205–9312. For Rehabilitation of individuals who are mentally ill, contact Ellen Chesley, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3320, Switzer Building), Washington, D.C. 20202–2649. Telephone (202) 205–9481.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** 29 U.S.C. 774.

Dated: July 8, 1997.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 97–18376 Filed 7–11–97; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[CFDA Nos. 84.044 and 84.066]**

### Talent Search and Educational Opportunity Centers Programs Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998 and Notice of Technical Assistance Workshops

**SUMMARY:** The Secretary invites applications for new awards for FY 1998 and announces technical assistance workshops for the Talent Search Program and Educational Opportunity Centers Programs.

**DATES:** The closing date for transmitting applications under each of these competitions is listed in this notice under the individual announcement for the program. The dates, time, and places for the workshops are listed under the section entitled ''Technical Assistance Workshops.''

**ADDRESSES:** The address and telephone number for obtaining applications or for further information about the two programs are listed in this notice under the individual announcement for the programs.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov).

However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**SUPPLEMENTARY INFORMATION:** Applicants must address the changes included in the final regulations published in the **Federal Register** on November 5, 1993 for the Talent Search Program and on January 18, 1994 for the Educational Opportunity Centers Program. In general, the grantee selection criteria have been modified with particular emphasis on the sections relevant to need, plan of operation, evaluation and prior experience. The final regulations will be included in the application package made available by the Department.

## Available Funds

The Congress has not yet enacted a fiscal year 1998 appropriation for the Department of Education. However, the Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimated amount of funds available for this program is based on the President's 1998 budget.

**Note:** Currently funded Talent Search and Educational Opportunity Centers grantees with five-year awards expiring in 1999 must submit an application during this competition to be considered for a new award under the fiscal year 1998 funding cycle. The project start date for new grants awarded to current five-year grantees who are successful applicants under this competition will be September 1, 1999.

## Application Notices

*CFDA No. 84.044—Talent Search Program*

*Purpose of Program:* The Talent Search Program provides grants to enable applicants to conduct projects designed to (1) Identify qualified youths who are low-income and potential first-generation college students and to encourage them to complete high school and enroll in postsecondary education; (2) publicize the availability of student financial assistance at the postsecondary level; and (3) encourage persons who have not completed secondary or postsecondary education to re-enter these programs.

*Eligible Applicants:* Institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies, and organizations, and, in exceptional cases, secondary schools if there are no other applicants capable of providing a Talent Search or Educational Opportunity Centers project in the proposed target area.

*Deadline for Transmittal of Applications:* October 31, 1997.

*Deadline for Intergovernmental Review:* December 31, 1997.

*Applications Available:* August 1, 1997.

*Estimated Range of Awards:* $190,000—$400,000.

*Estimated Average Size of Awards:* $273,000.

*Estimated Number of Awards:* 347.

*Project Period:* Up to 60 months.

**Note:** The Department is not bound by any of the estimates in this notice.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for these programs in 34 CFR part 643.

*For Applications or Information Contact:* Clinton Black, Federal TRIO Programs, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600 D, Washington, DC 20202–5249. Telephone: (202) 708–4804 or by Internet to TRIO@ed.gov or Clinton__Black@ed.gov.

**Program Authority:** 20 U.S.C. 1070a–11 and 1070a.

*CFDA No. 84.066—Educational Opportunity Centers Program*

*Purpose of Program:* The Educational Opportunity Centers Program provides grants to conduct projects designed to (1) provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education, and (2) assist individuals applying for admission to institutions that offer programs of postsecondary education.

*Eligible Applicants:* Institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies, and organizations, and, in exceptional cases, secondary schools if there are no other applicants capable of providing a Talent Search or Educational Opportunity Centers project in the proposed target areas.

*Deadline for Transmittal of Applications:* September 30, 1997.

*Deadline for Intergovernmental Review:* November 30, 1997.

*Applications Available:* August 1, 1997.

*Estimated Range of Awards:* $190,000–$450,000.

*Estimated Average Size of Awards:* $357,000.

*Estimated Number of Awards:* 81.

**Note:** The Department is not bound by any of the estimates in this notice.

*Project Period:* Up to 60 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for these programs in 34 CFR part 644.

*For Applications or Information Contact:* Margaret A. Wingfield, Federal TRIO Programs, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600 D, Washington, DC 20202–5249. Telephone: (202) 708–4804 or by Internet to TRIO@ed.gov or Margaret__Wingfield@ed.gov.

**Program Authority:** 20 U.S.C. 1070a–11 and 1070a.

## Technical Assistance Workshops

The Department of Education will conduct 10 technical assistance workshops for the Talent Search and Educational Opportunity Centers Programs. At these workshops, Department of Education staff will assist prospective applicants in developing proposals and will provide budget information regarding these programs. The technical assistance workshops will be held as follows:

University of Texas at Arlington, Room 100—Nedderman Hall, 415 S. West, Arlington, Texas 76010, Contact: Becky Valentich, (817) 272–2506—August 5, 1997, 9:00 a.m.–4:00 p.m.

University of Chicago, Ida Noyes Hall, 1212 E. 59th Street, Chicago, Illinois 60637, Contact: Terhonda Palacios, (773) 702–8288—August 5, 1997, 9:00 a.m.–4:00 p.m.

Community College of Denver, Auraria Campus, 1200 Larimer Street, North Classroom Bldg., Rm. 1130–A, Denver, Colorado 80204, Contact: Florence Lavato (303) 629–9226—August 7, 1997, 9:00 a.m.–4:00 p.m.

Morris Brown College, Atlanta University Center, Robert W. Woodruff Library, Exhibition Hall—Upper Level, 111 James P. Brawley Dr., S.W., Atlanta, Georgia 30314, Contact: Marvin King (404) 220–0384–August 7, 1997, 9:00 a.m.–4:00 p.m.

San Diego State University, 5200 Campanile Drive, Student Services Bldg., Room 1500, San Diego, California 92182, Contact: Maxine Haun (619) 594–1683—August 12, 1997, 9:00 a.m.–4:00 p.m.

University of Massachusetts, Media Auditorium, Upper Level, Healy Library, 100 Morrissey Blvd., Dorchester, MA 02125–3393, Contact: Bill Pollard (617) 287–7390—August 12, 1997, 9:00 a.m.–4:00 p.m.

Portland State University, South Memorial Center, Rooms 294 & 296,

1825 S.W. Broadway, Portland, OR 97207, Contact: Cora Grey (503) 725–4458—August 14, 1997, 9:00 a.m.–4:00 p.m.

University of Puerto Rico Rio Piedras, Faculty of General Studies, Amphitheater #5, Barbosa Avenue, San Juan, PR 00931–3323, Contact: Evelyn Rivera, (787) 764–8063—August 14, 1997, 9:00 a.m.–4:00 p.m.

John Jay College, 445 West 59th Street, Room 1311N, New York, NY 10019, Contact: Karen K. Texeira-Delucca (212) 237–8280 or Josefina Couture (212) 237–8275—August 14, 1997, 9:00 a.m–4:00 p.m.

Washington, DC, Auditorium, Regional Office Building 3, 7th & D Streets, S.W., Washington, DC 20202, Contact: Federal TRIO Programs Staff (202) 708–4804—August 19, 1997, 9:00 a.m.–4:00 p.m.

Dated: July 7, 1997.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 97–18417 Filed 7–11–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

**DATES AND TIMES:** Wednesday, July 23, 1997, 1:00 pm–5:00 pm and Thursday, July 24, 1997, 8:30 am–11:30 am.

**ADDRESSES:** Bechtel Corporation, Hoteling Suites, Second Floor, 50 Beale Street, San Francisco, California.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1709 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:**

#### Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

#### Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

#### Tentative Agenda

*Wednesday, July 23, 1997*

1:00–1:30 pm—Opening Remarks & Introductions; Philip Sharp, ESR Task Force Chairman.
1:30–2:45 pm—Working Session: Review of the Draft ESR Task Force Interim Report.
2:45–3:00 pm—Break.
3:00–4:30 pm—Working Session: Review of the Draft ESR Task Force Interim Report.
4:30–5:00 pm—Public Comment Period.
5:00 pm—Adjourn.

*Thursday, July 24, 1997*

8:30–8:45 am—Opening Remarks & Summary of Agreements; Philip Sharp, ESR Task Force Chairman.
8:45–10:00 am—Working Session: Final Review of the ESR Task Force Interim Report.
10:00–10:15 am—Break.
10:15–11:00 am—Discussion: Next Steps—Approach to Addressing & Resolving the Remaining Task Force Issues.
11:00–11:30 am—Public Comment Period.
11:30 am—Adjourn.

This tentative agenda is subject to change. The final agenda will be available at the meeting.

#### Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in San Francisco, California the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

#### Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force may also be found at the Secretary of Energy Advisory Board's web site, located at http://vm1.hqadmin.doe.gov:80/seab/.

Issued at Washington, DC, on July 9, 1997.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–18375 Filed 7–11–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Civilian Radioactive Waste Management; OCRWM Spent Nuclear Fuel Transportation Workshops

**AGENCY:** Office of Civilian Radioactive Waste Management, Department of Energy.

**ACTION:** Notice of public workshops.

**SUMMARY:** The Office of Civilian Radioactive Waste Management will hold two public workshops in August 1997 to discuss issues related to the transportation of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act (NWPA). These discussions will assist the Department of Energy in developing policy related to transportation activities and implementing a transportation program that provides for safe, uninterrupted and uneventful shipment of spent nuclear fuel and high-level radioactive waste.

#### DATES and ADDRESSES:

August 7, 1997, 1:00 p.m.–5:00 p.m., Dallas, TX
August 8, 1997, 8:00 a.m.–3:00 p.m., Dallas, TX
August 12, 1997, 1:00 p.m.–5:00 p.m., Reston, VA
August 13, 1997, 8:00 a.m.–3:00 p.m., Reston, VA

**To Pre-Register:** If you are interested in attending either of these workshops, please reply for the Dallas workshop by July 21, 1997, and for the Reston

workshop by July 28, 1997. Please provide your name, organization, address, phone number and the specific workshop (Dallas or Reston) you plan to attend to: Sharon J. Long, Waste Acceptance and Transportation Division, Office of Civilian Radioactive Waste Management (RW–44), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. Telephone: (202) 586–5263. Fax: (202) 586–9764. E-Mail: Sharon J. Long@rw.doe.gov.

**FOR FURTHER INFORMATION CONTACT:** Sharon J. Long (202)–586–5263.

**SUPPLEMENTARY INFORMATION:** The Department is mandated under the Nuclear Waste Policy Act of 1982, as amended (the Act), to provide for the safe management, including transportation, and permanent disposal of our Nation's spent nuclear fuel and high-level radioactive waste. The Act created the Office of Civilian Radioactive Waste (OCRWM) within the Department to implement this mandate. These workshops will provide a forum for interested parties to discuss issues and concerns related to NWPA transportation activities. There will be two separate facilitated workshops. On the second day of each workshop, individuals from each session will report back to the group in the closing plenary session. An opportunity will be provided for public comments.

A block of hotel rooms has been reserved in Dallas and in Reston. Please contact the hotels directly for reservations: The GRAND Kempinski Dallas (972) 386–6000 (cut-off date for reservations is July 18) and Hyatt Regency at Reston Town Center (703) 709–1234 (cut-off date for reservations is July 25).

Airport shuttles to hotels are available. In Dallas, transportation to the hotel is available via SuperShuttle at a cost of $12–13 one way—advance reservations are required—(800) 258–3826. In Reston, a complimentary Hyatt shuttle bus runs between Dulles airport and the hotel.

Issued in Washington, DC, on July 8, 1997.

**Ronald A. Milner,**

*Acting Director, Office of Civilian Radioactive Waste Management.*

[FR Doc. 97–18374 Filed 7–11–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[FERC Form-580]**

## Proposed Information Collection and Request for Comments

July 8, 1997

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of request submitted for review to the Office of Management and Budget.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of these comments to the Commission, as explained below. The Commission received comments from two entities in response to an earlier **Federal Register** notice of March 13, 1997 (62 FR 11852) and has replied to these comments in its submission to OMB.

**DATES:** Comments must be filed within 30 days of publication of this notice.

**ADDRESSES:** Addrss comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 726 Jackson Place N.W., Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street, N.E. Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

*Description:* The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form No. 580, ''Interrogatory on Fuel and Energy Purchase Practices, Docket No. IN79–6''

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: 1902–0137. The Commission is now requesting that OMB approve a three year extension of these mandatory collection requirements.

4 Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the Federal Power Act (FPA). The FPA was amended by the Public Utility Regulatory Policies Act (P.L. 95–617) to require the Commission to review ''not less frequently than every two (2) years * * * of practices * * * to ensure efficient use of resources (including economical purchase and use of fuel and electric energy) * * *''. The information is used to: (1) evaluate fuel costs in individual rate filings; (2) review fuel costs passed through automatic fuel adjustment clauses, as determined during periodic compliance audits of utility books and records; and (3) to initiate Commission action under Section 205(f)(3) of the FPA. The Commission's regulations require that a determination be made that wholesale rates are just and reasonable. To make this determination, it is necessary to investigate an analyze the different types of costs incurred in providing electric service. One such expense is fuel costs, which accounts for nearly two-thirds of the electric utility's total operating costs.

To allay its concern that utilities lack incentives to minimize fuel costs, Congress directed the Commission to review utility fuel and energy purchase practices to insure that fuel costs are reasonable. To properly assess the effectiveness of utility fuel procurement programs it is necessary to address a wide range of issues that directly impact fuel expenses.

5. Respondent Description: The respondent universe currently comprises approximately 150 respondents.

6. Estimated Burden: 6,031 total burden Hours (12,061 every two years), 129 respondents, 64.5 responses annually (129 responses every two years), 93.5 hours per response (average).

**Statutory Authority:** Sections 205(f) of the Federal Power Act, as amended by Section 208 of the Public Utility Regulatory Policies Act. (49 Stat. 851; 16 U.S.C. 824d).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18301 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–5–007]**

## Algonquin Gas Transmission Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1997:

Third Revised Sheet No. 604
Second Revised Sheet No. 633
Fourth Revised Sheet No. 709
First Revised Sheet No. 709A
Fifth Revised Sheet No. 710
Second Revised Sheet No. 714

Algonquin asserts that the purpose of this filing is to comply with the Commission's order issued June 16, 1997 in Docket No. RP97–5–006 which required Algonquin to file tariff sheets to incorporate GISB Business Practice Standard 4.3.6 not less than 30 days in advance of the required effective date of August 1, 1997.

Algonquin states that the tariff sheets listed above implement Standard 4.3.6. to be effective August 1, 1997.

Algonquin states that copies of the filing were served on all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18324 Filed 7–11–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–232–000]**

## Amoco Production Co. and Amoco Energy Trading Co. v. Natural Gas Pipeline Co. of America; Notice of Filing of Staff Audit Report and Establishing Comment Dates

July 8, 1997.

Take notice that on July 8, 1997, Commission Staff (Staff) filed its audit report, in the above-docketed proceeding. Staff filed its report pursuant to the Commission's Order Establishing Procedures (Order) issued March 25, 1997, 78 FERC ¶ 61,313 (1997). In the March 25, 1997 Order, the Commission directed Staff to conduct an audit of the records, procedures, and practices related to the allocation of capacity on Natural Gas Pipeline Company of America's system, including requests for service and contracting for capacity, for the period from January 1, 1995, to the present, and to report its findings.

Any party wishing to file comments may file initial comments on Staff's audit report on or before July 28, 1997. Reply comments shall be filed on or before August 7, 1997.

By direction of the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18377 Filed 7–11–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–171–007]**

## ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice that, on July 1, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheet No. 162B.1 in compliance with Order No. 587–C, and a Commission June 26, 1997 order.

ANR states that this tariff sheet is being filed to comply with the requirement that ANR implement, thirty days before August 1, 1997, GISB Standard No. 4.3.6. That standard requires the establishment by pipelines of a home page accessible on the Internet's World Wide Web.

ANR states that copies of the filing have been mailed to all affected customers and state regulator commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commissions Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18312 Filed 7–11–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–110–004]**

## Black Marlin Pipeline Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 201A
Third Revised Sheet No. 221

Black Marlin states that on April 29, 1997, in Docket No. RP97–110–002, Black Marlin submitted pro forma changes to the General Terms and Conditions of its Tariff (April 29 Filing) in compliance with the requirements of Order No. 587–C issued March 4, 1997 in Docket No. RM96–1–004. The April 29, filing included pro forma tariff changes to implement Gas Industry Standards Board standards to become effective August 1, 1997, relating to Black Marlin's Internet web page, as well as tariff changes relating to revised and new business standards to become effective November 1, 1997. The April 29, filing also included an alternate version of Sheet No. 201A which did not incorporate specific data dictionaries into Black Marlin's Tariff. The pro forma tariff changes, with the exception of the changes reflected on the alternate tariff sheet, were approved by Letter Order dated June 13, 1997 (June 13 Order).

Black Marlin states that the instant filing is submitted in compliance with the June 13, Order to implement the corresponding final tariff sheets to become effective August 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18306 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–52–002 and RP97–52–003]**

## Columbia Gulf Transmission Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Columbia Gulf Transmission Company (Columbia Gulf) made its filing in compliance with the Commission's June 16, 1997, Order On Rehearing and Compliance Filing in the referenced proceeding. See Columbia Gulf Transmission Co., 79 FERC ¶ 61,351 (1996) (the June 16 Order). The June 16 Order, among other items addressed, required Columbia Gulf to file the reconciliation required by 18 CFR Section 154.312(j)(2)(ii)(B), which requires the pipeline to provide a reconciliation of the base period revenues and billing determinants and the revenues and billing determinants for the base period as adjusted. Columbia Gulf is filing the required reconciliation.

Columbia Gulf states that copies of its filing have been mailed to each of the parties set forth on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. A copy of Columbia Gulf's filing is on file with the Commission and is available for public inspection in the Commission's Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18302 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–58–005]**

## East Tennessee Natural Gas Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Second Revised Sheet No. 169
2nd Rev. 1st Revised Sheet No. 176

East Tennessee states that the tariff sheets implement the Gas Industry Standards Board's (GISB) Internet Web page standards in accordance with the June 19, 1997 Letter Order of the Office of Pipeline Regulation in the above-referenced docket. In accordance with the June 19 Letter Order, East Tennessee requests an effective date of August 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Pubic Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18303 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–4514–000]**

## Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice that on July 2, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, with an effective date of March 1, 1997:

Fourth Revised Sheet No. 189

FGT states that the instant filing is being made to incorporate tariff changes which have been previously accepted by the Commission but which, because of an inadvertent omission by FGT in a subsequent filing, are not reflected in the currently effective tariff sheet.

FGT states that on August 30, 1996, in Docket No. RP96–366–000, FGT filed revised tariff sheets including Third Revised Sheet No. 189 superseding Second Revised Sheet No. 189. By Order issued September 30, 1996 the Commission accepted the revised tariff sheets including Third Revised Sheet No. 189 for filing and suspended them to become effective March 1, 1997.

Subsequently, on October 16, 1996 in Docket No. RP96–380–001, FGT filed and the Commission approved by Order issued November 7, 1996, Substitute First Revised Second Revised Sheet No. 189 superseding Second Revised Sheet No. 189, which included the tariff revisions contained herein.

On February 27, 1997, in Docket No. RP96–366–004, FGT filed third Revised Sheet No. 189 superseding Second Revised Sheet No. 189. In the February 27 filing, FGT inadvertently made redlined changes from Second Revised Sheet No. 189 rather than the previously approved Substitute First Revised Second Revised Sheet No. 189. In the instant filing, Fourth Revised Sheet No. 189 is being filed to incorporate the provisions of Substitute First Revised Second Revised sheet No. 189, which had been accepted by the Commission's November 7, 1996 Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section

154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 97–18313 Filed 7–11–97; 8:45 am]

**BILLING CODE 6716–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulation Commission

**[Docket No. RP97–21–005]**

## Florida Gas Transmission Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 102B
First Revised Sheet No. 114

FGT states that on April 29, 1997, in Docket No. RP97–21–004, FGT submitted pro forma changes to the General Terms and Conditions of its Tariff (April 29 Filing) in compliance with the requirements of Order No. 587–C issued March 4, 1997 in Docket No. RM96–1–004. The April 29 Filing included pro forma tariff changes to implement Gas Industry Standards Board standards to become effective August 1, 1997 relating to FGT's Internet web page, as well as tariff changes relating to revised and new business standards to become effective November 1, 1997. The April 29 Filing also included an alternate version of Sheet No. 102B which did not incorporate specific data dictionaries into FGT's Tariff. The pro forma tariff changes, with the exception of the changes reflected on the alternate tariff sheet, were approved by Letter Order dated June 16, 1997 (June 16 Order).

FGT states that the instant filing is submitted in compliance with the June 16 Order to implement the corresponding final tariff sheets to become effective August 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulation Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18350 Filed 7–11–96; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP97–161–007 and RP97–329–004]**

## Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice that on July 2, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 1, 1997:

Second Revised Sheet No. 64
Fourth Revised Sheet No. 76
Second Revised Sheet No. 120

Iroquois states that these sheets were submitted in compliance with the provisions of the Commission's May 19, 1997, Order Accepting and Rejecting Tariff Sheets, Subject to Conditions, and Denying Rehearing, 79 FERC ¶ 61,196 (May 19, 1997) (Order). In its Order, the Commission granted Iroquois an extension of the implementation date for certain GISB standards and required Iroquois to implement those standards effective August 1, 1997. The tariff sheets included herewith reflect the inclusion of the GISB Standards the Commission required Iroquois to make effective as of August 1, 1997.

Iroquois also states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18311 Filed 7–11–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–416–000]**

## MIGC, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice that on July 2, 1997, MIGC Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain tariff sheets with a proposed effective date of August 1, 1997.

MIGC states that the purpose of the filing is to make the following revisions to its tariff: revise and update the imbalance procedures and penalties; revise and update the fuel and unaccounted for loss reimbursement (F&U) provisions and move such provisions from Rate Schedules ITS–1 and FTS–1 into the Transportation General Terms and Conditions, as required by Commission Regulations; add provisions to govern the construction of new receipt or delivery facilities; and make several minor housekeeping changes.

MIGC also states that it is requesting authorization herein to purchase or sell gas as necessary for system operations.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18314 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP97–155–005 and RP97–361–002]**

## Mobile Bay Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice that on July 2, 1997, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective June 1, 1997:

Third Revised Sheet No. 158
Third Revised Sheet No. 237

Mobile Bay states that this filing reflects miscellaneous, non-substantive tariff revisions to combine tariff provisions previously accepted by the Commission in two separate proceedings.

Mobile Bay also states that a copy of this filing has been served upon all affected customers, state commissions, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18309 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–64–008]**

## Natural Gas Pipeline Company of America; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 2, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Substitute Second Revised Sheet No. 278, to be effective May 1, 1997.

Natural states that the purpose of the filing is to comply with the Commission's order issued June 30, 1997, in Docket No. RP97–64–001.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheet to become effective on May 1, 1997.

Natural states that copies of the filing are being mailed to its customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP97–64.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18304 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–2000–023]**

## NorAm Gas Transmission Company, Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice that on July 1, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1997:

Fifteenth Revised Sheet No. 7
Original Sheet no. 7M

NGT states that these tariff sheets are filed herewith to reflect specific negotiated rate transactions for the month of July 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18322 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP93–206–015 and RP96–347–005]**

## Northern Natural Gas Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Northern Natural Gas Cmpany (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 201
2nd Substitute Original Sheet No. 263D
First Revised Sheet No. 303
Original Sheet No. 304

Northern states that the instant filing is made in compliance with the Commission's Order issued July 16, 1997 in Docket Nos. RP93–206–014 and RP96–347–004 addressing the Carlton Settlement.

Norther states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before in accordance with

Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18321 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–347–006]**

## Northern Natural Gas Company; Notice of Filing

July 8, 1997.

Take notice that on July 1, 1997, Northern Natural Gas Company (Northern), tendered for filing Schedule No. 1 as part of the Carlton Stipulation and Agreement of Settlement filed in Docket No. RP96–347.

On July 1, 1997, pursuant to the Carlton Stipulation and Agreement of Settlement filed in Docket No. RP96–347 and Northern Natural Gas Company FERC Tariff, Northern has filed Schedule No. 1 detailing the Carlton surcharge dollars reimbursed to the appropriate parties.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18348 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–17–006]**

## Northern Natural Gas Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on August 1, 1997:

Second Revised Sheet No. 204
First Revised Sheet no. 222

Northern states that the instant filing is made in compliance with the Commission's Order Accepting Tariff Sheets, Subject To Conditions, issued on June 16, 1997 in Docket No. RP97–17–005 and to comply with the Gas Industry Standards Board (GISB) standards reflected in Order No. 587–C.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18352 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MT97–10–000]**

## Pacific Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Tale notice that on July 1, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheet, to become effective August 1, 1997:

Fourth Revised Sheet No. 52

PGT states the purpose of this filing is to reflect the addition of PG&E Energy Trading, Inc., as a PGT marketing affiliate.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**LInwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18317 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–4–008]**

## Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, proposed to be effective August 1, 1997.

Panhandle asserts that the purpose of this filing is to comply with the Commission's Letter Order dated June 18, 1997 to incorporate into its Tariff Standard 4.3.6 promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–C in Docket No. RM96–1–004, Standards for Business Practices of Interstate Natural Gas Pipelines.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18323 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL97–44–000]**

## Pennsylvania-New Jersey-Maryland Interconnection Restructuring; Notice of Filing

July 8, 1997.

Take notice that on June 19, 1997, the Coalition for a Competitive Electric Market (CCEM) filed a Capacity Rights Open-Access Transmission Tariff for restructuring the PJM Interconnection in accordance with Order No. 888. Copies of the filing were served on the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest 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 18 CFR 385.214). All such motions or protests should be filed on or before July 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18349 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–150–004]**

## Richfield Gas Storage System; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Richfield Gas Storage System (Richfield) tendered for filing as part of its FERC Gas Tariff, Substitute Volume No. 1, the tariff sheets listed below to become effective June 1, 1997.

Richfield states that this filing is made in compliance with the Commission's order dated April 30, 1997, in Docket No. RP97–277–000.

**FERC Gas Tariff**

*Substitute Volume No. 1*

Revised First Revised Sheet No. 10
Revised First Revised Sheet No. 37
Revised Original Sheet No. 41B

Richfield states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18307 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–150–005]**

## Richfield Gas Storage System; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 2, 1997, in compliance with the Commission's Letter Order dated June 18, 1997 in Docket No. RP97–150–003 (Letter Order), Richfield Gas Storage System (Richfield) submitted for filing as part of its FERC Gas Tariff, Substitute Revised Volume No. 1, the proposed tariff sheet listed below:

Rev 1st Rev Original Sheet No. 41B

Richfield states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18308 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. OR92–8–000, et al.]**

## SFPP, L.P.; Notice of Informal Settlement Conference

July 8, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, July 15, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulator Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Dennis Melvin at (202) 208–0042 or Arnold Meltz at (202) 208–2161.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18320 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–612–000]**

## Tennessee Gas Pipeline Company; Notice of Application

July 8, 1997.

Take notice that on July 1, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an abbreviated application in Docket No. CP97–612–000 pursuant to Section 7(b) of the Natural Gas Act, requesting expedited authorization to abandon service rendered by Tennessee to Flagg Energy Development Corporation (Flagg) under Tennessee's Rate Schedule NET. Tennessee states that Flagg has informed it that Flagg no longer requires or desires the service, intends to terminate the transportation contract, does not intend to pay for the service, and that Tennessee should take steps to mitigate any damages due to Flagg's breach of the contract, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee further states that on June 27, 1997, it filed in Docket No. GT 97–53 a Notice of Termination to terminate the transportation contract with Flagg on July 27, 1997, in accord with the Billing and Payment provisions of its FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 29, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 and the Regulations under the Natural Gas Act (18 CFR 157.10.) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. An person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18315 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–159–007]**

## Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice on July 1, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are listed on Attachment A to the filing. The proposed effective date for the tariff sheets is August 1, 1997.

Transco states that the purpose of the instant filing is to comply with the Commission's order issued June 16, 1997 in the referenced docket (June 16 Order). The June 16 Order addressed Transco's submission of pro forma tariff sheets reflecting changes required to comply with order No. 587–C and required Transco to file actual tariff sheets at least 30 days prior to the proposed effective date, August 1, 1997.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18310 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–18–007]**

## Transwestern Pipeline Company; Notice of Compliance Filing

July 8, 1997.

Take notice that on July 1, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets proposed to become effective on August 1, 1997:

Fourth Revised Sheet No. 49
Fourth Revised Sheet No. 72

Transwestern states that the instant filing is made in compliance with the Commission's Order issued on June 27, 1997 in Docket No. RP97–18–006 (June 27 Order) and to comply with the Gas Industry Standards Board (GISB) standards reflected in Order No. 587–C.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18351 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–67–006]**

### Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1997.

Take notice that Williams Natural Gas Company (WNG) on July 1, 1997, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective May 1, 1997:

Fourth Revised Sheet No. 203
Sixth Revised Sheet No. 227
Second Revised Sheet No. 227A
Third Revised Sheet No. 227B
Fourth Revised Sheet Nos. 233 and 280

WNG states that this filing is being made to comply with Commission Order issued June 25, 1997, in Docket No. RP97–67–003.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18305 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–616–000]**

### Williams Natural Gas Company; Notice of Request Under Blanket Authorization

July 8, 1997.

Take notice that on July 1, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–616–000 a request pursuant to Sections 157.205, 157.208(b), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, and 157.216) for approval to abandon in place approximately 1,400 feet of the Southridge 16-inch lateral pipeline (Line CO) and appurtenant facilities and install approximately 1,400 feet of replacement 8-inch lateral pipeline and appurtenant facilities in Wyandotte County, Kansas, under WNG' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WHG asserts that this change is not prohibited by an existing tariff and that WNG has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to WNG's other customers.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If not protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18316 Filed 7–11–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Lease of Project Lands

July 8, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Lease of Project Lands.

b. *Project No:* 1494–139.

c. *Date Filed:* April 2, 1997 and supplemented by letter dated June 20, 1997.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Project.

f. *Project location:* Grand Lake O' The Cherokees and the Neosho River, Mayes County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Mary E. Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, 918–256–5545.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* September 3, 1997.

k. *Description of Project:* The Grand River Dam Authority, licensee for the Pensacola Project, has filed a request to issue a 50-year lease to the Oklahoma Department of Tourism. The lease will be for a parcel within the boundary of the Pensacola Project. The parcel, located immediately below the Pensacola Dam and consisting of approximately 145 acres, will be used for the development of a 9-hole golf course and clubhouse.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'',

''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18318 Filed 7–11–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Tendered for Filing With the Commission

July 8, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* 2674–003.

c. *Date Filed:* May 30, 1997.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Vergennes.

f. *Location:* On Otter Creek in the city of Vergennes, Addison County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Craig T. Myotte, Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, Vt 05402, (802) 864–5731.

i. *FERC Contact:* Lee Emery (202) 219–2779.

j. *Comment Date:* Within 60 days of the date filed shown in paragraph (c).

k. *Description of Project:* The proposed project would consist of the following existing features: (1) Three concrete overflow dams and one 29-foot-long, non-overflow dam; (2) an 8.8-mile long, 133 acre reservoir with a normal water surface elevation of 134.28 feet mean sea level; (3) the north forebay with trashracks, headgate and two 7-foot-diameter steel penstocks; (4) the north powerhouse (Plant 9B) with a 1,000-kW generating unit; (5) the south forebay, with trashracks and headgates, two surge powerhouse (Plant 9) with two 700-kW generating units; and (7) appurtenant facilities.

l. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–18319 Filed 7–11–97; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00490; FRL–5731–4]**

## FIFRA Scientific Advisory Panel; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with Exposure Assessment Methodologies for Residential Scenarios, Developing Probabilistic Risk Assessment Methodologies for Aquatic and Terrestrial Risks, Efficacy Testing for Public Health Antimicrobial Pesticides, and Criteria for Requiring In-utero Cancer Studies. The SAP also will be briefed on progress concerning Food Quality Protection Act Risk Assessment Methodology Issues.

**DATES:** The meeting will be held on Tuesday and Wednesday, September 9 and 10, 1997, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at: Embassy Suites Hotel, 1300 Jefferson Davis Highway, Arlington, Virginia 22202. The telephone number for the hotel is: (703) 979–9799.

By mail, submit written comment (one original and 20 copies) to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Supplementary Information of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; Office location: Rm. 819B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5369/7351; e-mail: dorsey.larry@epamail.epa.gov.

Copies of EPA documents may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 1132 Bay, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805.

**SUPPLEMENTARY INFORMATION:** Any member of the public wishing to submit written comments should contact Larry C. Dorsey at the address or the phone number given above. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately five minutes. As oral statements only will be permitted as time permits, the Agency urges the

public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit twenty copies of the summary information no later than August 22, 1997, to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–00490'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00490. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Copies of the Panel's report of their recommendations will be available approximately 15 working days after the meeting and may be obtained by contacting the Public Response and Program Resources Branch, at the address or telephone number given above.

**List of Subjects**

Environmental protection.

Dated: July 8, 1997.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 97–18570 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[Docket No. A–96–44; FRL–5857–8]**

### Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of change to method of announcing meetings, open to the public, of the Multi-Agency Radiation Site Investigation Manual (MARSSIM) Development Working Group.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a change to the method of announcing the schedule, location, and registration information for future meetings of the MARSSIM development working group (Department of Defense, Department of Energy, Environmental Protection Agency, and the Nuclear Regulatory Commission).

**SUPPLEMENTARY INFORMATION:** Meetings of the MARSSIM Development Working Group are open to the public on a first come, space available basis with advance registration (60 FR 12555). The schedule, location, and registration information for future meetings will continue to be posted on the U.S. Nuclear Regulatory Commission Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, (800) 880–6091 and the NRC Public Meeting Announcement System by electronic bulletin board at (800) 952–9676 or by recording at (800) 952–9674. They will also be announced via the Internet at http://www.epa.gov/radiation/cleanup/ and http://www.nrc.gov/NRC/PUBLIC/meet.html. They will no longer be announced on the RCRA/Superfund Hotline or the EPA Cleanup Regulation Electronic Bulletin Board. Future meeting information from EPA may also be obtained by phone or by mail from Mark Doehnert; Phone: (202) 233–9386, U.S. Environmental Protection Agency, Mail Stop 6602J, 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information concerning this group and the work of developing the MARSSIM should contact CDR Colleen Petullo, USPHS, U.S. Environmental Protection Agency/R&IE, PO Box 98517, Las Vegas, NV 89193–8517, (702) 798–2446.

For the U.S. Environmental Protection Agency, dated this 27th day of June 1997.

Dated: June 27, 1997.

**John Karhnak,**

*Director, Center for Cleanup and Reuse, EPA Office of Radiation and Indoor Air.*

[FR Doc. 97–18411 Filed 7–11–97; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of the Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

ANA Logistics, Inc., 600 Renaissance Center, Suite 1400, Detroit, MI 48243, Officer: Frederick D. Ball, President

RJB Import/Export Consultants Corp., 84 Monroe Street, Suite 2, Newark, NJ 07105, Officer: Robert Gonzalez, President

World 2000 Services, Inc., 6966 N.W., 12th Street, Suite 200, Miami, FL 33126, Officer: Alejandro C. Trasobares, President

Pum Yang Express U.S.A. Inc., 425 Victoria Terrace, Ridgefield, NJ 07657, Officers: Jung Kee Bae, President, Andrew Fung, Operations Manager/Ocean

American Shores Co., 4410 D Lafayette Blvd., Fredericksburg, VA 22401, Hesham F. Fayyad, Sole Proprietor

AFS Logistic Management, Inc. d/b/a, Arrowhead Forwarding Services, 844 S. Chapel Ave., Alhambra, CA 91801, Officers: Eric Tat Wah Kwong, President, Elean Y. Chik, Secretary

Elite Airfreight, Inc., 16440 Air Center Blvd., Houston, TX 77032, Officers: Bobby Hale, President, Madeleine Lay, Vice President

Oscar Freight Line, 555 W. Redondo Beach Blvd., #250, Gardena, CA 90248, Heung R. Park, Sole Proprietor

U.S.G.A. Logistic, Inc., 15864 West Hardy Road, Suite 700s, Houston, TX 77060, Officers: Jean-Jacques Lalou, President, Aymerica Offredi, Chairman

Richard T. Freeman, 2441 Foxwood Road South, Orange Park, FL 32073, Sole Proprietor

LR International, Inc., 160 Beeline Drive, Bensenville, IL 60106, Officers: Linda L. Frantz, President, Frederick G. Frantz, Jr., Vice President

A.O.G., Inc., 212 Everett Street, Revere, MA 02151, Officers: Donald F. Lombardi, President, Patricia Lombardi, Director

Dated: July 9, 1997.

**Joseph C. Polking,**

*Secretary.*

FR Doc. 97–18441 Filed 7–11–97; 8:45 am]

**BILLING CODE 6730–01–M**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 1997.

**A. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Chaparral Bancshares, Inc.*, Richardson, Texas, and Chaparral Delaware Bancshares, Inc., Dover, Delaware; to acquire 11 percent of the voting shares of Van Alstyne Financial Corporation, Van Alstyne, Texas, and thereby indirectly acquire First National Bank of Van Alstyne, Van Alstyne, Texas.

Board of Governors of the Federal Reserve System, July 9, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–18388 Filed 7–11–97; 8:45 am]

**BILLING CODE 6210–01–F**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1997.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

*1. Keystone Financial, Inc.*, Harrisburg, Pennsylvania; to acquire MMC & P, Inc., Pittsburgh, Pennsylvania, and thereby engage in employee benfits consulting services, pusuant to § 225.28(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 9, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–18389 Filed 7–11–97; 8:45 am]

**BILLING CODE 6210–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Nursing Research Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Review of Individual National Research Service Award Applications (Teleconference Call).

*Date:* July 28, 1997.

*Time:* 2:00 p.m.

*Place:* Building 45, Rm. 3AN–18B (Teleconference Call), 45 Center Drive, Bethesda, Maryland 20892.

*Contact Person:* Mary Stephens-Frazier, Ph.D., Building 45, Room 3AN–18B, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

*Purpose/Agenda:* To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: July 9, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–18379 Filed 7–11–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* July 15, 1997.

*Time:* 3 p.m.

*Place:* Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Gloria Levin, Ph.D., Parklawn Building, Room 9C–18, 5600

Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* July 24, 1997.

*Time:* 1 p.m.

*Place:* Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Gloria Levin, Ph.D., Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 9, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–18380 Filed 7–11–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

*Committee Name:* Pharmacological Sciences.

*Date:* July 28, 1997.

*Time:* 2:00 p.m. until conclusion.

*Place:* The Copley Plaza Hotel, 138 St. James Avenue, Boston, MA 02116.

*Contact Person:* Bruce K. Wetzel, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 2AS–19, Bethesda, MD 20892–6200, 301–594–3907.

*Purpose:* To review and evaluate anesthesiology center applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: July 9, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–18382 Filed 7–11–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting:

*Name of SEP:* National Library of Medicine Special Emphasis Panel.

*Date:* July 31, 1997.

*Place:* National Library of Medicine, 8600 Rockville Pike, Building 38A, Fifth-floor Conference Room, Bethesda, Maryland 20894.

*Contact:* Frances E. Johnson, Acting Scientific Review Administrator, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5S–506, Bethesda, Maryland 20894, 301/496–4621.

*Purpose/Agenda:* To review Internet Connections Grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: July 9, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–18381 Filed 7–11–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 62 FR 18355, April 15, 1997, and redesignated from part HN as part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the reorganization of the National Institute of Mental Health as follows: (1) Establish the Division of Basic and Clinical Neuroscience Research (N77, formerly HN77), the Division of Services and Intervention Research (N78, formerly HN78), and the Division of Mental Disorders, Behavioral Research and AIDS (N79, formerly HN79); (2) revise the functional statement of the Office on AIDS (N716, formerly HN716); and (3) abolish the Division of Neuroscience and Behavorial Science (N72, formerly HN72), the Division of Clinical and Treatment Research (N73, formerly HN73), and the Division of Epidemiology and Services Research (N74, formerly HN74).

Section N–B, Organization and Functions, under the heading National Institute of Mental Health (N7, formerly HN7), is amended as follows: (1) The titles and functional statements for the following are inserted: Division of Basic and Clinical Neuroscience Research (N77, formerly HN77), Division of Services and Intervention Research (N78, formerly HN78), and Division of Mental Disorders, Behavioral Research and AIDS (N79, formerly HN79); (2) the functional statement for the Office on AIDS (N716, formerly HN716) is deleted in its entirety and the new statement below is inserted; and (3) the titles and functional statements for the following are deleted in their entirety: Division of Neuroscience and Behavorial Science (N72, formerly HN72), the Division of Clinical and Treatment Research (N73, formerly HN73), and the Division of Epidemiology and Services Research (N74, formerly HN74).

**Division of Basic and Clinical Neuroscience Research (N77, Formerly HN77)**

(1) Directs, plans, and supports programs of basic and clinical neuroscience research, genetics and therapeutics research, research training, resource development, and research

dissemination to further understand the etiology, treatment and prevention of brain disorders with a focus on: behavioral and integrative neuroscience; molecular and cellular neuroscience; genetics; and preclinical and clinical therapeutics; and (2) analyzes and evaluates national needs and research opportunities.

**Division of Services and Intervention Research (N78, Formerly HN78)**

Directs, plans, supports, and conducts programs of research, research demonstrations, research training, resource development, and research dissemination in prevention and treatment interventions, services research, clinical epidemiology, and diagnostic and disability assessment; (2) provides biostatistical analysis and data management reporting for research studies; and (3) analyzes and evaluates national needs and research opportunities.

**Division of Mental Disorders, Behavioral Research and AIDS (N79, Formerly HN79)**

(1) Directs, plans, conducts, and supports programs of research, research training, research dissemination, and resource development in behavioral science, developmental psychopathology, prevention and early intervention, and in research on the causes of HIV (AIDS); and (2) analyzes and evaluates national needs and research opportunities.

**Office on AIDS (N716, Formerly HN716)**

(1) Directs, consults and advises on the development of research policy designed to promote a better understanding of the biological and behavioral cause of HIV (AIDS virus) infection; (2) analyzes and evaluates National needs and research opportunities to identify areas warranting either increased or decreased program emphasis; and (3) consults and cooperates with voluntary and professional health organizations and with other NIH components and Federal agencies to identify and meet AIDS-related needs.

Dated: June 27, 1997.

**Harold Varmus,**

*Director, National Institutes of Health.*

[FR Doc. 97–18378 Filed 7–11–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket Nos. FR–4191–C–03; FR–4212–C–06]**

## Federally Assisted Low-Income Housing Drug Elimination Grants and Safe Neighborhood Grants; Notice of Funding Availability—FY 1997

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notices of Funding Availability (NOFA) for Fiscal Year (FY) 1997; Additional Correction to List of Field Offices.

**SUMMARY:** On May 23, 1997, HUD published the FY 1997 NOFA for Federally Assisted Low-Income Housing Drug Elimination Grants and the FY 1997 NOFA for Safe Neighborhood Grants. A list of HUD field offices, with addresses and phone numbers, was attached to each of these NOFAs. However, HUD inadvertently omitted certain field offices from the list. Therefore, on June 13, 1997, HUD published a notice providing the complete list of HUD field offices with their addresses and phone numbers. The list published on June 13, 1997 provided an incorrect address for the Las Vegas office. This notice announces the correct address for that office.

**DATES:** This notice does not change the application submission deadlines provided in each of the May 23, 1997 NOFAs. Applications for grants under the Federally Assisted Low-Income Housing Drug Elimination program must still be received at the local HUD field office on or before July 22, 1997 at 4 p.m. local time. Applications for Safe Neighborhoods Grants must still be received at the local HUD field office on or before August 21, 1997 at 3 p.m. local time.

**ADDRESSES:** This notice does not change the application submission information provided in each of the May 23, 1997 NOFAs. Applications may still be obtained from the HUD field office having jurisdiction over the location of the applicant project, and from the Multifamily Housing Clearinghouse by calling 1–800–685–8470. Applications (original and two copies) must still be received by the deadline at the appropriate HUD field office with jurisdiction over the applicant project, Attention: Director of Multifamily Housing.

**FOR FURTHER INFORMATION CONTACT:** For application materials and project-specific guidance, please contact the Office of the Director of Multifamily Housing in the HUD field office having jurisdiction over the project(s) in question.

*For the Federally Assisted Low-Income Housing Drug Elimination Grants program:* Policy questions of a general nature may be referred to Michael Diggs, Office of Multifamily Housing Asset Management, Department of Housing and Urban Development, Room 6182, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0558. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

*For Safe Neighborhood Grants:* For program, policy, and other guidance, contact Henry Colonna, Department of Housing and Urban Development, Virginia State Office, 3600 West Broad Street, Richmond, VA 23230–4920, telephone (804) 278–4505, extension 3027 (or (804) 278–4501 TTY).

**SUPPLEMENTARY INFORMATION:** On May 23, 1997, HUD published the fiscal year (FY) 1997 notice of funding availability (NOFA) for the Federally Assisted Low-Income Housing Drug Elimination Grants program (62 FR 28564). On the same day, HUD also published the FY 1997 NOFA for Safe Neighborhood Grants (62 FR 28586). A list of HUD field offices, with addresses and phone numbers, was attached as Appendix A to each of these NOFAs (62 FR 28572, 28597). The list provides information to applicants about where to request and submit applications, and where to go for further information. The list published on May 23, 1997 for both NOFAs, however, inadvertently did not include all of the appropriate HUD field offices. Therefore, HUD published a notice on June 13, 1997 (62 FR 32408) in an attempt to provide a full list of field offices for purposes of the FY 1997 NOFA for Federally Assisted Low-Income Housing Drug Elimination Grants and the FY 1997 NOFA for Safe Neighborhood Grants. However, the list published on June 13, 1997 provided an incorrect address for the Las Vegas office. Accordingly, this notice announces the correct address for that office, which is as follows:

**Las Vegas**

Dottie Manz, Chief, MF Branch, HUD Nevada State Office, 333 N. Rancho, Suite 700, Las Vegas, NV 89106–3714, (702) 388–6247.

Dated: July 8, 1997.

**Camille Acevedo,**

*Assistant General Counsel for Regulations.*

[FR Doc. 97–18300 Filed 7–11–97; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–910–0777–38; AZA 29960]**

### Notice of Availability of the Environmental Assessment (EA) and Finding of No Significant Impacts (FONSI) for the Saguaro National Park Exchange Proposal, Maricopa and Pima Counties, Arizona

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Extension of public comment period.

**SUMMARY:** This notice advises the public that the Bureau of Land Management has extended the comment period for the Environmental Assessment and Finding of No Significant Impacts for the Saguaro National Park exchange proposal until July 31, 1997.

**DATES:** Public comments must be submitted or postmarked no later than July 31, 1997.

**ADDRESSES:** Written comments may be submitted to the Bureau of Land Management, Attn. Bill Childress, Project Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

**FOR FURTHER INFORMATION CONTACT:** Bill Childress, Project Manager, BLM, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027 or Telephone (602) 780–8090.

Dated: July 8, 1997.

**Ken R. Drew,**

*Program Manager.*

[FR Doc. 97–18354 Filed 7–11–97; 8:45 am]

BILLING CODE 4310–32–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–010–07–1430–01: CA 37871]**

### Realty Action, Land Use Lease of Public Lands; Amador County, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action—Land Use Lease of Public Lands; Amador County, California.

**SUMMARY:** The following described public land in Amador County, California is being considered for a non-competitive, life-time, residential, land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

**Mount Diablo Meridian, California**

T. 7 N., R. 11 E.,
Sec. 3, NW¼NW¼ (within);
Sec. 4, NE¼NE¼ (within).

Containing 1.05 acres, more or less.

The above parcel of land would be leased to Mr. and Mrs. Clifford Lastiri to resolve a trespass situation. The lease would be issued for the remainder of Mr. and Mrs. Lastiri's lives. Upon their death, all improvements would have to be removed from the public lands. The land will be leased at fair market value.

The parcel would be subject to any prior existing rights. All necessary clearances including clearances for archaeology and for rare plants and animals would be completed prior to any lease being issued. The proposal is consistent with the Bureau's land use plans that support the settlement of trespass by lease when an undue hardship case is present.

**COMMENTS:** Interested parties may submit comments to the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630. Comments must be received on or before August 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Karen Montgomery, BLM Folsom Resource Area Office, (916) 985–4474.

**D.K. Swickard,**

*Area Manager.*

[FR Doc. 97–18296 Filed 7–11–97; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–1910–00–4041] ES–48893, Group 91, Arkansas**

### Notice of Filing of Plat of Survey; Arkansas

The plat, in two sheets, of the dependent resurvey of a portion of the east and south boundaries, a portion of the subdividual lines; the subdivision of certain sections, the survey of a portion of certain National Park Service Tracts in sections 1, 2, and 3, the survey of National Park Service Tract No. 20–117 in section 29, and the survey of the center line (as built) of Arkansas State Highway No. 43 in sections 6, 7, 18 and 19, Township 16 North, Range 22 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 18, 1997.

The survey was requested by the National Park Service.

All inquires or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 18, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 2, 1997.

**Stephen G. Kopach,**

*Chief Cadastral Surveyor.*

[FR Doc. 97–18426 Filed 7–11–97; 8:45 am]

BILLING CODE 4310–GJ–M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Modifications to the Bid Adequacy Procedures

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notification of procedural changes.

**SUMMARY:** The Minerals Management Service (MMS) has modified its existing bid adequacy procedures for ensuring receipt of fair market value on Outer Continental Shelf (OCS) oil and gas leases. In Phase 1 these procedures establish a new number of bids rule for acceptance of selected tracts. In Phase 2 these procedures expand the scope of tract evaluation; replace the geometric average evaluation of tract with a revised arithmetic average measure of the tract; eliminate the one-eighth rule for anomalous bids; and clarify the treatment of tracts identified as having unusual bidding patterns.

These changes were made following a review of bidding activity in OCS sales. The new number of bids rule relies more on market-determined factors to ensure receipt of fair market value. This new rule, along with expansion of evaluation procedures beyond only tract specific assessments, will allow for earlier acceptance on tracts that would be accepted later in the evaluation process. The revised average measure is designed to generate a better estimate of tract value when all bids fall below the Government's original estimate of tract value. The stricter screening rules associated with the revised average measure eliminate the need for the one-eighth rule. The Regional Director's expanded authority to handle

documented instances of unusual bidding patterns provides flexibility to modify certain acceptance rules and allows for a decision to reject the high bid on identified tracts.

**DATES:** This modification is effective July 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Marshall Rose, Chief, Economics Division, at (703) 787–1536.

**SUPPLEMENTARY INFORMATION:** The following set of bid adequacy procedures incorporates the most recent changes. During the bid review process, MMS conducts evaluations in a two-phased process for bid adequacy determination. In Phase 1 we review the bid for legal sufficiency [1] and anomalies [2] to establish the set of qualified bids [3] to be evaluated.

(1) Phase 1 partitions the tracts receiving bids into three general categories:

- Those tracts which the MMS identifies as being nonviable [4] based on adequate data and maps;
- Those tracts where competitive market forces can be relied upon to assure fair market value; and
- Those tracts where opportunities for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices are greatest and where the Government has the most detailed and reliable data.

Based on these categories, four Phase 1 rules are applied to all tracts receiving bids:

- Pass directly to Phase 2 for further evaluation all tracts t that require additional information to make a determination on viability or tract type and all drainage and development tracts.
- Accept the highest qualified bid on confirmed and wildcat tracts receiving three or more qualified bids where the third highest such bid on the tract is at least 50 percent of the highest qualified bid.
- Pass to Phase 2 confirmed and wildcat tracts receiving either one or two qualified bids, or three or more qualified bids where the third highest such bid is less than 50 percent of the highest qualified bid.
- Accept the highest qualified bid on confirmed and wildcat tracts determined to be nonviable.

In assuring the integrity of the bidding process, the Regional Director (RD) may identify an unusual bidding pattern [5] at any time during the bid review process, but before a tract is accepted. If the finding is documented, the RD has discretionary authority, after consultation with the Solicitor, to pass those tracts so identified to Phase 2 for further analysis. The RD may eliminate all but the highest of the unusual bids from consideration when applying any bid adequacy rule, may choose not to apply a bid adequacy rule, or may reject the tract's highest qualified bid.

Phase 1 procedures are generally completed simultaneously within three weeks of the bid opening.

(2) Phase 2 applies criteria designed to resolve bid adequacy assessments by analyzing, partitioning, and evaluating tracts in two steps:

- Further mapping and/or analysis is done to review, modify and finalize viability determinations and tract classifications.
- Tracts identified as being viable must undergo an evaluation to determine if fair market value has been received.

After completing these two steps, the following rules and procedures are used in Phase 2.

- Accept the highest qualified bid on all tracts determined to be nonviable.
- Accept newly classified confirmed and wildcat tracts having three or more qualified bids where the third highest such bid is at least 50 percent of the highest qualified bid.
- Determine whether any categorical fair market evaluation technique(s) will be used. If so:
  - Evaluate, define and identify the appropriate threshold measure(s).
  - Accept all tracts whose individual cash flow values, if estimated by MMS and used in the bid adequacy procedures, would result in satisfaction of the threshold categorical requirements.
  - Conduct a full-scale evaluation, which could include the use of MONTCAR [6], on all remaining tracts [7] passed to Phase 2 and still awaiting an acceptance or rejection decision. Compare the highest qualified bid on each of these remaining tracts to two measures of bid adequacy: the Mean Range of Values (MROV) [8] and the Adjusted Delayed Value (ADV).[9]
    - —Accept the highest qualified bid for those tracts where such a bid equals or exceeds the tract's ADV.
    - —Reject the highest qualified bid on drainage and development tracts receiving three or more qualified bids where such a bid is less than one-sixth of the tract's MROV.
    - —Reject the highest qualified bid on drainage and development tracts receiving one or two qualified bids and on confirmed and wildcat tracts receiving only one qualified bid where the high bid is less than the tract's ADV.
  - Select from the outstanding tracts [10] those (a) drainage and development tracts having three or more qualified bids with the third highest such bid being at least 25 percent of the highest qualified bid and (b) confirmed and wildcat tracts having two or more qualified bids with the second highest such bid being at least 25 percent of the highest qualified bid. Compare the

[1] Legal bids are those bids which comply with MMS regulations (30 CFR 256) and the Notice of Sale. Any illegal high bid will be returned to the bidder.

[2] Anomalous bids include all but the highest bid submitted for a tract by the same company, parent or subsidiary (bidding alone or jointly). Such bids are excluded when applying the number of bids rule or any bid adequacy measure.

[3] Qualified bids are those bids which are legal and not anomalous.

[4] Nonviable tracts or prospects are those geographic or geologic configurations of hydrocarbons whose risk weighted most probable resource size is below the minimum economic field size for the relevant cost regime and anticipated future prices. The risk used is below the lowest level anticipated for any tract or prospect in the same cost regime.

[5] Within the context of our bid adequacy procedures, the term ''unusual bidding patterns'' typically refers to a situation in which there is an excessive amount of coincident bidding by different companies on a set of tracts in a sale. Other forms of unusual bidding patterns exist as well, and generally involve anti-competitive practices, e.g., when there is an uncommon absence of competition among companies active in a sale on a set of prospective tracts.

[6] MONTCAR is a probabilistic, cash flow computer simulation model designed to conduct a resource-economic evaluation that results in an estimate of the expected net present value of a tract (or prospect) along with other measures.

[7] These include tracts not accepted by a categorical rule that are classified as drainage and development tracts and those classified as confirmed and wildcat tracts that are viable and received (a) one or two qualified bids, or (b) three or more qualified bids where the third highest such bid is less than 50 percent of the highest qualified bid.

[8] The MROV is a dollar measure of a tract's expected net present private value, given that the tract is leased in the current sale, allowing for exploration and economic risk, and including tax consequences including depletion of the cash bonus.

[9] The ADV is the minimum of the MROV and the Delayed MROV (DMROV). The DMROV is a measure used to determine the size of the high bid needed in the current sale to equalize it with the discounted sum of the bonus and royalties expected in the next sale, less the forgone royalties from the current sale. The bonus for the next sale is computed as the MROV associated with the delay in leasing under the projected economic, engineering, and geological conditions, including drainage. If the high bid exceeds the DMROV, then the leasing receipts from the current sale are expected to be greater than those from the next sale, even in cases where the MROV exceeds the high bid.

[10] These consist of those tracts having a highest qualified bid that does not exceed the MROV or the ADV, and are either (a) drainage or development tracts receiving three or more qualified bids with the highest such bid exceeding one-sixth of the tract's MROV, or (b) confirmed and wildcat tracts that are viable and receive two or more qualified bids.

highest qualified bid on each of these selected, outstanding tracts to the tract's Revised Arithmetic Average Measure (RAM).[11] For all these tracts:

—Accept the highest qualified bid where such a bid equals or exceeds the tract's RAM.

—Reject the highest qualified bid where such a bid is less than the tract's RAM.

• Reject the highest qualified bid on all leftover tracts, i.e., those that were in the ''outstanding'' set above but not selected for comparison to the RAM.

The Phase 2 bid adequacy determinations are normally completed sequentially over a period ranging between 21 and 90 days after the sale. The total evaluation period can be extended, if needed, at the RD's discretion (61 FR 34730, July 3, 1996).

Dated: July 7, 1997.

**Carolita U. Kallaur,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 97–18291 Filed 7–11–97; 8:45 am]

BILLING CODE 4310–MR–P

[11] The RAM is the arithmetic average of the MROV and all qualified bids on the tract that are equal to at least 25 percent of the high bid.

## DEPARTMENT OF INTERIOR

### National Park Service

### Lake Mead National Recreation Area; Operation of a Marina at Willow Beach

**SUMMARY:** The National Park Service finds it necessary to issue a third solicitation notice to correct the closing date for the acceptance of offers. The correct closing date will be August 19, 1997, and not September 30, 1997, as previously announced. This notice supersedes all previous announcements. The National Park Service is seeking offers to operate a marina at Willow Beach Site within Lake Mead National Recreation Area. This opportunity remains fully competitive. There is no existing concession operator. The new operation will consist of a 125 slip marina, a modest food and store outlet, and fuel service. All the existing facility are government-owned. An initial capital investment will be required for the rehabilitation of marina facilities. The term of the contract has been extended from five to ten years. In addition, rather than having to write-off the investment in the new marina docking system during the contract term, the concessioner will be allowed a possessory interest in that facility (a right to be compensated at the end of the ten years) at either the appraised value, based on its replacement cost less wear-and-tear and obsolescence or on the investment made (whichever is less).

**SUPPLEMENTARY INFORMATION:** The cost for purchasing a prospectus is $30.00. Parties interested in obtaining a copy should send a check, no cash, payable to ''National Park Service'' to the following address: National Park Service, Office of Concession Program Management, Pacific Great Basin Support Office, 600 Harrison St., Suite 600, San Francisco, California 94107–1372. The front of the envelope should be marked ''Attention: Office of Concession Program Management—Mail Room Do Not Open''. Please include a mailing address indicating where to send the prospectus. Address inquiries to Ms. Teresa Jackson, Secretary, Office of Concession Program Management at (415) 427–1369.

Dated: June 20, 1997.

**Holly Bundock,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 97–18437 Filed 7–11–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intention To Issue a Concession Contract for Point Reyes National Seashore

**SUMMARY:** Notice is hereby given in accordance with the requirements of 36 CFR 51.5 that the National Park Service intends to issue a concession contract to continue operations currently conducted at Point Reyes National Seashore to provide park visitors with hostel services. This entails renewal of an existing business operating within the park, along with upgrading the authorization from a permit to a concession contract. The current operation is a 44-bed hostel providing low-cost accommodations primarily to hikers and cyclists who frequent the park. Over the last 4 years, the business has provided an average of 8,000 overnight stays per year. Services are provided daily on a year-round basis. The existing business currently operates out of 3 buildings that were once part of a working ranch, and subsequently assigned to the incumbent concessioner after acquisition by the National Park Service (NPS). The buildings include the main hostel building, an employee dormitory, and a structure used for group functions. Access to the site is via Sir Francis Drake Highway and park circulation roads.

In accordance with the requirements of Pub. L. 89–249 (16 U.S.C. 20d), the current concessioner, having operated to the satisfaction of the Secretary, has a right to a preference in this renewal action.

**SUPPLEMENTAL INFORMATION:** The proposed contract calls for a capital investment of approximately $210,000 to meet current need for improved employee housing, at least 2 additional family guest units, and an expanded sewage disposal system with greater capacity.

Proposed term of the new contract will be 10 years, provided that the concessioner satisfactorily completes the required capital improvement program within the first 5 years of the contract. Otherwise, the contract expires immediately after the 5th year.

The cost for purchasing a prospectus is $30.00. Parties interested in obtaining a copy should send a check, no cash, payable to ''National Park Service'' to the following address: National Park Service, Office of Concession Program Management, Pacific Great Basin Support Office, 600 Harrison St., Suite 600, San Francisco, California 94107–1372. The front of the envelope should be marked ''Attention: Office of Concession Program Management—Mail Room Do Not Open''. Please include a mailing address indicating where to send the prospectus. Address inquiries to Mr. Glenn Baker, Office of Concession Program Management at (415) 427–1365.

Dated: June 30, 1997.

**Cynthia Ip,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 97–18436 Filed 7–11–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of availability

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** Notice is hereby given that pursuant to the provisions of the National Environmental Policy Act (Public Law 91–190) and its implementing regulations 40 CFR parts 1500–1508 and the provisions of Section 2 of the Act of September 28, 1976, U.S.C. 1901 et seq. and its implementing regulations 36 CFR part 9, subpart A, Denali National Park has prepared an Environmental Assessment for appraisal sampling operations on the Caribou Howtay Association #1 unpatented mining claim.

**ADDRESSES:** This environmental assessment is available for inspection during normal business hours at the following location: Denali National Park and Preserve, Park Headquarters, P.O. Box 9, Denali Park, Alaska 99755.

**FOR FURTHER INFORMATION CONTACT:** Mike Klensch, Natural Resources Technician, Denali National Park and Preserve (907) 683–2294, at the address above.

Dated: June 27, 1997.

**Ken Kehrer,**

*Chief Ranger, Denali National Park and Preserve.*

[FR Doc. 97–18434 Filed 7–11–97; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate a Cultural Item from New Mexico in the Possession of the Laboratory of Anthropology, Museum of Indian Arts and Culture, Museum of New Mexico, Santa Fe, NM

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item from New Mexico in the possession of the Laboratory of Anthropology, Museum of Indian Arts and Culture, Museum of New Mexico, Santa Fe, NM which meets the definition of ''sacred object'' under Section 2 of the Act.

The cultural item is a Chiricahua Apache Gahe mask of painted wood, cloth, buckskin, shell, string, metal, and a mirror.

In 1996, this item was donated to the Museum of Indian Arts and Culture by John and Pat Rosenwald for the purpose of repatriation.

Based on consulation and evidence provided by representatives of the Mescalero Apache Tribe, this item has been determined to have been made by Mr. Eustace Fatty, a member of the Chiricahua community at Mescalero. Consultation evidence provided by representatives of the Mescalero Apache Tribe further states that this item is needed by traditional religious leaders for the practice of Native American religion by present day adherents. Mr. Eustin Murphy, grandson of Mr. Eustace Fatty, has claimed this mask as a lineal descendent, and representatives of the Mescalero Apache Tribe have indicated that Mr. Murphy is the appropriate custodian of the mask.

Based on the above information, officials of the Museum of New Mexico have determined that, pursuant to 25 U.S.C. 3001 (3)(C), this cultural item is a specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Museum of New Mexico have also determined, pursuant to 25 U.S.C. 3005 (a)(5)(A), that Mr. Eustin Murphy is the direct lineal descendant of the individual who owned this sacred object.

This notice has been sent to Mr. Eustin Murphy, and officials of the Mescalero Apache Tribe and the Fort Sill Apache Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Dr. Patricia Neitfeld, NAGPRA Project Director, Museum of Indian Arts and Culture, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone (505) 827–6344 ext. 559 before August 13, 1997. Repatriation of this object to the Mr. Eustin Murphy may begin after that date if no additional claimants come forward.

Dated: July 8, 1997.

**Francis P. McManamon,**

Departmental Consulting Archeologist,

*Manager, Archeology and Ethnography Program.*

[FR Doc. 97–18431 Filed 7–11–97; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

**AGENCY:** National Park Service; Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

*Meeting Date and Time:* Thursday, September 11, 1997 at 7:00 pm.

*Address:* Bushkill Visitor Information Center, Bushkill, Pa 18324.

*Meeting Date and Time:* Saturday, January 10, 1998 at 9:00 am (Snow date Jan. 17).

*Address:* New Jersey District Office, Layton, NJ 07881.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including: By-Laws, Natural Resources, Recreation, Cultural and Historical Resources, Intergovernment and Public Affairs, Construction and Capital Project Implementation, and Interpretation, as well as Special Committee Reports. Superintendent William G. Laitner will give a report on various park issues.

**SUPPLEMENTARY INFORMATION:** The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Pub. L. 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

The meeting will be open on the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizen Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meetings will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road, 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

**FOR FURTHER INFORMATION, CONTACT:** Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: June 30, 1997.

**William G. Laitner,**

*Superintendent.*

### Congressional Listing for Delaware Water Gab NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802

Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, D.C. 20515–3815

Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Bldg., Washington, D.C. 20515–3810

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

[FR Doc. 97–18435 Filed 7–11–97; 8:45 am]
BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Connecticut in the Possession of the Yale Peabody Museum of Natural History, New Haven, CT

**AGENCY:** National Park Service
**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from Connecticut in the possession of the Yale Peabody Museum of Natural History, New Haven, CT.

A detailed assessment of the human remains was made by Yale Peabody Museum of Natural History professional staff in consultation with representatives of the Mohegan Tribe.

In 1913, human remains representing two individuals were excavated on the property of Ulmer Leather Company, Norwich, CT and donated to the Yale Peabody Museum by Henry Ulmer. No known individuals were identified. The nine associated funerary objects include an incomplete copper vessel, two incomplete copper spoons, four trade metal spoons, a trade clay pipe with a broken stem, and a stone pestle.

In 1973, human remains representing one individual recovered from Norwich, CT were donated to the Yale Peabody Museum by Mr. Max Miller of Norwich, CT. No known individual was identified. The one associated funerary object is a bronze vessel.

Morphological evidence indicates these human remains are Native American based on dentition. Based on the types of associated funerary objects, these human remains most likely date from the proto-historic into the early historic period. Historic documents indicate that the Mohegan occupied Norwich into the historic period.

Based on the above mentioned information, officials of the Yale Peabody Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Peabody Museum of Natural History have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the ten objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Mohegan Tribe.

This notice has been sent to officials of the Mohegan Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Richard Burger, Director, Yale Peabody Museum of Natural History, 170 Whitney Avenue, P.O. Box 208118, New Haven, CT 06520–8118; telephone: (203) 432–3752, before August 13, 1997. Repatriation of the human remains and associated funerary objects to the Mohegan Tribe may begin after that date if no additional claimants come forward.

Dated: July 8, 1997.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 97–18431 – Filed 7–11–97 ; 8:45 am]
BILLING CODE 4310–70–F

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.
**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Civil Procedure will meet for a two-day symposium. The symposium will be on Discovery Issues in Litigation. It will be open to public observation but not participation.

**DATES:** September 4–5, 1997.
**TIME:** 9:00 a.m. to 5:00 p.m.
**ADDRESSES:** Boston College Law School, Stuart House, Room 411, 885 Centre Street, Newton, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 97–18341 Filed 7–11–97; 8:45 am]
BILLING CODE 2210–01–M

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.
**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

**DATES:** September 11–12, 1997.
**ADDRESSES:** The Williamsburg Lodge, Room B, Main Floor, 310 South England Street, Williamsburg, Virginia.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 97–18342 Filed 7–11–97; 8:45 am]
BILLING CODE 2210–01–M

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.
**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

**DATES:** September 29–30, 1997.

**ADDRESSES:** Homewood Suites Hotel, 400 Griffin Street, Santa Fe, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 97–18343 Filed 7–11–97; 8:45 am]

**BILLING CODE 2210–01–M**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

**DATES:** October 6–7, 1997.

**TIME:** 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** Stein Eriksen Lodge, 7700 Stein Way, Park City, Utah.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 97–18344 Filed 7–11–97; 8:45 am]

**BILLING CODE 2210–01–M**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

**DATE:** October 13–14, 1997.

**ADDRESS:** Monterey Plaza Hotel, 400 Cannery Row, Monterey, California.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 97–18345 Filed 7–11–97; 8:45 am]

**BILLING CODE 2210–01–M**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

**DATE:** October 20–21, 1997.

**ADDRESS:** Charleston Place Hotel, 130 Market Street, Charleston, South Carolina.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 8, 1997.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 97–18346 Filed 7–11–97; 8:45 am]

**BILLING CODE 2210–01–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Modified Final Judgment and Memorandum in Support of Modification

Notice is hereby given that a Motion to Modify, a Memorandum in Support of Modification, a proposed Modified Final Judgment and a Stipulation, and have been filed in the United States District Court for the District of Columbia in *United States of America* v. *MCI Communications Corporation and BT Forty-Eight Company (''NewCo''),* Civ. No. 94–1317 (TFH).

As set forth in the plaintiff's uncontested Motion and Memorandum In Support of Modification, a number of factual and legal events have occurred since the entry of the existing Final Judgment, including British Telecommunications plc's (''BT'') plan, announced last fall, to purchase the remaining 80% of MCI Communications Corporation (''MCI'') for $21 billion.

The existing final judgment, which stems from a 1994 acquisition by BT of 20% of MCI's stock, contains provisions designed to remedy allegations in the Complaint filed contemporaneously therewith, that BT would successfully act on its incentives to use its market power in the United Kingdom to discriminate in favor of MCI and/or BT's joint-venture with MCI, at the expense of other U.S. telecommunications carriers in the market for international telecommunications services between the U.S. and the U.K. and the global network services market. The proposed Modified Final Judgment retains and, in some cases, strengthens these protections in order to take into account the full integration of BT and MCI, as well as changed market conditions since the existing Final Judgment was entered. Specifically, the proposed Modified Final Judgment increases the amount of information that the merged entity, who is named as a party to the modified decree, is required to report in order to facilitate the detection of specific instances of discrimination and to provide evidence that could be used in support of complaints to the relevant U.S. and U.K. regulatory agencies. The proposed Modified Final Judgment also revises the confidentiality provisions of the existing decree in order to reduce the risk that confidential, competitively sensitive information that BT obtains in the course of its relationships with other U.S. telecommunications providers are not disclosed to MCI through the corporate parent or as a result of any subsequent corporate reorganization. The proposed Modified Final Judgment also extends the time period of the existing decree and enhances the Department's ability to monitor and enforce compliance with the decree by giving the Department access to the merged entity's documents and personnel, wherever located.

Public comment on the proposed Modified Final Judgment should be directed to Donald Russell, Chief, Telecommunications Task Force, Room 8104, U.S. Department of Justice, Antitrust Division, 555–4th Street, N.W., Washington, D.C. 20001. Such comments and the Department's responses thereto will be filed with the Court. In its filing, the Department indicated that it would follow its standard 60-day comment period. On

July 7, 1997, however, the Court granted defendants' motion to shorten the comment period to 30 days.

**Constance K. Robinson,**

*Director of Operations.*

**United States District Court for the District of Columbia**

**United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company ("NewCo"), Defendants**

[Civil Action No. 94–1317 (TFH)]

**Stipulation**

It is stipulated and agreed by and between the undersigned parties by their respective attorneys, that:

1. The Court has jurisdiction over the defendants and, for the limited purpose of enforcing this Stipulation, over British Telecommunications plc (''BT'').

2. The parties to this Stipulation consent to the modification of the Final Judgment entered by this Court on September 29, 1994, as shown in the attached Modified Final Judgment filed with this Stipulation. The parties further consent that the Modified Final Judgment in the form attached may be entered by the Court, upon any party's motion, at any time after the completion of the procedures specified in the United States' Explanation of Procedures, attached to this Stipulation, without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the Modified Final Judgment by serving notice on the defendants and BT and by filing that notice with the Court.

3. BT and defendant MCI have entered into a Merger Agreement and Plan of Merger dated November 3, 1996 (''Merger Agreement''), whereby MCI shall be merged into a wholly-owned subsidiary of BT. Upon completion of the merger, the parent company, BT, will be renamed Concert plc (''Concert''). The parties have agreed that this Court shall have jurisdiction over the parent company following the consummation of the proposed transaction, and that the parent company will be bound by the provisions of the Final Judgment and the Modified Final Judgment when it is entered. The parties are hereby estopped from arguing that this Court lacks venue or jurisdiction over the subject matter of this action or over Concert. The parties further agree that following its formation, Concert will become a party to the Modified Final Judgment.

4. The parties to this Stipulation agree that as of the date of this Stipulation and pending entry of the Modified Final Judgment, MCI shall abide by the terms and conditions of Section II.A.3.ii of the Modified Final Judgment as though the same were in full force and effect as an order of the Court.

5. The parties to this Stipulation agree that if the Merger Agreement is consummated before the Modified Final Judgment is entered, they shall abide by all of the terms and conditions of the Modified Final Judgment as though the same were in full force and effect as an order of the Court.

6. The parties agree to notify the plaintiff in writing if MCI or Concert hereafter files with the Federal Communications Commission (''FCC'') or the United Kingdom's Office of Telecommunications (''OFTEL'') an application to assign (or transfer control of) any license or authorization held by MCI or BT relating to telecommunications services between the United States and the United Kingdom, or if Concert seeks to reorganize its corporate structure so as to combine NewCo and BT in the same corporate entity as set forth in Section VII.B of the Modified Final Judgment.

7. The agreements governing disclosure to United States corporations that are referenced in Section IV.E of the Modified Final Judgment, shall provide that: (1) Non-public information received from the Department of Justice shall be used solely in connection with the filing of a complaint with or providing information to governmental authorities in the United States or the United Kingdom, and not for any other purpose; (2) such information shall not be disclosed to any persons other than those officers, directors, employees, agents or contractors of the corporation who need such information in order to file a complaint, to determine whether a complaint should be filed or to provide information to any governmental authority in the United States or the United Kingdom, and to those government authorities (including, but not limited to, the FCC and OFTEL); (3) all persons to whom any non-public information is disclosed will be advised of the limitations on the use and disclosure of such information; and (4) if unauthorized use or disclosure occurs, the Department of Justice may revoke or otherwise limit further access to such information by the corporation or any person unless the Department of Justice decides, in its sole discretion, that such revocation is unnecessary under the circumstances. The Department of Justice may add further conditions to any agreements referenced in Section IV.E of the Modified Final Judgment if it determines that such conditions are necessary for the protection of any non-public information. Any actions taken by the Department of Justice to redress the unauthorized use or disclosure of any non-public information shall neither preclude nor give rise to defendant's right to pursue to separate action against any person for the unauthorized use of disclosure or such information.

8. In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Modified Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

For Plaintiff United States of America.

Dated: July 2, 1997.

Yvette Benguerel,

*D.C. Bar #442452,*

David Myers

*United States Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.*

For British Telecommunications PLC.

Dated: July 2, 1997.

David J. Saylor,

*D.C. Bar # 96826,*

Hogan & Hartson,

*Columbia Square, 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109, (202) 637–8679.*

For MCI Communications Corporation.

Dated: July 2, 1997.

Anthony C. Epstein,

*D.C. Bar #250829*

Jenner & Block,

*601 Thirteenth Street, N.W., Suite 1200, Washington, D.C. 20005, (202) 639–6080.*

**Certificate of Service**

I, Tracy Varghese, hereby certify under penalty of perjury that I am not a party to this action, that I am not less than 18 years of age, and that I have on this day caused the Motion to Modify, Memorandum In Support of Modification, Stipulation, and Modified Final Judgment, to be served on the defendants by mailing a copy, postage paid, to each of the defendants on the attached service list.

Dated: July 7, 1997.

Tracy Varghese

**Service List**

BT Forty-Eight Company.

David J. Saylor,

Hogan & Hartson,

*Columbia Square, 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109.*

MCI Communications Corporations

Anthony C. Epstein,

Jenner & Block,

*601 Thirteenth Street, N.W., Suite 1200, Washington, D.C. 20005.*

**United States District Court for the District of Columbia**

[Civil Action No. 94–1317 (TFH)]

**United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company, ("NewCo"), Defendants**

**Motion of the United States for Modifications of the Final Judgment**

Plaintiff, the United States of America, moves this Court to modify the Final Judgment in the above-captioned matter. Plaintiff's motion is based on the following grounds:

1. On June 15, 1994, the United States filed its complaint in the above-captioned case alleging that the acquisition by British Telecommunications plc (''BT'') of a 20% ownership interest in MCI Communications Corporation (''MCI'') created an incentive for BT, using its existing market power in the United Kingdom, to favor MCI at the expense of other United States international carriers in the market or markets for international telecommunications services in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint also alleged that the formation of a joint venture between BT and MCI (''NewCo'') to provide seamless global network services to multinational corporations created an incentive for BT to

use its dominance in the UK to favor the joint venture at the expense of other global network service providers in the provision of the UK segment essential to any seamless global network.

2. The Final judgment, filed contemporaneously with the compliant and entered by the Court on September 29, 1994 after a Tunney Act review, contains provisions designed to reduce the risk that BT would use its market power to discriminate in favor of MCI or the joint venture. The Final Judgment further provides that the Department may seek a modification of the Final Judgment in order to prevent discrimination. The potential discrimination need not have been foreseen at the time the Complaint in this matter was filed. If a motion for modification is uncontested, it is analyzed under a public interest standard. After the Final Judgment was entered, BT and MCI consummated BT's 20% acquisition and formed the joint venture, NewCo.

3. In November 1996, BT and MCI entered into a Merger Agreement and Plan of Merger pursuant to which MCI will be completely merged into a wholly-owned subsidiary of BT. The new parent company, BT, will then be renamed Concert, plc.

4. Both the US and UK governments have enacted reforms since the final judgment was entered that altar the status of competition for international traffic between the US and the UK. Despite these changes, however, BT still maintains substantial market power in local and domestic long distance services in the United Kingdom and BT's dominance in these markets is unlikely to erode swiftly.

5. Accordingly, certain modifications to the final judgment aimed at deterring and detecting discrimination need to be retained and, in some cases, strengthened in order to ensure that the resulting full integration of BT and MCI and changed market conditions will not impair the effectiveness of any protections afforded by the existing decree.

6. The proposed modified final judgment, filed contemporaneously herewith, sets forth the specific modifications agreed to among the parties. Plaintiff's Memorandum In Support Of Modification demonstrates that the proposed modifications are necessary to address the concerns raised by the full integration of BT and MCI as well as certain regulatory changes and, therefore, are in the public interest.

7. Defendants have authorized Plaintiff to state that they concur in this motion.

8. The Department does not believe that this modification is subject to the Tunney Act. Because of the important issues involved, however, the Department intends to follow the comment procedures outlined in the attached Explanation of Procedures. After completion of the procedures, the Department will file another motion requesting that the Court enter the attached Modified Final Judgment.

Respectfully submitted,

Joel I. Klein,

*Acting Assistant Attorney General.*

Lawrence R. Fullerton,

*Deputy Assistant Attorney General.*

Charles E. Biggio,

*Senior Counsel.*

Constance K. Robinson,

*Director of Operations.*

Donald J. Russell,

*Chief, Telecommunications Task Force.*

Nancy M. Goodman,

*Assistant Chief, Telecommunications Task Force.*

Yvette Benguerel,

*DC Bar #442452*

David Myers

*Attorneys, United States Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.*

Dated: July 7, 1997.

**United States District Court for the District of Columbia**

[Civil Action No. 94–1317 (TFH)]

**United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company (''NewCo''), Defendants**

**Memorandum of the United States in Support of Modification of the Final Judgment**

The United States submits this memorandum in support of its motion to modify the Final Judgment entered in the above-captioned case. Contemporaneously with filing its motion and memorandum, the United States is also filing a proposed modified final judgment and a Stipulation wherein the parties have agreed to be bound by the provision of modified final judgment following consummation of the merger and pending entry of the modified final judgment by the Court. A number of factual and legal events have occured since the entry of the exisiting final judgment, including an agreement among the parties to enter into a full merger. The proposed modifications ensure that these events do not impair the effectiveness of the existing Final Judgment, and are in the public interest.

**I. Introduction and Background**

On June 15, 1994, the United States filed its complaint in the above-captioned case. The complaint alleged, *inter alia,* that the acquisition by British Telecommunications plc (''BT'') of a 20% ownership interest in MCI Communications Corporation (''MCI'') created an incentive for BT, using its existing market power in the United Kingdom, to favor MCI at the expense of other United States international carriers in the market or markets for international telecommunications services between the United States and the United Kingdom. See Competitive Impact Statement of the United States Department of Justice (hereinafter ''CIS''), dated June 15, 1994, at 11. The complaint also alleged that the formation of a joint venture between BT and MCI to provide seamless global network services to multinational corporations created an incentive for BT to use its dominance in the UK to favor the joint venture at the expense of other global network service providers in the provision of the UK segment essential to any seamless global network. See CIS at 14–17.

The complaint recognized that BT could effectuate this discrimination in numerous ways, including: (1) Offering MCI and the joint venture interconnection and other telecommunications services on more favorable terms and conditions than MCI's competitors and/or providing MCI and the joint venture with advance notice of planned changes to BT's network; (2) providing MCI and the joint venture with confidential, competitively sensitive information that BT obtains from other telecommunications providers through BT's correspondent relationships and/or through BT's provision of interconnection or other telecommunications services within the United Kingdom; and (3) discriminating against other carriers by diverting some or all of BT's international switched traffic between the United Kingdom and the United States to MCI or the joint venture, outside the correspondent system.[1] If other carriers could not respond to this diversion by diverting their own traffic, they would be left with larger net settlement payments (due to the loss of BT's offsetting minutes of traffic), placing them at a competitive disadvantage to MCI. It would also give BT an incentive to keep the US–UK accounting rate high. See id.

The final judgment, filed contemporaneously with the complaint and entered by the Court on September 29, 1994 after a Tunney Act review, contains three categories of provisions designed to remedy the anticompetitive effects of the partial acquisition: (1) Transparency provisions;[2] (2) confidentiality provisions;[3] and (3) a provision designed to address the diversion issue.[4] These provisions were specifically designed to diminish the risk that BT would successfully act on its incentive to use its

[1] Under the correspondent system, carriers from one nation set up correspondent relationships with carriers from other nations to facilitate the movement of traffic between their respective countries. The negotiated rate at which such traffic is carried is called the Accounting Rate. In order to prevent foreign monopoly carriers from discriminating against United States carriers by threatening to send all of their traffic to any one US carrier unless the other carriers accepted a higher accounting rate (a practice known as ''whipsawing''), the FCC promulgated the International Settlements Policy or ISP. Pursuant to the ISP, each carrier must pay ½ of the accounting rate, known as the Settlement Rate, for the completion of calls on the corresponding carrier's network; all US carriers must be charged the same accounting rate (non-discrimination); and traffic must be returned to a particular US carrier in proportion to the traffic received from that US carrier (proportionate return). Because the US sends more minutes of traffic to the UK than UK carriers send to the US, US carriers end up with a net settlement outpayment to UK carriers equal to the settlement rate multiplied by the imbalance of minutes.

[2] See Sections II.A.1–5.

[3] See Sections II.B–D.

[4] See Section II.E.

market power to discriminate in favor of MCI or the joint venture. After the final judgment was entered, BT and MCI consummated BT's 20% acquisition and formed the joint venture, NewCo.[5]

The final judgment also specifically provided a mechanism for allowing modifications of the judgment to expand, alter or reduce its terms in order for the United States to maintain the status quo or to prevent new forms of discrimination that would result in harm to United States consumers.[6] Under the terms of the decree, the event or change that triggers the need for the modification need not have been foreseen at the time the final judgment was entered. Such an event could include new forms of discrimination that were not anticipated at the time the final judgment was entered and thus, not referenced or described in the CIS. See CIS at 32–33, 38.[7] Whether based on foreseen or unforeseen circumstances, a modification that is uncontested is reviewed under a public interest standard. Id. at 31–32. The modifications proposed herein have been agreed to by all parties, and this memorandum, therefore, analyzes the proposed modifications under a public interest standard.

## II. Factual and Legal Events Occurring Since the Final Judgment Was Entered

The United States seeks to modify the final judgment, in part, because BT and MCI have now agreed to enter into a full merger. In November 1996, a Merger Agreement and Plan of Merger was executed pursuant to which MCI shall be merged into a wholly-owned subsidiary of BT. The new parent company, BT, will be renamed Concert plc. Although the Department thoroughly analyzed all of the competitive consequences associated with BT's initial 20% acquisition of MCI, the Department undertook an evaluation of the changes in market conditions since 1994 in order to determine whether a modification of the existing decree was appropriate under the circumstances.

In addition to the full merger of BT and MCI, both the US and UK governments have enacted reforms since the Final Judgment was entered that alter the status of competition for international traffic between the US and the UK. Theses changes were designed to move international telecommunications services from the highly regulated correspondent system characterized by few providers (many of which have substantial market power in their home countries) and above-cost prices, to a more competitive environment. As discussed in more detail below, these regulatory changes and, in particular, the granting of International Simple Resale (''ISR'') licenses,[8] have been somewhat effective in lowering the US–UK accounting rate. Despite these changes, however, the US–UK accounting rate is still above-cost and, thus, BT's incentive to discriminate against its and MCI's competitors still exists.

In addition to BT's incentive to discriminate, concerns about BT's ability to discriminate against its and MCI's competitors also still exist. BT maintains substantial market power in local and domestic long distance services in the United Kingdom. Currently, BT has an 80% share of switched long distance revenues in the UK. Although cable companies have made some inroads into the local market, BT maintains a 91% share of local revenues. BT's position in these markets is unlikely to erode swiftly.[9] For the foreseeable future, international carriers will be required to obtain interconnection and other services from BT in order to terminate calls in the UK.

As a result of its new analysis, the Department has concluded that provisions of the Final Judgment aimed at deterring and detecting discrimination need to be retained and, in some cases, strengthened. In addition, certain modifications are required in order to ensure that the resulting full integration of BT and MCI will not impair the effectiveness of the protections afforded by the existing decree.

## III. Explanation of the Proposed Modifications

BT's merger with MCI, combined with the regulatory changes outlined above, justify modifying certain substantive and procedural provisions of the existing Final Judgment. These proposed modifications are discussed seriatim.

### *A. Transparency Provisions*

Sections II.A.1–6 of the existing Final Judgment require MCI and NewCo (the joint venture of BT and MCI that provides global network services), to report certain information, including but not limited to prices, terms and conditions of interconnection and other arrangements between MCI, NewCo and BT, data concerning the quality of service provided by BT to MCI and NewCo, and the total minutes of traffic that MCI sends to and receives from BT in each accounting rate category. See CIS at 18–26. These provisions were included to allow principal competitors of MCI and the joint venture (who have signed confidentiality agreements with the US government) to monitor whether BT is discriminating in favor of these entities and to provide evidence that could be used in support of complaints to the relevant US or UK government agencies.

The proposed modified final judgment retains all of the transparency provisions of the existing final judgment with two notable modifications. First, in addition to MCI, the proposed modified final judgment directs the ultimate corporate parent, Concert plc, to report the requisite information.[10] This ensures that the required information is reported regardless of what entity within Concert maintains it and whether Concert in the future undergoes substantial reorganization. The second modification requires MCI and Concert, in addition to reporting the total number of minutes that MCI sends to and receives from BT, to report information regarding time-of-day, point-of-termination and type of transmission facility. This information is designed to enable competitors to more easily detect a particular type of discrimination. Given BT's ownership of MCI there is a concern that BT could discriminate by sending better traffic (i.e., traffic that is less expensive to terminate and, therefore, more profitable) to MCI, thus disadvantaging MCI's competitors. The modified final judgment also requires the parties to report this information on a semiannual as opposed to annual, basis and no later than 60 days after the end of the six month period being reported.

Under a separate provision, defendants have also agreed to provide notification to the United States prior to any corporate reorganization that would combine the functions of or otherwise eliminate the separate identities of MCI, NewCo and BT. Such reorganizations may make it difficult for the parties to accurately report the data required under the transparency provisions or make the data reported insufficient to detect discriminatory conduct. The provision further establishes a procedure whereby the United States can obtain additional information prior to any such reorganization in order to evaluate the impact of such reorganization on the modified final judgment and, if required, to seek further modifications so as to maintain the viability of the modified final judgment.[11]

### *B. Confidentiality Provisions*

Sections II.B, II.C and II.D of the existing Final Judgment prohibit MCI and NewCo from receiving confidential, competitively sensitive information that BT receives in the course of its correspondent relationships with other United States telecommunications providers and/or in the provision of interconnection or other telecommunications services within the United Kingdom. This prohibition made sense in the context of BT's 20% acquisition because MCI remained an independent, fully accountable company.

[5] The joint venture ultimately came to be known as Concert Communications Company, not to be confused with Concert plc (the proposed name of the fully merged company as discussed below).

[6] The modification provision of the final judgment also allows the parties to seek changes in order to prevent undue hardship to them.

[7] Before concluding that discrimination against any particular competitor of MCI or NewCo necessitates modification of the final judgment, however, the Department would ordinarily first inquire whether the injured party had availed itself of existing regulatory remedies in the United States or the United Kingdom. See CIS at 32–33.

[8] International Simple Resale or ISR means the use of telecommunications facilities to carry international telecommunications traffic without measuring usage (e.g., over private leased lines), where such traffic is carried over the public switched network in the nation where it originates and where it terminates.

[9] These figures have not changed substantially since the complaint was filed in this case. See CIS at 7–8. Although UK regulators have taken steps to encourage competition, they do not require BT to unbundle local loops or to provide dialing parity and/or presubscription to competing providers. Such requirements have been imposed in the US to speed the introduction of competition into telecommunications markets.

[10] Concert plc, the ultimate parent, is thus named as a party to the Modified Final Judgment. Because Concert plc is defined therein to include NewCo, and because Concert plc has agreed to assume liability for certain acts of NewCo, NewCois deleted as a separately named party to the modified final judgment.

[11] See Section VII.B of the proposed modified final judgment.

After the complete merger of MCI into BT, concerns abut the inappropriate use of such confidential information continue to exist. For a number of reasons, however, the complete merger of MCI into BT limits the enforceability of the existing provisions. First, after the merger, Concert plc, not MCI, will be the ultimate decision-maker. Confidential information could flow from BT to MCI and the joint venture through the corporate decision-maker, Concert. Second, after the merger, the defendants have proposed to transfer the responsibility for maintaining BT's correspondent relationships with other United States telecommunications carriers to the subsidiary with responsibility for the merged entity's global network services business. The threat of misuse of confidential information is exacerbated when both wholesale and retail functions are housed in the same subsidiary. Third, as discussed above, there is no guarantee that either MCI or NewCo will be maintained as separate subsidiaries from BT post-merger. The merged entity could thwart the existing confidentiality provisions by reorganizing in such a way as to combine the functions of, or otherwise eliminate, the separate identities of BT, MCI and NewCo.

The proposed modified final judgment redresses these problems by prohibiting the parties from inappropriately using any confidential information they obtain from competitors. Specifically, the ultimate parent, Concert, as well as MCI, is prohibited from using any confidential, competitively sensitive information that BT (or any entity performing the same functions as BT) receives through its correspondent relationships and/or as a result of BT's provision of interconnection or other telecommunications services in the United Kingdom, for any purpose other than the purpose for which such information is obtained (or for which BT is otherwise authorized to use such information by the entity from whom such information is obtained) or to disclose such information to any person other than those persons, including supervisory persons, with a need to know such information.[12]

*C. Diversion Provision*

The complaint recognized that one of the ways BT could discriminate against MCI's competitors was by diverting some or all of its international switched traffic over private lines (a practice known as ''International Simple Resale'' or ''ISR'') to MCI. Because traffic sent over ISR is outside of the correspondent system, it is not subject to the FCC's rules regarding non-discrimination and proportionate return.[13] If other carriers could not respond to this diversion by diverting their own traffic, they would be left with larger net settlement deficits (due to the loss of BT's offsetting minutes), hence higher costs. BT's ability to divert ''could also give BT an increased incentive to keep international accounting rates above costs.'' CIS at 13–14. The existing Final Judgment sought to ameliorate these anticompetitive consequences by prohibiting BT and MCI from engaging in ISR until, *inter alia*, a selected list of other international telecommunications providers were granted ISR licenses by the UK government. The list of providers was included in Annex A to the existing Final Judgment.

Since the existing Final Judgment was entered, all of the international telecommunications providers listed in Annex A have been granted ISR licenses by the UK government. The grant of these licenses alleviates concerns that BT and MCI could bypass the correspondent system on the US-UK route by sending traffic to the US over ISR when other US carriers could not, thereby gaining an unfair competitive advantage. Because this condition has been fulfilled, it has no continuing legal effect and therefore, is deleted in the proposed Modified Final Judgment.

*D. Visitorial Provisions*

Section V of the final judgment allows the Department of Justice to monitor defendants' compliance by giving the Department access to records and documents of the defendants and also access to their personnel for interviews or to take sworn testimony. Under the original final judgment only MCI and NewCo were parties to the decree. In the modified final judgment, Concert has been made a party thus necessitating access by the Department to all of Concert's documents and personnel with information related to compliance issues. Consequently, where applicable, Concert has replaced NewCo in the visitorial provisions of the modified final judgment and language limiting the scope of these provisions to documents and information relating only to NewCo has been deleted. As modified, the visitorial provisions now grant the United States access in the United States to Concert's documents, and personnel, wherever located, for the purposes of determining or securing compliance with the modified final judgment.

*E. Term of Decree*

The final judgment was entered on September 29, 1994 and by its terms would have expired on September 29, 1999. The modified final judgment will expire 10 years after the entry of the existing final judgment. Although there have been significant changes in the regulatory scheme in the UK and new entry into some segments of the UK telecommunications industry, BT still retains a substantial share of the UK local telecommunications market and is expected to retain its existing market power for a significant period of time. Given BT's continued dominance in the UK as well as its increased interest in MCI, the term of the decree was extended in order to ensure that US consumers were protected from any anticompetitive consequences of the merger until the risk of discrimination by the defendants has been dissipated by the development of competitive markets in the UK.

**IV. Other Concerns Related to the US–UK Route**

In the course of the investigation of the proposed merger of BT and MCI, some competitors identified potential new ways in which the merged entity could discriminate and therefore lessen competition in the market for international traffic between the US and UK. Specifically, competitors have argued that the merged entity could deter or delay new facilities-based competitors on the US–UK route by refusing to sell requisite facilities to new entrants. These facilities include capacity on the transatlantic cable as well as interconnection and backhaul[14] services at both ends of the circuit. For the reasons discussed below, the Department has concluded that it is not necessary at present to modify the Final Judgment to resolve these issues.[15]

With respect to cable capacity, BT and MCI are major owners of capacity on transatlantic cables. Presently, BT and MCI are the first and third largest owners of capacity on the eastern end of TAT 12/13, the main cable used to provide international telecommunications services between the US and UK.[16] Indeed, BT controls approximately 43% of the eastern end capacity of the TAT 12/13 cable and MCI controls approximately 13%. As a result of the merger, the combined entity will own over 56% of this capacity.

The merged entity's increased ownership of TAT 12/13 cable capacity potentially strengthens its ability to disadvantage potential competitors by denying them access to needed facilities. Given the current shortage of capacity on the transatlantic

[12] The modified final judgment also requires the parties to provide the Department with advance notice of any subsequent reorganization that would combine the functions of, or otherwise eliminate, the separate identities of BT, MCI and NewCo. The provision also allows the Department to seek additional information prior to any such reorganization in order to determine whether it would impair the effectiveness of any of the confidentiality provisions and, if so, to seek further modifications of the decree.

[13] One of the problems with the ISP is that accounting rates are significantly above-cost. Prior to December 1996, only BT and Mercury Communications, Ltd. were allowed to provide the corresponding half-circuit in the UK. Since US carriers had to correspond with BT or Mercury in order to terminate traffic in the UK, they had no choice but to accept whatever accounting rate that BT and Mercury were offering. ISR was devised as a way of bypassing the ISP and thus, exerting downward pressure on the accounting rate.

[14] Backhaul can be defined as the transport of traffic from the international cable head-end to a point of interconnection with a carrier's domestic facilities.

[15] These concerns were not mentioned in the earlier CIS or included in the Complaint filed in June 1994, because, at that time, no one other than BT or Mercury could own facilities on the UK-end of the US–UK transatlantic route for the purposes of providing US–UK telecommunications services. On December 19, 1996, the UK government granted 45 new international facilities licenses (''IFLs'') thus allowing, for the first time in history, carriers other than BT and Mercury to become facilities-based providers of international telecommunications services in the UK. The UK indicated that it anticipated that these new licenses would put ''further downward pressure on international rates.'' See Press Notice of the United Kingdom's Department of Trade and Industry, dated December 19, 1996, attached hereto as Exhibit A.

[16] TAT 12/13 is the largest transatlantic cable and utilizes state-of-the-art self-restoring technology. For these reasons, it is the most desirable cable for the transmission US–UK international traffic.

cables,[17] such denials would be especially detrimental to the new IFLs recently licensed by the UK government who are currently seeking to enter the US–UK international route. As discussed above, it is this entry that is expected to create downward pressure on the US–UK accounting rate.

Modification of the existing final judgment is not required to prevent Concert from delaying or deterring IFLs access to the TAT 12/13 cable, however, because on May 14, 1997, the European Commission (''EC'') required, as a condition of its approval of the merger, that BT make TAT 12/13 cable capacity available to certain of these IFLs.[18] Under this condition, BT is required to divest all of the capacity it obtained through its merger with MCI. The Department believes that this divestiture will relieve any potential problem associated with TAT 12/13 cable capacity shortages, and BT's and MCI's increased control over existing capacity.

With respect to interconnection and backhaul, concerns have also been raised both with the Department and with the FCC about the availability of backhaul in the US.[19] Entrants seeking to provide international telecommunications services between the US and the UK may have difficulty in obtaining US backhaul facilities as currently, there are only three entities that own backhaul facilities from the TAT 12/13 cable head-ends located in the US: AT&T, MCI and Sprint. However, the Department believes that it is appropriate to allow the FCC to evaluate this issue in the first instance. As the Department stated in its CIS, if it subsequently received complaints about potential discrimination, it would not seek to modify the existing final judgment unless the injured parties first sought relief from the appropriate regulatory agency. See CIS at 32–33. This condition was included in order to minimize the risk that the final judgment would contain provisions that were inconsistent with regulatory requirements in the US or the UK.

Accordingly, the Department is not seeking to modify the decree at this time in order to redress potential concerns associated with backhaul facilities in the US. Rather, the Department will continue its investigation of the extent and nature of the problem, if any, raised by the merged entity's control of backhaul facilities in the U.S. If the Department later concludes that the merged entity could discriminate against new entrants by denying or delaying IFLs access to backhaul facilities in the U.S. and that these concerns are not alleviated by regulatory conditions placed on the parties by the FCC, the Department will seek a further modification of the Final Judgment.[20] The parties have agreed that they will not contest a modification that requires MCI to sell backhaul capacity, equivalent in quantity to the transatlantic capacity which the parties are required to offer pursuant to the EC's order, on reasonable terms and conditions, to certain IFLs or to those corresponding therewith.[21]

## V. Modification Is In The Public Interest

Pursuant to Section VII of the Final Judgment, an uncontested motion to modify the final judgment ''shall be granted if the proposed modification is within the reaches of the public interest.'' See, e.g., *United States* versus *Western Electric Co.,* 993 F.2d 1572, 1576 (D.D.C. 1993) (citing *United States* versus *Western Electric Co.,* 900 F.2d 283, 307 (D.D.C. 1990) (hereinafter Triennial Review)). In the context of an uncontested motion to modify an existing consent decree, the ''public interest'' standard ''directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today.''' *United States* versus *Western Electric Co.,* 993 F.2d at 1576 (quoting Triennial Review, 900 F.2d at 307) (emphasis in original). Thus, ''it is not up to the court to reject an agreed-on change simply because the proposed diverged from its view of the public interest. Rather, the court [is] bound to accept any modification that the Department (with the consent of the other parties, we repeat) reasonably regarded as advancing the public interest.'' *United States* versus *Western Electric Co.,* 993 F.2d at 1576. See also *United States* versus *Microsoft Corp.,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995); *United States* versus *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *United States* versus *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; *United States* versus *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978). See also Microsoft, 56 F.3d at 1461.

## V. Conclusion

For all of the foregoing reasons, the proposed modification is in the public interest, and the United States' motion for modification of the final judgment should be granted.

Respectfully submitted,

Joel I. Klein,

*Acting Assistant Attorney General.*

Lawrence R. Fullerton,

*Deputy Assistant Attorney General.*

Charles E. Biggio,

*Senior Counsel.*

Constance K. Robinson,

*Director of Operations.*

Dated: July 7, 1997.

Donald J. Russell,

*Chief, Telecommunications Task Force.*

Nancy M. Goodman,

*Assistant Chief, Telecommunications Task Force.*

Yvette Benguerel,

*DC Bar # 442452,*

David Myers,

*Attorneys.*

*United States Department of Justice, Antitrust Division, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.*

Exhibits A through C have not been reprinted here, however they may be inspected in Room 215, Department of Justice, 325 7th Street, N.W., Washington, D.C. and at the Office of the Clerk of the United States District Court for the District of Columbia.

July 2, 1997.

*By Messenger*

Ms. Yvette Benguerel,

*Attorney, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC. 20001*

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[17] On December 20, 1996, the day after the international facilities licenses were granted, MCI put in a demand for 252 circuits on the TAT 12/13 cable. MCI's purchase triggered other co-owners' standing orders (BT, for instance, received 155 circuits and AT&T acquired 205), exhausting the TAT 12/13 cable capacity and foreclosing access to TAT 12/13 cable capacity to all but a few IFLs.

The transatlantic capacity shortage is expected to be a short-term problem. A new planned cable, Gemini, is projected to come into service in March 1998 (the southern leg) and September 1998 (the northern leg). Moreover, the TAT 12/13 co-owners recently voted to deploy wave division multiplexing, which will result in a doubling of the capacity of the existing TAT 12/13 cable. Finally, another new cable known as Atlantic Crossing #1 is also under development. The two legs of the Atlantic Crossing #1 are planned to begin service in May 1998 and November 1998, respectively.

[18] See Statement of the European Commission re: No. IP/97/406, dated May 14, 1997, attached hereto as Exhibit B.

[19] During the course of its investigation, the Department also examined interconnection in the US as well as interconnection and backhaul from the TAT 12/13 cable head-end located in the UK in order to determine whether any of these facilities constitute bottlenecks through which the merged entity could exert its market power to deter or delay new entry. After conducting numerous interviews with the industry as well as US and UK regulators, the Department is satisfied at this time that the reporting requirements of the decree, along with regulations currently or soon to be put into place in the US and the UK, are sufficient to alleviate any competitive concerns raised with respect to the merged entity's control over any of these facilities. Accordingly, the Department proposes taking no further relief in this proposed Modified Final Judgment with respect to interconnection in the US or the UK or backhaul from the TAT 12/13 cable head-end located in the UK.

[20] Again, as with the transatlantic cable, any problem with backhaul capacity is expected to be short-term. New entry into the U.S. backhaul market could occur in 2–3 years.

[21] See Letter from Anthony C. Epstein To Yvette Benguerel, dated July 1, 1997, and Letter from David J. Saylor and Anthony C. Epstein to Yvette Benguerel, dated July 2, 1997, attached hereto as Exhibits C and D, respectively.

Re. *United States* v. *MCI Communications Corporation and Concert Communications Company, Civil Action No. 94–1317–TFH (D.D.C)*

Dear Ms. Benguerel: MCI Communications Corporation (''MCI'') and British Telecommunications plc (''BT''), through their undersigned counsel, submit this letter with respect to their proposed merger to form Concert plc (''Concert'').

As set forth in the attached letter that MCI will send to the Federal Communications Commission (''FCC'') on the date the proposed Modified Final Judgment is filed with the Court, MCI and BT do not object to the inclusion of certain conditions concerning the provision of backhaul facilities to the western TAT 12/13 cable head-ends in any FCC order approving the transfer of control of various licenses in connection with the proposed merger.

Exhibit D

MCI and BT understand and agree that, if for any reason any FCC order approving the transfer of control does not incorporate the conditions set forth in the attached letter, the Department, in its sole discretion, may seek a further modification of the final judgment in the above-captioned case that incorporates any or all of these requirements. MCI and BT, on behalf of their successor Concert, further agree not to contest any such motion under Section VII of the decree. MCI and BT understand that the Department has concluded that the Tunney Act, 15 U.S.C. § 16(b–h), does not apply to modifications of existing consent decrees, but that the Department would follow Tunney Act-like procedures with respect to any such motion for further modification under Section VII.

The parties make these commitments in order to achieve a prompt resolution of this matter and without agreeing that they are necessary to comply with any legal duty.

Respectfully submitted,

David J. Saylor,

*Counsel for BT.*

Anthony C. Epstein,

*Counsel for MCI.*

July 7, 1997.

Peter F. Cowhey,

*Chief, International Bureau, Federal Communications Commission, 2000 M St. NW—Room 800, Washington, D.C. 20554.*

Re: EX PARTE in Merger of British Telecommunications plc and MCI Communications Corporation, General Docket No. 96–245

Dear Mr. Cowhey: On behalf of MCI Communications Corporation (''MCI'') and British Telecommunications plc (''BT''), we are by this letter stating a commitment to offer a backhaul service, as described below, as a condition of transferring the licenses and authorizations at issue in this docket, subject to the Commission's determination that the commitments are consistent with the Communications Act. MCI and BT (''the parties'') make these commitments in order to achieve a prompt resolution of this matter and without agreeing that these commitments are necessary to comply with any legal duty.

MCI and BT have no objection to the following requirements in any Commission order approving the above-captioned merger:

a. MCI and Concert will make available backhaul capacity equivalent to a total of 147E–1 circuits, pursuant to the schedule described below, between the TAT 12/13 cable head-ends located in the United States and a point or points served by MCI's existing backhaul facilities.

b. MCI and Concert will make these circuits available in four phases: capacity equivalent to a total of 63E–1 circuits available on the date that the Commission releases its order approving the merger; capacity equivalent to a total of 42 additional ET–1 circuits available within 30 days after release of the order; capacity equivalent to 21 additional E–1 circuits available within 60 days after release of the order; and capacity equivalent to 21 additional E–1 circuits available within 90 days after release of the order.

c. This backhaul capacity will be offered on a first-come, first-served basis to any carrier (directly or through its authorized representative), which is not a U.S. cable head-end owner or collocated at a U.S. cable head-end, that purchased from MCI, BT, or Concert the indefeasible right to use the U.S. end of the 147 whole circuits on TAT 12/13 that the parties offered pursuant to the terms of the decision of the European Union dated May 11, 1997, relating to the proposed merger between MCI and BT. Each such carrier shall be eligible to purchase an amount of backhaul capacity equivalent to the capacity it purchased on TAT 12/13 pursuant to the terms of this decision, and for use in connection with the capacity that it purchased on TAT 12/13 pursuant to this decision.

d. These circuits will be offered in each phase as a priority as DS–3 circuits and then as E–1 circuits. If more DS–3 or E–1 circuits are ordered simultaneously than are available in the next phase, MCI will select on a random basis the order or orders to be filled in that phase and will fill the remaining orders in the following phase. No later than the day following the release of the Commission order approving the merger, MCI will send to eligible carriers a written offer for backhaul service that includes all the terms and conditions described in this letter, including specific recurring and nonrecurring charges. Any order will be deemed received on the business day it is physically received by MCI, unless it is received less than fourteen days after the date of MCI's written offer, in which case it will be deemed received on the date fourteen days after the date of that letter.

e. The obligation to make these circuits available shall end two years after the date of the release of the order.

f. MCI and Concert will make these backhaul circuits available by carrier-to-carrier contract for terms of one, two, three, four, and five years pursuant to terms and conditions, including prices for the interoffice channel component, that are substantially the same as those reflected in MCI's then-effective interstate tariff for TDS 45 service for DS–3 backhaul circuits and in MCI's then-effective interstate tariff for TDS 1.5 service for E–1 backhaul circuits, adjusted to recover different costs related to the provision of backhaul services. MCI will make circuits ready for use by the requesting carrier within a reasonable period of time. The contracts will not unreasonably restrict the ability of any carrier to resell these circuits.

Sincerely,

Mary L. Brown.

**United States District Court for the District of Columbia**

[Civil Action No. 94–1317 (TFH)]

**United States of America, Plaintiff, v. Concert PLC and MCI Communications Corporation, Defendants**

**Modified Final Judgment**

*Whereas,* plaintiff, United States of America, filed its Complaint in this action on June 15, 1994 and a Final Judgment was entered on September 29, 1994,

*And whereas,* plaintiff and defendants, by their respective attorneys, have consented to the entry and modification of this Final Judgment without trail or adjudication of any issue of fact or law,

*And whereas,* defendants have further consented to be bound by one provision of this modified final judgment pending its approval by the Court and to be bound by all the provisions of this modified final judgment if the Merger Agreement is consummated before this modified final judgment is approved by the Court,

*And whereas,* plaintiff the United States believes that entry of this modified final judgment is in the public interest,

*Therefore,* it is hereby *Ordered, Adjudged, and Decreed* that this modified final judgment shall replace the existing final judgment, dated September 29, 1994, in all respects:

*And* it is further *Ordered, Adjudged, and Decreed* that:

**I. Jurisdiction**

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this modified final judgment. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended.

**II. Substantive Restrictions and Obligations**

A. Concert and MCI shall not offer, supply, distribute, or otherwise provide in the United States any telecommunications or enhanced telecommunications service that makes use of telecommunications services provided by BT in the United Kingdom or between the United States and the United Kingdom, unless the following information is disclosed in the United States by Concert and MCI or such disclosure is expressly waived, in whole or in part, by plaintiff through written notice to defendants and the Court:

1. Within 30 days following any agreement or change to an agreement—The prices, terms, and conditions, including any applicable discounts, on which telecommunications services are provided by BT to NewCo in the United Kingdom

pursuant to interconnection arrangements, whether formal or informal;

2. Within 30 days following any agreement or change to an agreement, or the provision of service absent any specific agreement—The prices, terms, and conditions, including any applicable discounts, on which telecommunications services, other than those provided pursuant to interconnection arrangements as described in Section II.A.1 hereinabove, are provided by BT to NewCo in the United Kingdom for use by NewCo in the supply of telecommunications or enhanced telecommunications services between the United States and the United Kingdom, or are provided by BT in the United Kingdom in conjunction with such NewCo services where BT is acting as the distributor for NewCo;

3. With respect to international switched telecommunications or enhanced telecommunications service jointly provided by BT and MCI on a correspondent basis between the United States and the United Kingdom, and to the extent not already disclosed publicly pursuant to the rule and regulations of the Federal Communications Commission,

(i) Within 30 days following any agreement or change to an agreement, or the provision of service absent any specific agreement, the accounting and settlement rates and other terms and conditions for the provision of each such service; and

(ii) On a semiannual basis, and within 60 days of the end of the six month period, for any international direct dial or integrated services digital network (''ISDN'') service (except for ISDN traffic that is not subject to a proportionate return requirement), separately for each accounting rate, MCI's minutes of traffic to and from BT and, separately, BT's minutes of traffic to MCI and to each United States international telecommunications providers by time of day (e.g., traffic originating in six-hour periods beginning at midnight), by point of termination (e.g., traffic to each area code in the United States in the North American Numbering Plan), and by type of transatlantic transmission facility (e.g., satellite versus submarine cable).

4. On a semiannual basis—A list of telecommunications services provided by BT to NewCo in the United Kingdom for use by NewCo in the supply of telecommunications or enhanced telecommunications services between the United States and the United Kingdom, or provided by BT in the United Kingdom in conjunction with such NewCo services where BT is acting as the distributor for NewCo, showing:

(i) The types of circuits (including capacity) and telecommunications services provided;

(ii) The actual average time intervals between order and delivery of circuits (separately indicating average intervals for analog circuits, digital circuits up to 2 megabits, and digital circuits 2 megabits and larger) and telecommunications services; and

(iii) The number of outages and actual average time intervals between fault report and restoration of service for circuits (separately indicating average intervals for analog and for digital circuits) and telecommunications services;

but excluding the identities of individual customers of BT, MCI, or NewCo or the location of circuits or telecommunications services dedicated to the use of such customers;

5. A list showing:

(i) On a semiannual basis, separately for analog international private line circuits (IPLCs) and for digital IPLCs jointly provided by BT and MCI between the United States and the United Kingdom, the actual average time intervals between order and delivery by BT;

(ii) On an annual basis, separately for analog IPLCs and for digital IPLCs jointly provided by BT and MCI between the United States and the United Kingdom, the number of outages and actual average time intervals between fault report and restoration of service, for any outages that occurred in the international facility, in the cablehead or earth station outside the United States, or the network of a telecommunications provider outside the United States, indicating separately the number of outages and actual average time intervals to restoration of service in each such area; and

(iii) On a semiannual basis, for circuits used to provide international switched telecommunications services or enhanced telecommunications services on a correspondent basis between the United States and the United Kingdom, the average number of circuit equivalents to MCI during the busy hour;

6. Within 30 days of receipt of any information described herein—Information provided by BT to MCI or NewCo about planned telecommunications system operated pursuant to its license that would affect interconnection arrangements, whether formal or informal, between BT and NewCo or interconnection arrangements between BT and other licensed operators, provided that if MCI receives any such information from BT separately from NewCo, MCI shall similarly be required to disclose such information in the same manner as NewCo.

The obligations of this Section II.A shall not extend to the disclosure of intellectual property or other proprietary information of the defendants or BT that has been maintained as confidential by its owner, except to the extent that it is of a type expressly required to be disclosed herein, or is necessary for licensed operators to interconnect with Concert's United Kingdom public telecommunications system operated pursuant to its license or for United States international telecommunications providers to use Concert's international telecommunications or enhanced telecommunications correspondent services.

B. Neither Concert nor MCI shall use any information that is identified as proprietary by United States telecommunications or enhanced telecommunications service providers (and maintained as confidential by them) and is obtained by BT from such providers as the result of BT's provision of interconnection or other telecommunications services in the United Kingdom, for any purpose other than BT's provision of interconnection or other telecommunications services in the United Kingdom, and any such information shall not be disclosed to any person other than those persons within BT who need such information in order for BT to provide interconnection or other telecommunications services in the United Kingdom, except that any United States telecommunications or enhanced telecommunications service providers may authorize BT to use such providers' proprietary information for some other purpose if such authorization is in writing and specifically sets forth the purpose for which such information is to be used. Such written authorizations shall be appended to any reports required to be filed with the Department of Justice pursuant to Section V herein. Nothing in this Section II.B shall prevent Concert or BT from disclosing any information to any governmental authority as required by law or regulation.

C. Neither Concert nor MCI shall use any confidential, non-public information obtained as a result of BT's correspondent relationships with other United States international telecommunications or enhanced telecommunications service providers, for any purpose other than conducting BT's correspondent relationships with such providers, and such information shall not be disclosed to any person other than those persons within BT who need such information in order to conduct BT's correspondent relationships with other United States international telecommunications and enhanced telecommunications service providers, except to the extent that such disclosure is necessary for Concert or MCI to comply with their obligations under Section IIA.3(ii) concerning disclosure of the total volume of traffic (but not the individual traffic volumes for other providers) received by BT from the United States and sent by BT to the United States that is subject to proportionate return, or under Section II.A.5 (but not including individual information on other providers), and except further than any United States telecommunications or enhanced telecommunications service providers may authorize BT to use such providers' proprietary information for some other purpose if such authorization is in writing and specifically sets forth the purpose for which such information is to be used. Such written authorization shall be appended to any reports required to be filed with the Department of Justice pursuant to Section V herein. Nothing in this Section II.C shall prevent Concert, MCI or BT from disclosing any information to any governmental authority as required by law or regulation.

D. Neither Concert nor MCI shall use any non-public information about the future prices or pricing plans of any provider of international telecommunications services between the United States and the United Kingdom obtained through BT's correspondent relationships with other United States international telecommunications providers, for any purpose other than accounting rate negotiations between BT and such providers, and such information shall not be disclosed to any person other than those persons within BT who need such information in order to negotiate BT's accounting rates with other United States international

telecommunications providers. Nothing in Section II.D shall prevent Concert or BT from disclosing any information to any governmental authority as required by law or regulation.

**III. Applicability and Effect**

The provisions of this modified final judgment shall be binding upon defendants, their affiliates, subsidiaries, successors, and assigns, officers, agents, servants, employees, and attorneys, and upon these persons in active concert or participation with them who receive actual notice of this modified final judgment by personal service or otherwise. Defendants shall cooperate with the United States Department of Justice in ensuring that the provisions of this Modified Final Judgment are carried out. Neither this modified final judgment nor any of its terms or provisions shall constitute any evidence against, an admission by, or an estoppel against the defendants. The effective date of this modified final judgment shall be the date upon which it is entered.

**IV. Definitions**

For the purposes of this Final Judgment:

A. ''BT'', prior to the consummation of the Merger Agreement and the creation of Concert, means British Telecommunications plc, and any subsidiary, affiliate, predecessor, successor, or assign of British Telecommunications plc, and following the consummation of the Merger Agreement and the creation of Concert, BT means any other entity or entities partially (20% or more) or wholly owned or controlled by Concert and providing interconnection or other telecommunications services within the United Kingdom or from the United Kingdom to the United States, but does not include MCI or NewCo.

B. ''Concert'' means Concert plc, and any subsidiary, affiliate, predecessor, successor, or assign of Concert plc, or any other entity that is partially (20% or more) or wholly owned or controlled by Concert plc, including without limitation, BT, MCI and NewCo.

C. ''Correspondent'' means a bilaterally negotiated arrangement between a provider of telecommunications services in the US or the UK and a provider of telecommunications services in the other of the US or the UK for provision of an international telecommunications or enhanced telecommunications service, by which each party undertakes to terminate in its country traffic originated by the other party. A service managed by NewCo, and provided without correspondent relationships with any other provider, shall not be deemed to constitute a correspondent service.

D. ''Defendant'' or ''defendants'' means Concert and MCI.

E. ''Disclose,'' for purposes of ¶¶ II.A.1–6, means disclosure to the United States Department of Justice Antitrust Division, which may further disclose such information to any United States corporation that directly or through a subsidiary or affiliate holds or has applied for a license from either the United States Federal Communications Commission or the United Kingdom Department of Trade and Industry to provide international telecommunications services between the United States and the United Kingdom. Disclosure by the Department of Justice to any corporation described above shall be made only upon agreement by such corporation, containing the terms prescribed in the Stipulation entered into by BT, defendant MCI and the United States on July 2, 1997, not to disclose any non-public information to any other person, apart from governmental authorities in the United States or United Kingdom and not to use such information for any purpose other than to obtain relief from said governmental authorities. Where Concert or MCI is required to disclose, in Section II.A, particular telecommunications services provided, this shall include disclosure of the identity of each of the services, and reasonable detail about each of the services to the extent not already published elsewhere, but shall not require disclosure of underlying facilities used to provide a particular service that is offered on a unitary basis, except to the extent necessary to identify the service and the means of interconnection with the service.

F. ''Enhanced telecommunications service'' means any telecommunications service that involves as an integral part of the service the provision of features or capabilities that are additional to the conveyance (including switching) of the information transmitted. Although enhanced telecommunications services use telecommunications services for conveyance, their additional features or capabilities do not lose their enhanced status as a result.

G. ''Facility'' means: (i) Any line, trunk, wire, cable, tube, pipe, satellite, earth station, antenna or other means that is directly used or designed or adapted for use in the conveyance, transmission, origination or reception of a telecommunications or enhanced telecommunications service; (ii) any switch, multiplexer, or other equipment or apparatus that is directly used or designed or adapted for use in connection with the conveyance, transmission, origination, reception, switching, signaling, modulation, amplification, routing, collection, storage, forwarding, transformation, translation, conversion, delivery or other provision of any telecommunications or enhanced telecommunications service, and (iii) any structure, conduit, pole, or other thing in, on, by, or from which any facility as described in (i) or (ii) is or may be installed, supported, carried or suspended.

H. ''MCI'', prior to the consummation of the Merger Agreement, means MCI Communications Corporation, and any subsidiary, affiliate, predecessor, successor, or assign of MCI Communications Corporation, and following the consummation of the Merger Agreement, MCI means any other entity or entities partially (20% or more) or wholly owned or controlled by Concert and providing telecommunications services within the United States or from the United States to the United Kingdom, but does not include BT or NewCo.

I. ''Merger Agreement'' means the Agreement and Plan of Merger, dated November 3, 1996 (including any subsequent modifications or amendments to such agreement), entered into by and among British Telecommunications plc, MCI Communications Corporation and Tadworth Corporation.

J. ''NewCo'' means Concert Communications Company, the joint venture of MCI and BT created pursuant to the terms of the Joint Venture Agreement entered into by MCI and BT as of August 4, 1993 (including any subsequent modifications or amendments to such agreement), and any subsidiary, affiliate, predecessor (whether the predecessor is jointly owned by MCI and BT or separately owned by either of them), successor, or assign of such joint venture, or any other entity or entities partially (20% or more) or wholly owned or controlled by Concert and having among its purposes substantially the same purposes as described for NewCo in the Joint Venture Agreement, but does not include MCI or BT.

K. ''Telecommunications service'' means the conveyance, by electrical, magnetic, electromagnetic, electromechanical or electrochemical means (including fiber-optics, as well as satellite, microwave and other wireless transmission), of information consisting of:

—Speech, music and other sounds;
—Visual images;
—Signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter, including but not limited to data otherwise than in the form of sounds or visual images;
—Signals serving for the actuation or control of machinery or apparatus; or
—Translation or conversion that does not alter the form or content of information as received from that which is originally sent.

''Convey'' and ''conveyance'' include transmission, switching, and receiving, and cognate expressions shall be construed accordingly. A telecommunications service includes all facilities used in providing such service, and the installation, maintenance, repair, adjustment, replacement and removal of any such facilities. A service that is considered a ''telecommunications service'' under this definition retains that status when it is used to provide an enhanced telecommunications service, or when used in combination with equipment, facilities or other services.

L. ''United Kingdom'' and ''UK'' mean England, Wales, Scotland, Northern Ireland and all territories, dependencies or possessions of the United Kingdom (excluding the Isle of Man) for which international telecommunications traffic is not normally separately reported to the United States Federal Communications Commission by United States telecommunications carriers.

M. ''United States'' and ''US'' mean the fifty states, the District of Columbia, and all territories, dependencies, or possessions of the United States.

N. ''United States international telecommunications provider'' means any person or entity actually providing international telecommunications services or enhanced telecommunications services to users in the United States, and that is

incorporated in the United States, or that is ultimately controlled by United States persons within the meaning of 16 CFR § 801.1.

**V. Visitorial and Compliance Provisions**

A. Concert agrees to maintain sufficient records and documents to demonstrate compliance with the requirements of this modified final judgment.

B. For the purposes of determining or securing compliance of defendants with this modified final judgment, duly authorized representatives of the plaintiff, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant, shall have access without restraint or interference to Concert and MCI in the United States:

1. During their office hours to inspect and copy all records and documents in their possession or control relating to matters contained in this modified final judgment; and

2. To interview or take sworn testimony from their officers, directors, employees, trustees, or agents, who may have counsel present, relating to any matter contained in this modified final judgment.

C. Concert consents to make available to duly authorized representatives of the plaintiff, for the purposes of determining whether defendants have complied with the requirements of this final judgment and to secure their compliance:

1. At the premises of the Antitrust Division in Washington, DC., within sixty days of receipt of written request by the Attorney General or Assistant Attorney General in charge of the Antitrust Division, records and documents in the possession or control of Concert, wherever located; and

2. For interviews or sworn testimony, in the United States if requested by plaintiff but subject to their reasonable convenience, officers, directors, employees, trustees or agents, who may have counsel present.

D. Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit written reports, under oath if requested, relating to any of the matters contained in this decree.

E. No information or documents obtained by the means provided in this Section V shall be divulged by the plaintiff to any person other than the United States Department of Justice, the Federal Communications Commission (''FCC''), and their employees, agents and contractors, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this decree, or for identifying to the United Kingdom Office of Telecommunications (''OFTEL''), the European Commission (''EC''), or other appropriate United Kingdom or EC regulatory agencies, conduct by defendants that may violate United Kingdom or EC law or regulations or Concert's license to operate its United Kingdom public telecommunications system (but no documents received from defendants pursuant to this Section V shall be disclosed to United Kingdom or EC authorities by the Department of Justice), or as otherwise required by law. Prior to divulging any documents, interviews or sworn testimony obtained pursuant to this Section V to the Federal Communications Commission or prior to divulging any interviews or sworn testimony obtained pursuant to this Section V to the EC, plaintiff will obtain assurances that such materials are protected from disclosure to third parties to the extent permitted by law.

F. If at the time information or documents are furnished by a defendant to plaintiff pursuant to this Section V, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, ''Subject to a claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

**VI. Retention of Jurisdiction**

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this modified final judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate to carry out or construe this decree, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

**VII. Modification**

A. Any party to this modified final judgment may seek modification of its substant ive terms and obligations, and other parties to the modified final judgment shall have an opportunity to respond to such a motion. If the motion is contested by another party, it shall only be granted if the movant makes a clear showing that (i) a significant change in circumstances or significant new event subsequent to the entry of the modified final judgment requires modification of the modified final judgment to avoid substantial harm to competition or consumers in the United States, or to avoid substantial hardship to defendants, and (ii) the proposed modification is (a) in the public interest, (b) suitably tailored to the changed circumstances or new events and would not result in serious hardship to any defendant, and (c) consistent with the purposes of the antitrust laws of the United States and with the telecommunications regulatory regime of the United Kingdom. Neither the absence of specific reference to a particular event in the modified final judgment nor the foresee-ability of such an event at the time this modified final judgment was entered, shall preclude this Court's consideration of any modification request. This standard for obtaining contested modifications shall not require the United States to initiate a separate antitrust action before seeking modifications. The same standard shall apply to any party seeking modification of this modified final judgment. If a motion to modify this modified final judgment is not contested by any party, it shall be granted if the proposed modification is within the reaches of the public interest. Where modifications of the modified final judgment are sought, the provisions of Section V of this modified final judgment may be invoked to obtain any information or documents needed to evaluate the proposed modification prior to decision by the Court.

B. Concert agrees to notify the plaintiff in writing if MCI or Concert hereafter files with the FCC or OFTEL an application to assign (or transfer control of) any license or authorization held by MCI or BT relating to telecommunications services between the United States and the United Kingdom, or if Concert seeks to reorganize its corporate structure so as to combine NewCo and BT in the same corporate entity. Within five (5) days of receipt by plaintiff of such notice, plaintiff may request form defendants additional information concerning the proposed assignment, transfer or reorganization. Defendants shall furnish any additional information requested within ten (10) days of receipt of the request. Such assignment, transfer or reorganization shall not take effect until thirty (30) days after receipt of the notice or, if additional information is requested by plaintiff, until twenty (20) days after receipt of the additional information. If the plaintiff determines, in its sole discretion, that such an assignment, transfer or reorganization would impair the effectiveness of any of the provisions of this modified final judgment, then the plaintiff, in the exercise of its discretion and without waiving its right to obtain any other remedy, may seek further modification of this modified final judgment, which modification will be reviewed as set forth in Section VII.A hereinabove. Concert and MCI agree that they will not oppose any request by the plaintiff for expedited consideration by the Court of any such request for further modification.

**VIII. Sanctions**

Nothing in this modified final judgment shall prevent the United States from seeking, or this Court from imposing, against defendants or any other person, any relief available under any applicable provision of law.

**IX. Further Provisions**

A. The entry of this modified final judgment is in the public interest.

B. The substantive restrictions and obligations of this modified final judgment shall be removed after ten years have passed from September 29, 1994, the date of entry of the final judgment, unless this modified final judgment has been previously terminated.

United States District Judge.

**United States District Court for the District of Columbia**

[Civil Action No. 94–1317 (TFH]

**United States of America, Plaintiff, v. MCI Communications Corporation and BT Forty-Eight Company (''NewCo''), Defendants**

**United States' Explanation of Procedures**

The United States submits this short memorandum summarizing the procedures

regarding the Court's entry of the proposed modified final judgment. Although the United States does not believe that this modified final judgment is subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), it intends to follow procedures similar to those set out in this Act in order to allow for interested parties to submit comments to the Court prior to the Court's determination of whether the entry of the modified judgment is in the public interest.

1. Today, the United States has filed a modified final judgment, a Stipulation pursuant to which the parties have consented to entry of the modified final judgment and a Memorandum In Support Of Modification explaining the proposed modifications and the reasons therefor.

2. The United States intends to publish the proposed modified final judgment and its Memorandum In Support Of Modification in the **Federal Register** and in certain newspapers at least 60 days prior to the time that the United States files a motion for the entry of the proposed modified final judgment. The notice will inform members of the public that they may submit comments concerning the modified final judgment to the United States Department of Justice, Antitrust Division.

3. During the sixty-day period, the United States will consider, and at the close of that period respond to, any comments received.

4. After the expiration of the sixty-day period, the United States will file with the Court the comments, the United States' response and a Motion for Entry of the Modified Final Judgment (unless the United States has decided to withdraw its consent to entry of the Modified Final Judgment, as permitted by Paragraph 2 of the Stipulation).

5. At that time, or any time thereafter, the Court may enter the modified final judgment without a hearing, if it finds that the modified final judgment is in the public interest.

Dated: July 7, 1997.

Respectfully submitted,

Yvette Benguerel,

*D.C. Bar #442452.*

*U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, 555 4th Street, N.W., Washington, D.C. 20001, (202) 514–5808.*

[FR Doc. 97–18289 Filed 7–11–97; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Ninety-day emergency extension request to a currently approved emergency extension for a revision of a currently approved collection; Application for Asylum and Withholding of Removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance/approval in accordance with the Paperwork Reduction Act of 1995. Additionally, this notice will serve as the 60-day public notification for comments as required by the Paperwork Reduction Act of 1995. The new streamlined information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 12, 1997.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of this Information Collection**

(1) *Type of Information Collection: Revision of a currently approved collection.*

(2) *Title of the Form/Collection:* Application for Asylum and Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–589. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(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 used by the INS and EOIR to access eligibility of persons applying for asylum and withholding of deportation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 80,000 responses at three and one half (3.16) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 252,800 annual burden hours.

Comments and questions about the emergency extension of this information collection should be forwarded to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20503.

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 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 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. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 9, 1997.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

**Amendments to Form I–589 Application for Asylum and for Withholding of Removal**

In an effort to streamline the Form I–589, Application for Asylum and for Withholding of Removal (OMB No. 1115–0086), the Immigration and Naturalization Service, Office of International Affairs established a Working Group. The Working Group consisted of input from members from the following programs: Executive Office for Immigration Review (EOIR); Office of International Affairs; Office of General Counsel; Benefits Division; Field Manual Project and the Policy Directives and Instructions Branch. Outlined below are the findings as a result of the I–589 Working Group. The Form I–589 has been revised accordingly.

**Part E—Background Information About You**

Former Part E of the I–589 application was not deleted as previously requested by OMB. Part E was included in Part A because it was felt this information was necessary to adjudicate this application. The more information asked on the form, the more information the applicant will provide and the easier it is for the asylum officer to conduct a fair appraisal of the claim. The intent of a non-confrontational interview is to obtain a complete, clear view of the manner in which the applicant has lived and functioned in his home country. Many applicants are intimidated by being questioned and they may react in a manner which is not conducive to a non-confrontational interview. Having the applicant provide the majority of the information relieves the officer of the need to ask these questions. This puts the officer in a less confrontational position in the applicant's eyes.

An additional section was added which requests the applicant to list ALL children regardless of age or civil status or whether they are in the United States or not. Providing this information will prompt the applicant to think of every member within his family at one time, rather than one by one as is done formerly in Part B of the form, and will help him or her to include every child eligible to be included in the application. This information will also assist the Service in future requests the applicant may make for benefit at a future date.

The form also asks the applicant to provide information about his or her parents, past residences and employments and education. The Service believes it is necessary to ask the applicant to provide this information on the application form for several important reasons.

Having the applicant provide specific details to these questions helps the applicant to articulate more thoroughly different forms of persecutory treatment. Additionally, by engaging in the process of answering the questions, the applicant is prompted to remember and cite facts which he or she might otherwise not recall during an oral recounting of circumstances and occurrences in their home country regarding the claim to asylum. Likewise, for the asylum officer, seeing the information, at a glance, patterns of mistreatment would be revealed. This would enable the officer to quickly determine whether certain areas need to be developed further or could suggest other lines of questioning which would provide additional, essential information.

For example: the information the applicant provides about his or her education indicates to the asylum officer whether the applicant was denied benefits in his or her home country. This point is necessary in developing a pattern of persecutor treatment. If a person is denied education, this opens for the asylum officer additional possibilities for developing the applicant's claim. Education is an important element of persecution in communist societies.

Repeated changes in residence and employment during the previous five years provide the officer with a clearer view of the life pattern of the applicant and assist the asylum officer in developing the reasons for those changes. The asylum officer can identify any necessity for identifying additional areas of persecution which could influence positively the outcome of the applicant's claim. For example; why did they move, were they forced by the government to move, did they feel the necessity to move in order to get out from under the control of certain government or military authorities, or did they have to receive permission to move, and whether they were forced into menial labor by the authorities.

By asking the applicant for information about his or her parents, the applicant is provided a means of giving evidence he or she might not otherwise consider pertinent to their situation in their home country. The status afforded to and the location of the residence of the applicant's parents can easily reflect a pattern of persecution if it shows the asylum officer, for example that, if the parents are outside the country of nationality, where they are and what status they have.

**Photographs**

The Service has changed the photograph requirement from ADIT-type photos to passport-style photos. The Service believes that there are more photographers who take passport-style photographs than do ADIT photographs. This will make it easier for the applicant to comply with the photograph requirement. Also, the requirement of two photographs has been changed to one photograph.

**Organization of the Form**

The form has been reorganized to have all information about the applicant in Part A rather than scattered throughout the application. The Service believes that this should make it easier for the applicant to complete the form and thus may cut down on the time required to answer all the questions.

BILLING CODE 4410–18–M

**U.S. Department of Justice**
Immigration and Naturalization Service

OMB NO. 1115-0086

# Instructions for Form I-589
# Application for Asylum and for Withholding of Removal

**Purpose of This Form**

This form is used to apply for asylum in the United States (U.S.), and for withholding of removal (formerly called "withholding of deportation"). You may file for asylum if you are physically in the United States and you are not a United States citizen.

You may include in your application your spouse and your unmarried children who are under 21 years of age and physically present in the United States. Married children and children 21 years of age or older must file a separate Form I-589 application. If your spouse and/or unmarried children under the age of 21 are outside the United States, you may file a petition for them to gain similar benefits, if you are granted asylum.

This instruction pamphlet is divided into two (2) sections. The first section has filing instructions. It discusses eligibility and will guide you through filling out and filing the application. The second section describes how your application will be processed. This section also describes potential interim benefits while your application is pending. However, you will not be authorized to work based on filing this application.

Please read these instructions carefully. The instructions will help you complete your application and understand how it will be processed.

*WARNING:* **Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act.**

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## 1. FILING INSTRUCTIONS

**Basis of Eligibility.**

In order to qualify for asylum, you must establish that you are a refugee. A refugee is a person who is unable or unwilling to return to his or her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. In your application, you should clearly describe any of your experiences, or those of family members, which may show that you are a refugee. If you are not granted asylum, the Immigration and Naturalization Service (INS) may use the information you provide in this application to establish that you are removable under 8 CFR part 237. Unless there are exceptional or extraordinary circumstances, you should file this application within one (1) year of arriving in the United States.

You may also include background material to support your application, such as newspaper articles, affidavits of witnesses or experts, periodicals, journals, books, photographs, official documents, other personal statements, or evidence regarding incidents that have occurred to others. However, you must establish how this background is material to your specific circumstances and why you have a well-founded fear of persecution.

**Completing the Form.**

Type or print all of your answers in ink on the Form I-589. Your answers must be completed in English. Forms completed in a language other than English will be returned to you.

Provide the specific information requested about you and your family. **Answer ALL of the questions asked.** If any question does not apply to you, answer "none" or "not applicable". Provide detailed information and answer the questions as completely as possible. If you need more space, attach an additional sheet(s) indicating the question number(s) you are answering. Sign and date each additional sheet.

You are strongly urged to attach additional written statements and documents that support your claim. Your written statements should include details of your experiences, events, and dates that relate to your claim for asylum.

If you need, or would like, help in completing this form and preparing your written statements, assistance from pro bono attorneys and/or voluntary agencies may be available. They may help you for a reduced fee. If you have not already received from INS a list of attorneys and accredited representatives, you may do so by calling 1-800-870-FORM.

Representatives of the United Nations High Commissioner for Refugees (UNHCR) may be able to assist you in identifying persons to help you complete the application. You may, if you wish, forward a copy of your application and other supporting documents to UNHCR. The current address of the UNHCR is:

United Nations High Commissioner for Refugees
1775 K Street, NW., Third Floor
Washington, DC 20006
Telephone: (202) 296-5191

**Part A. Information about You.**

This part asks for basic information about you. Alien Registration Number (A#) refers to your INS file number. In question 9, use the current name of the country. Do not use historical, ethnic, province, or other local names.

If you check block 17, you must complete the blocks 17a through 17g. The I-94# is the number on Form I-94, Departure Record, given to you when you entered the U.S. In Block 17g,enter the date

as it appears on the Form I-94. If you did not receive one, write "None". If you entered without being inspected by an immigration officer, write "EWI" in Block 17c.

**Part B. Spouse and Children.**

*You should list your spouse and all your children in this application regardless of whether they are in the U.S. when you file your application.*

You may ask to have your spouse, and/or any children who are under 21 and unmarried, included in this application **if they are in the U.S.** Children who are married and/or children who are 21 years of age or older must file separately for asylum by submitting their own asylum applications (Form I-589).

Submit an additional copy of your completed asylum application, the documentary evidence establishing your family relationship, and all other items mentioned when including a family member in your asylum application.

- If including your spouse in your application, submit copies of your marriage certificate.
- If you wish to include any children who are unmarried and under 21 in your application, submit copies of each child's birth certificate.

If you do not have, or are unable to obtain these documents, you may submit an affidavit from at least one (1) person for each event you are trying to prove. Affidavits may be provided by relatives. Persons providing affidavits need not be U.S. Citizens. Affidavits must:

- fully describe the circumstances or event in question and must fully explain how the person acquired knowledge of the event;
- be sworn to, or affirmed by, persons who were alive at the time and have personal knowledge of the event (date and place of birth, marriage, etc.) that you are trying to prove; and
- show the full name, address, date, and place of birth of each person giving the affidavit, and indicate any relationship between you and the person giving the affidavit.
- If you have more than two (2) children, attach additional pages and documentation providing the same information asked in the form.

**Part C. Information about your Claim for Asylum.**

This part asks specific questions relevant to eligibility for asylum and for withholding of removal. Follow the instructions on the application form. Your answers should be detailed. Use additional sheets for your answers. Put your name (exactly as it appears in Part A of the form) and A# (if any) at the top of each additional page. You must clearly indicate the number of the question you are answering.

**Part D. Additional Information about your Application for Asylum.**

Check yes or no in the box provided for all six (6) questions. If your answer is YES to any question, explain in detail on additional sheets as needed.

**Part E. Your Signature.**

You must sign your application in Part E and provide the information requested. Sign when completed.

**Part F. Signature of Person Preparing Form if Other than Above.**

*Any* person, other than an immediate family member, who helped prepare your application must sign the application and provide the information requested.

**PENALTY FOR PERJURY.** You and anyone, other than an immediate relative, who assists you in preparing the application must sign the application under penalty of perjury. Your signature is evidence that you are aware of the contents of this application. Any person, other than an immediate family member, assisting you in preparing this form must include his or her name and address and sign the application where indicated in Part G. Failure of the preparer to sign will result in the application being returned to you as an incomplete application. If the INS later learns that you received assistance from a person other than an immediate family member, and this person has failed to sign, this may result in an adverse ruling against you.

All statements contained in response to questions contained in this application are declared to be true and correct under penalty of perjury.

Title 18, United States Code, Section 1546, provides in part:

...Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned not more than five years, or both.

If you knowingly provide false information on this application, you or the preparer of this application may be subject to criminal penalties under Title 18 of the United States Code and to civil penalties under Section 274C of the Immigration and Nationality Act, 8 U.S.C. 1324c.

**Part G. To be Completed at Interview.**

Do not sign your application in Part G before filing this form. You will be asked to sign your application in this space at the conclusion of the interview regarding your claim.

NOTE: You must, however, sign Part E of the application.

**Required Documents and Required Number of Copies that you must Submit with your Application:**

- The **original** and two (2) copies of your completed asylum application, Form 1-589, and the original and two (2) copies of any additional sheets and supplementary statements. You must submit a total of three (3) copies of any other documentation such as supporting documentation. You should retain one (1) copy of the completed application for your own records. Although the INS will confirm in writing its receipt of your application, you may wish to send the completed forms by registered mail (return receipt requested). The INS suggests that you bring a copy of your Application for Asylum and for Withholding of Removal(Form I-589) with you when you have your interview;

- Three (3) copies of any documentary **evidence of relationship(s)**, such as birth records of your children, marriage certificate, or proof of termination of marriage;

- If these instructions state that a copy of a document may be filed with this application and you choose to send us the original, we may keep that original for our records.

Any foreign language document must be accompanied by an adequate English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

NOTE: If you do not have, and are unable to obtain, these forms of documentary evidence, you must submit an original and two (2) copies of an **affidavit** from a third person who knows of the relationship.

- An **additional two (2) copies of your Form I-589** complete with additional sheets and supplementary statements for each family member(s) listed in Part B who you want to have included in your application;

- **One (1) Fingerprint Card, FD-258,** for you and each family member listed in Part B, 14 years of age or older, who is included in your application. Your fingerprints must be taken by an INS approved Designated Fingerprinting Service (DFS), a law enforcement agency recognized by INS as a DFS, or a designated INS employee. A list of approved Designated Fingerprinting Services is available at the INS district office which services you. You may obtain INS forms by calling 1-800-870-FORM;

  You must complete the information on the top of the card and write your A# (if any) in the space marked "Your No. OCA" or "Miscellaneous No. MNU". Do not sign the card until you have been fingerprinted, or are told to sign by the person who takes your fingerprints. The person who takes your fingerprints must also sign the card, and write his or her title and the date you are fingerprinted in the space provided. **Do not bend, fold, or crease the fingerprint card.**

- One (1) **passport-style photograph** of you and each family member listed in Part B who is included in your application. **The photos must have been taken no more than 30 days before you file your application.** Print the person's comple name and A# (if any) on the back of his or her photos with a pencil; and

- A copy of the passport (cover to cover) and a copy of any U.S. Immigration documents, such as an I-94 Departure Record, for you and each family member who you want included in your application.

**Additional Documents that you may Submit.**

- A copy of your **birth certificate;**

- **Any supporting documents.** You may submit background material, such as newspaper articles, affidavits of witnesses or experts, periodicals, journals, books, photographs, official documents, or personal statements. The original, plus two complete sets of your supporting documents, should be sent to the INS along with an additional copy for each family member who is included in your application; and

- You should submit and bring with you to the interview any other **identification**, if available.

**Fee.**

There is no fee for filing this application.

**Organizing your application.**

Put your application together in the following order ***(if possible, secure with binder clips and rubber bands so that material may be easily separated):***

☐ Your original Form I-589, with all questions completed, and with the application signed by you and by any preparer; and

☐ One (1) photo stapled in Part E.

Behind your original Form I-589 attach, in the following order:

☐ One (1) Form G-28, if represented by an attorney or other representative, signed by you and the attorney/representative;

☐ The original of all additional sheets and supplementary statements submitted with your application;

☐ One (1) copy of the evidence of your relationship to your spouse and unmarried children under 21 that you want included in your application;

☐ One (1) completed Fingerprint Card (FD-258) if you are 14 years of age or older [do not bend, fold or crease this card]; and

☐ One (1) copy of the items in your original package, except photographs, behind the original package.

Behind these duplicate packages, attach one (1) additional package for each family member that you want included in your application. Arrange each family member's package as follows:

☐ One (1) copy of your completed, signed application form. In Part B, staple one (1) photo in the upper right hand corner;

☐ One (1) copy of the Form G-28, if any;

☐ One (1) copy of evidence of your relationship to this person;

☐ One (1) copy of all continuation sheets and supporting evidence submitted with the original application;

☐ One (1) completed Fingerprint Card (FD-258) if he or she is 14 years of age or older (do not bend, fold or crease this card);

☐ One (1) additional copy of your completed and signed application form and continuation sheets submitted with the original application.

For example, if you include your spouse and 2 children, you should submit your original package, plus 2 duplicates for you, plus 2 packages for your spouse, plus 2 for each child, or a total of 9. Be sure each has the appropriate documentation.

**Incomplete Applications.**

An application that is incomplete shall be returned to you by mail within thirty (30) days of receipt of the application by the INS.

The filing of an incomplete application shall not commence the 150-day period after which you may file an application for employment authorization in accordance with 8 CFR 208.7(a)(1). An application that has not been returned to you within thirty (30) days of having been received by the INS shall be deemed complete. An application for asylum and withholding of removal will be considered incomplete if: it does not include a response to each of the questions contained in the Form I-589, is unsigned, is unaccompanied by one (1) completed Form FD-258 (Fingerprint Card) for you and for every family member who is included in your application for asylum and is fourteen years of age or older, is sent without the appropriate number of copies for any supporting materials submitted, or if you indicated in Part G that the application was prepared by someone other than yourself and the preparer failed to complete Part G of the asylum application.

If you are filing this application more than one (1) year after your arrival in the United States, you must attach an explanation of why you did not file within the first year after your arrival. Describe any change(s) in circumstances since your arrival which resulted in your decision to apply for asylum at this time or any extraordinary circumstances which prevented you from applying earlier.

**Where to File.**

***If you are in removal proceedings.***

If you are currently in removal proceedings (that is, if you have been served with Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for Hearing; Form I-860, Notice and Order of Expedited Removal; or Form I-862, Notice to Appear), you are required to file your application, Form I-589, with the Office of the Immigration Judge having jurisdiction over your case.

***If you are not in removal proceedings.***

You are to mail your complete application for asylum, Form I-589, and any other additional information, to the INS Service Center as indicated below.

If you live in the District of Columbia, western Pennsylvania, Maryland, Virginia, West Virginia, North Carolina, Georgia, Alabama, South Carolina, Louisiana, Arkansas, Mississippi, Tennessee, Texas, Oklahoma, Utah, New Mexico, Colorado, Wyoming, Florida, the Commonwealth of Puerto Rico, or the United States Virgin Islands, mail your application to:

USINS Southern Service Center
P.O. Box 152122
Department A
Irving, TX 75015-2122

If you live in Illinois, Indiana, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Missouri, Ohio, Iowa, Nebraska, Montana, Idaho, Kentucky, northern California, northern Nevada, Oregon, Washington, Alaska, Hawaii, or the territory of Guam, mail your application to:

USINS Northern Service Center
P.O. Box 87589
Lincoln, NE 68501-7589

If you live in Arizona, southern California, or southern Nevada, mail your application to:

USINS Western Service Center
P.O. Box 10589
Laguna Niguel, CA 92607-0589

If you live in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, eastern Pennsylvania, Rhode Island, or Vermont, mail your application to:

USINS Eastern Service Center
P.O. Box 9589
St. Albans, VT 05479-9589

**2. OTHER INFORMATION**

**Your Address in the United States.**

You must provide your street address in Part A of the asylum application. **You must notify the asylum office on Form AR-11 (Change of Address Form) or in writing of any changes of address that have occurred after the filing of your asylum application with the Service Center.** The address that you provide on the application, or the last Change of Address Form submitted, will be used by the INS for mailing. Any notices mailed to this address shall constitute adequate service of all notices. These notices include an interview notice, or other documents, except a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122), an Order to Show Cause (Form I-221) and a Notice and Order of Expedited Removal (Form I-860).

**Withholding of Removal.**

Your asylum application is also considered to be an application for withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act, as amended. If asylum is not granted, you may be eligible for withholding of removal.

In order to qualify for withholding of removal, you must establish a clear probability of persecution if you return to your home country on account of race, religion, nationality, membership in a particular social group, or political opinion.

**Interview.**

You will be notified by the INS asylum office of the date, time, and place (address) of a scheduled interview. The interview procedure is as follows: an asylum officer will interview you under oath, make an assessment of your claim and make a determination concerning your claim.

If you are unable to proceed with the interview in English you must provide, at no expense to the INS, a competent interpreter fluent in both English and your native language. Your interpreter must be at least 18 years of age. The following persons cannot serve as your interpreter: your attorney or representative of record or, a witness testifying on your behalf at the interview. Quality interpretation may be crucial to your claim. Such assistance must be obtained, at your expense, prior to the interview. A list of agencies willing to assist you in finding qualified interpreters may be obtained from local INS offices.

Failure without good cause to have a competent interpreter at your interview may be considered a failure without good cause to appear for the interview. You will be prevented from receiving work authorization and your asylum application may be referred directly to the immigration judge.

If you have a **passport,** other travel or identification document, Form I-94, Departure Record, you must bring these documents with you to the interview. You must bring some form of identification to your interview. You may bring to the interview any additional available items documenting your claim.

If other **members of your family** are to be included on your application for asylum, they must also appear for the interview and bring any identity or travel documents which they have in their possession.

**Status while your Claim is Pending.**

While your case is pending, you will be permitted to remain in the United States. After your asylum interview, if you have not been granted asylum, and appear to be deportable under Section 237 of the INA, 8 U.S.C. 1251, or inadmissible under Section 212 of the INA, 8 U.S.C. 1182, your application will be filed with the Office of the Immigration Judge upon referral by the asylum office.

**Travel Outside the United States.**

You must apply for and be granted advance parole, before you leave the United States. An applicant who leaves the United States without first obtaining advance parole shall be presumed to have abandoned his or her application. An applicant who leaves the United States pursuant to advance parole and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return.

**Employment Authorization while your Application is Pending.**

You will be granted permission to work if your asylum application is granted.

You may request permission to work if your asylum application is pending, and 150 days have lapsed since your application was accepted by the INS, but has not been denied within 180 days from the date of filing a complete application. If the 150-day period expires before a decision is made on your application, you may request permission to work by filing an Application for Employment Authorization, Form I-765. Follow the instructions on that application and submit it with a copy of evidence that you have a pending asylum application. Each family member you have asked to have included in your applicaton who also wants permission to work must submit a separate Form I-765.

You may ***not*** apply for employment authorization until your application for asylum or withholding of removal has been pending for at least 150 days since acceptance by the INS or the Office of the Immigration Judge. If you file an application for employment authorization before the 150 days has expired, that application will be denied. Any delay in the processing of your application that you request or cause shall not be counted as part of the 150-day time period.

**Privacy Act Notice.**

The authority to collect this information is contained in Title 8, United States Code. Furnishing the information on this form is voluntary; however, failure to provide all of the requested information may result in the delay of a final decision or denial of your request. The information collected will be used to make a determination on your application. It may also be provided to other government agencies (Federal, state, local and/or foreign). However, no information regarding this application will be provided to the Government or country from which you claimed a fear of persecution. All applicants are subject to a check of criminal information databases in order to determine eligibility.

**Paperwork Reduction Act Notice.**

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) **30** minutes to learn about the form; (2) **55** minutes to complete the form; and (3) **105** minutes to assemble and file the application, including the average interview and travel time; for a total estimated average of 3 hours and 10 minutes per application. If you have comments regarding the accuracy of this estimate or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, Policy Directives and Instructions Branch 425 I Street, NW., Room 5307, Washington, DC 20536, and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0086, Washington, DC 20503. ***(Do not mail your completed application to this address.)***

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0086

# Application for Asylum and for Withholding of Removal

*Start here - Please Type or Print. Use Black ink. See the separate instruction pamphlet for information about eligibility and how to complete and file this application.*

**PART A. INFORMATION ABOUT YOU.**

1. Alien Registration Number(s) (A#'s)

| 2. Complete Last Name | 3. First Name | 4. Middle Name |
|---|---|---|
| 5. Mailing Address in the U.S. C/O | How long have you lived here? | Telephone Number |
| Street Number and Name | | Apt. No. |
| City | State | ZIP Code |

| 6. Sex ☐ Male ☐ Female | 7. Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed |
|---|---|
| 8. Date of Birth *(Mo/Day/Yr)* | 9. City and Country of Birth |

| 10. Present Nationality *(Citizenship)* | 11. Race/Ethnic or Tribal Group | 12. Religion |
|---|---|---|

| 13. Where did you enter the U.S.? *(Port of Entry)* | 14. Date of Entry | 15. Social Security Number |
|---|---|---|

**Immigration Status, if applicable.** *(Check one and attach a copy of your INS status document.)*

16. ☐ I am now in exclusion or deportation proceedings.

17. ☐ I am *not* in removal proceedings. *(Complete 17a through 17g.)*

| a. Where did you last enter the U.S.? | b. When did you enter? *(Mo/Day/Year)* |
|---|---|
| c. What was your status when you entered? | d. What type of visa did you have, *(if any)*? |
| e. What is the number of your I-94? | f. What is the expiration date of your authorized stay *(if any)*? |

g. When did you first enter the U.S.? *(Mo/Day/Yr)*

18. I am not in exclusion or deportation proceedings.

19. What is your native language?

| 20. ☐ I am fluent in English. | 21. ☐ I am not fluent in English, but am fluent in: |
|---|---|

22. What was your nationality at birth?

23. Have you ever filed an application for refugee status, asylum, withholding of deportation, or withholding of removal?

- ☐ No.
- ☐ No. I was included in a pending application of my parent(s). However, I am now 21 years' old or married so I am filing my own application.
- ☐ Yes. *(What was the decision? Include the A#'s and the disposition or status of each application.)*

**FOR INS USE ONLY**

| Returned | Receipt |
|---|---|
| Resubmitted | |
| Reloc Sent | |
| Reloc Rec'd | |
| Action: Interview Date: | |

Asylum:
- ☐ Granted
- ☐ Denied
- ☐ Referred
- ☐ Recommended Approval

Date A.O. decision or referral issued _____

Total number of persons granted asylum _____

**For EOIR Use Only**

**To Be Completed by Attorney or Representative, if any**

☐ Check if G-28/EOIR-28 is attached showing you represent the applicant.

INS VOLAG or PIN #

ATTY State License # _____

**Information About You - Continued.**

24. What other names have you used? *(Include maiden name and all aliases.)*

| 25. What country issued your last passport? | 26. Passport # | 27. Expiration Date |
|---|---|---|
| | | |

28. Provide the following information about your most recent education.

| Name of School | Type of School | Location | Attended From *(Mo/Yr)* | To *(Mo/Yr)* |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

29. Provide the following information about your residences during the last five years. List your present address first. *(Use additional sheets of paper if necessary.)*

| Number and Street | City | Province or State | Country | Dates From *(Mo/Yr)* | To *(Mo/Y* |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

30. Provide the following information about your employment during the last five years. *(List your present employment first. Use additional sheets of paper if necessary. )*

| Name and Address of Employer | Your Occupation | Dates From *(Mo/Yr)* | To *(Mo/Yr)* |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

31. Provide the following information about your parents.

| Name | Country and City of Birth |
|---|---|
| | |
| | |

32. List *ALL* your children, regardless of their age and civil status. *(Use additional sheets of paper if necessary.)*

| Name | Date of Birth | Place of Birth |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

**PART B. INFORMATION ABOUT YOUR SPOUSE AND CHILDREN.**

**Your Spouse.** ☐ I am not married. *(Skip to Part B, Your Children.)*

1. Alien Registration Receipt Number (A#)

| 2. Complete Last Name | 3. First Name | 4. Middle Name | 5. Date of Birth *(Mo/Day/Yr)* |
|---|---|---|---|
| 6. Date of Marriage *(Mo/Day/Yr)* | 7. Place of Marriage | 8. City and Country of Birth | |
| 9. Nationality *(Citizenship)* | 10. Race, Ethnic or Tribal Group | 11. Sex ☐ Male ☐ Female | |

**Immigration Status.**

| 12. Is this person in the U.S.? ☐ Yes. *(Complete blocks 13 to 24.)* ☐ No. | | | 13. Social Security # |
|---|---|---|---|
| 14. Place of Entry in the U.S.? | 15. Date of Entry in the U.S.? *(Mo/Day/Yr)* | 16. I-94# | 17. Status when Admitted *(Visa type, if any.)* |
| 18. Expiration of Status *(Mo/Day/Yr)* | 19. Mode of Transportation | 20. Is your spouse in removal proceedings? ☐ Yes ☐ No | |
| 21. If previously in the U.S., Date of Last Arrival | 22. Place of Last Arrival | 23. Status at Time of Last Arrival | |

24. Is this person to be included in this application? *(Check the appropriate box.)*

☐ Yes. *(Attach one (1) photograph of your spouse in the upper right hand corner of Page 3 on the extra copy of the application submitted for this person.)*

☐ No, because spouse is/has:

☐ Filing separately. ☐ Separate application pending. ☐ Other reasons. *(Explain why on separate paper.)*

**Your Children, Regardless of Age or Marital Status.** *(Attach additional pages and documentation if you have more than two (2) children.)*

1. Alien Registration Receipt Number (A#):

| 2. Complete Last Name | 3. First Name | 4. Middle Name | 5. Date of Birth *(Mo/Day/Yr)* |
|---|---|---|---|
| 6. City and Country of Birth | 7. Nationality *(Citizenship)* | 8. Race, Ethnic or Tribal Group | 9. Sex ☐ Male ☐ Female |

**Immigration Status.**

| 10. Is this child in the U.S.? ☐ Yes. *(Complete blocks 11 to 22.)* ☐ No. | | | 11. Social Security # |
|---|---|---|---|
| 12. Place of Entry in the U.S.? | 13. Date of Entry in the U.S.? *(Mo/Day/Yr)* | 14. I-94# | 15. Status when Admitted *(Visa type, if any.)* |
| 16. Expiration of Status *(Mo/Day/Yr)* | 17. Mode of Transportation | 18. Is this child in removal proceedings? ☐ Yes ☐ No | |
| 19. If previously in the U.S., Date of Last Arrival | 20. Place of Last Arrival | 21. Status at Time of Last Arrival | |

22. Is this person to be included in this application? *(Check the appropriate box.)*

☐ Yes. *(Attach one (1) photograph of your spouse in the upper right hand corner of Page 3 on the extra copy of the application submitted for this person.)*

☐ No, because child is/has: ☐ Filing separately. ☐ Separate application pending. ☐ Over 21 years of age. ☐ Married.

☐ Other reasons. *(Explain why on separate paper.)*

**Information about your Spouse and Children - Continued.**

**Your Children, Regardless of Age or Marital Status.**

1. Alien Registration Receipt Number (A#):

| 2. Complete Last Name | 3. First Name | 4. Middle Name | 5. Date of Birth *(Mo/Day/Yr)* |
|---|---|---|---|
| 6. City and Country of Birth | 7. Nationality *(Citizenship)* | 8. Race, Ethnic or Tribal Group | 9. Sex ☐ Male ☐ Female |

**Immigration Status.**

| 10. Is this person in the U.S.? ☐ Yes. *(Complete blocks 11 to 22.)* ☐ No. | | | 11. Social Security # |
|---|---|---|---|
| 12. Place of Entry in the U.S.? | 13. Date of Entry in the U.S.? *(Mo/Day/Yr)* | 14. I-94# | 15. Status when Admitted *(Visa type, if any.)* |
| 16. Expiration of Status *(Mo/Day/Yr)* | 17. Mode of Transportation | 18. Is this child in removal proceedings? ☐ Yes ☐ No | |

| 19. If previously in the U.S., Date of Last Arrival | 20. Place of Last Arrival | 21. Status at Time of Last Arrival |
|---|---|---|

22. Is this person to be included in this application? *(Check the appropriate box.)*

☐ Yes. *(Attach one (1) photograph of your spouse in the upper right hand corner of Page on the extra copy of the application submitted for this person.)*

☐ No, because spouse is/has: ☐ Filing separately. ☐ Separate application pending. ☐ Over 21 years of age. ☐ Married.

☐ Other reasons. *(Explain why on separate paper.)*

**PART C. INFORMATION ABOUT YOUR CLAIM TO ASYLUM.**

1. Why are you seeking asylum? Explain in detail what the basis is for your claim. *(Attach additional sheets of paper as needed.)*

2. What do you think would happen to you if you returned to the country from which you claim you would be subjected to persecution? Explain in detail and provide information or documentation to support your statement, if available. *(Attach additional sheets of paper as needed.)*

3. Have you or any member of your family ever belonged to or been associated with any organizations or groups in your home country, such as a political party, student group, union, religious organization, military or para-military group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press?

☐ No. ☐ Yes. If yes, provide a detailed explanation of your involvement with the group(s) and include the name of the organization or group; the dates of your membership or affiliation; the purpose of the organization; your duties or your relatives' duties or responsibilities in the group or organization; and whether you or your relatives are still an active member. *(Attach additional sheets of paper as needed.)*

**Information about your Claim to Asylum - Continued.**

4. Have you or any member of your family ever been mistreated or threatened by the authorities of your home country or by a group or groups which are controlled by the government, or which the government of your home country is unable or unwilling to control?

☐ No. ☐ Yes. *(If YES, check any of the following boxes that apply.)*

☐ Race ☐ Religion ☐ Nationality ☐ Membership in a particular social group ☐ Political Opinion

On a separate sheet of paper, specify for each instance, what occurred and the circumstances; the relationship to you of the the person involved; the date; the exact location; who it was who took such action against you or your family member; his/her position in the government or group; the reason why the incident occurred; and the names and addresses of a few of the people who may have witnessed these actions and who could verify these statements. Attach documents referring to these incidents, if they are available. *(Attach additional sheets of paper as needed.)*

5. Have you or any member of your family ever been arrested, detained, interrogated, convicted and sentenced, or imprisoned in your country, any other country, or in the U.S.?

For each instance, specify what occurred and the circumstances; dates; location; the duration of the detention or imprisonment; the reason(s) for the detention or conviction; the treatment you received during the detention or imprisonment; any formal charges that were placed against you; the reason for your release; treatment of you after your release; and the names and addresses of a few of the people who could verify these statements. Attach documents referring to these incidents if they are available. *(Attach additional sheets of paper as needed.)*

6. Describe in detail your trip to the United States from your home country. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren), who are now in the U.S., travel through or reside in any other country before entering the U.S.?

☐ No. ☐ Yes. (If YES, for each person, identify each country and indicate the length of stay; the person's status while there; the reasons for leaving; whether the person is entitled to return for residence purposes; and if the person did not apply for refugee status or for asylum while there; or why he or she did not do so. *(Use additional sheets of paper as needed.)*

7. Do you fear being subjected to torture in your home country if you return?

☐ No. ☐ Yes. If yes, please explain why. *(Use additional sheet of paper as needed.)*

**PART D. ADDITIONAL INFORMATION ABOUT YOUR APPLICATION FOR ASYLUM.**

1. Do you, your spouse, or your child(ren) now hold, or have you ever held, permanent residence, other permanent status, or citizenship, in any country other than the one from which you are now claiming asylum?

☐ No. ☐ Yes.

2. Have you, your spouse, your child(ren), your parents ever filed for, been processed for, or been granted or denied refugee status or asylum by the U.S. Government?

☐ No. ☐ Yes. If YES, please explain the decision and what happened to any status you received as a result of that decision. *(Attach additional sheets of paper as needed.)*

3. Have you, your spouse, your child(ren), or your parents ever filed for, been processed for, or been granted or denied refugee status or asylum by any other country?

☐ No. ☐ Yes. If YES, please explain the decision and what happened to any status you received as a result of that decision. *(Attach additional sheets of paper as needed.)*

4. Have you, your spouse, or child(ren) ever caused harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion, or ever ordered, assisted, or otherwise participated in such acts?

☐ No. ☐ Yes. If YES, describe, in detail, the circumstance of your visit, for example, the date(s) of the trip(s), the purpose(s) or the trip(s), and the length of time you remained in that country for the visit(s). *(Attach additional sheets of paper as needed.)*

5. After you left your country of claimed persecution for the reasons you have described, did you return to that country?

☐ No. ☐ Yes. If YES, you must explain why you did not file within the first year after your arrival. In your explanation, describe any extraordinary circumstances or change(s) in your situation since your arrival which prevented you from applying earlier or any circumstances which resulted in your decision to apply at this time. Your failure to adequately explain such extraordinary circumstances or change in your circumstances may result in a finding that you are ineligible to apply for asylum. *(Attach additional sheets of paper as needed.)*

6. Are you filing the application more than one year after your last arrival in the United States?

☐ No. ☐ Yes. If YES, you must explain why you did not file within the first year after your arrival. In your explanation, describe any extraordinary circumstances or change(s) in your situation since your arrival which prevented you from applying earlier or any circumstances which resulted in your decision to apply at this time. Your failure to adequately explain such extraordinary circumstances or change in your circumstances may result in a finding that you are ineligible to apply for asylum. *(Attach additional sheets of paper as needed.)*

**PART E. SIGNATURE.**

*After reading the information on penalties in the instructions, complete and sign below. If someone helped you prepare this application, he or she must complete Part F.*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. Title 18, United States Code, Section 1546, provides in part: "Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact -- shall be fined in accordance with this title or imprisoned not more than five years, or both". I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Staple your photograph here.

***WARNING:*** Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act.

Signature of Applicant *(The person named in Part A)*

[ _____ ] _____

Sign your name so it all appears within the brackets. Date *(Mo/Day/Yr)*

| Print Name | Write your name in your native alphabet |
|---|---|
| | |

Did someone other than you or an immedate family member prepare the application? ☐ No ☐ Yes *(Complete Part F)*

Asylum applicants may be represented by counsel. Has INS provided you with a list of persons who may be available to assist you, at no cost, with your asylum claim? ☐ No ☐ Yes

**PART F. SIGNATURE OF PERSON PREPARING FORM IF OTHER THAN ABOVE.** *Sign below.*

I declare that I have prepared this application at the request of the person named in Part F, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant and that the completed application was read to the applicant in his or her native language for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information of the Form I-589 may also subject me to civil penalties under 8 U.S.C. Section 1324(c).

| Signature of Preparer | Print Name | Date *(Mo/Day/Yr)* |
|---|---|---|
| | | |

| Daytime Telephone Number ( ) | Address of Preparer: Street Number and Name |
|---|---|
| | |

| Apt. No. | City | State | ZIP Code |
|---|---|---|---|
| | | | |

**PART G. TO BE COMPLETED AT INTERVIEW.**

*You will be asked to complete this Part when you appear before an asylum officer of the Immigration and Naturalization Service (INS), or an Immigration Judge of the Executive Office for Immigration Review (EOIR) for examination.*

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not true to the best of my knowledge and that corrections numbered _____ to _____ were made by me or at my request.

Signed and sworn to before me by the above-name applicant on:

_____ _____

Signature of Applicant Date *(Mo/Day/Yr)*

_____ _____

Write your Name in your Native Alphabet Signature of Asylum Officer or Immigration Judge

[FR Doc. 97–18347 Filed 7–11–97; 8:45 am]

BILLING CODE 4410–18–C

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–97–23]**

### Construction Records for Tests and Inspections for Personnel Hoists

**ACTION:** Notice; proposed certification record requests; submitted for public comment and recommendations.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burdens, is conducting 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 (PRA 95) (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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the paperwork requirements contained in 29 CFR 1926.552(c)(15) that addresses inspections and tests of functions and safety devices of personnel hoists used in the construction industry. The Agency 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;
- 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.

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR–97–23, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION CONTACT:** Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219–7207. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207, ext. 132, or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the Information Collection Request on the certification provisions of Personnel Hoists, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The certification records required in 29 CFR 1926.552(c)(15) are necessary to assure compliance with the requirements for personnel hoists. They are intended to assure that the hoists have initial, periodic and regular maintenance checks.

#### II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirements for personnel hoists contained in 29 CFR 1926.552 (currently approved under OMB Control No. 1218–0210).

*Type of Review:* Extension.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Personnel Hoists (29 CFR 1926.552(c)(15)—Inspection Certifications.

*OMB Number: 1218–.*

*Agency Number:* Docket Number ICR–97–23.

*Affected Public:* State or local governments; Business or other for-profit.

*Number of Respondents:* 14,400.

*Frequency:* Every 3 months.

*Average Time per Response:* 15 minutes.

*Estimated Total Burden Hours:* 15,840.

*Total Annualized Capital/Startup Costs:* $0.

Signed at Washington, D.C., this 8th day of July 1997.

**Russell B. Swanson,**

*Director, Directorate of Construction.*

[FR Doc. 97–18394 Filed 7–11–97; 8:45 am]

**BILLING CODE 4510–26–M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR 97–21]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Construction Records for Rigging Equipment (29 CFR 1926.251(c)(15)(ii)—Proof-testing of Welded End Wire Rope Attachments

**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) [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 Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for 29 CFR 1926.251(c)(15)(ii). 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, 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.

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR 97–21, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION CONTACT:** Larry Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7198. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Larry Davey at (202) 219–7198 or Yamilet Ramirez at (202) 219–8055 ext. 141. For electronic copies of the Information Collection Request on 29 CFR 1926.251(c)(15)(ii) contact OSHA's WebPage on Internet at http://www.osha.gov/ and click on standards.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Occupational Safety and Health Act of 1970 (The Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. Section 1926.251(c)(15)(ii) requires employers to retain a certificate of proof-test from the manufacturer.

The retention of manufacturer certificates are necessary to assure compliance with the requirement for proof-testing welded end wire rope attachments and are intended to assure that all welded end attachments are tested at twice their rated capacity.

## II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirements contained in 29 CFR 1926.241(c)(15)(ii).

*Type of Review:* Extension.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Construction Records for Rigging Equipment (29 CFR 1926.251(c)(15)(ii)—Proof-testing of Welded End Wire Rope Attachments.

*OMB Number:* 1218–.

*Agency Number:* Docket Number ICR 97–21.

*Affected Public:* Business or other for profit.

*Number of Respondents:* 947,000.

*Frequency :* On occasion.

*Average Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 1515 hours.

*Total Annualized Capital/Startup Costs:* $0.

Signed at Washington, D.C., this 8th day of July 1997.

**Russell B. Swanson,**

*Director, Directorate Construction.*

[FR Doc. 97–18395 Filed 7–11–97; 8:45 am]

**BILLING CODE 4510–26–M**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–97–25]**

### Construction Records for Blasting Operations

**ACTION:** Notice; proposed collection of information requests; submitted for public comment and recommendations.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burdens is conducting 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 (PRA 95) (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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments on several requirements in 29 CFR 1926.900(k)(3)(I) which impose a burden on the employer to collect information related to the use of warning signs or other alternative means to prevent the premature detonation of electric blasting caps by mobile radio transmitters during blasting operations. The Agency 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.

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR–97–25, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION CONTACT:** Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219–7207. Copies of the referenced information collection request are available for inspection and copying in the Docket

Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207, ext. 132, or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the Information Collection Request on the provisions of Blasting Operations, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In Subpart U—Blasting and the Use of Explosives of OSHA's construction standards, employers are required to post a sign warning against the use of mobile radio transmitters on all roads within 1000 feet of blasting operations. When this would create an ''operational handicap'' an alternative method must be developed and implemented that will prevent the premature detonation of electric blasting caps. The alternative method must be written down and a competent person must certify its adequacy. OSHA currently has approval from the Office of Management and Budget for the requirement that a competent person must certify the adequacy of the alternative method, and through this preclearance process invites comments on the need to continue this requirement and the burden hour estimates for this certification requirement. OSHA does not currently have approval for the requirement to post the warning sign or the requirement for the employer to ''write'' down any alternative method of preventing premature detonations when the posting of warning signs would present an ''operational Handicap''. OSHA also seeks comments on the need for these requirements and the burden estimates developed.

## II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the certification requirements for blasting operations contained in 29 CFR 1926.900(k)(3)(i) which is currently approved under OMB Control No. 1218–0210). In addition this notice requests comment on OSHA's request for OMB approval of the other two collections of information in the blasting operation sections—the requirement to post a warning sign and the requirement to write down the alternative system when warning signs cannot be used.

*Type of Review:* Extension and Existing Collection Without OMB Approval.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Blasting Operations (29 CFR 1926.900(k)(3)(i)—Inspection Certifications.

*Agency Number:* Docket Number ICR–97–25.

*Affected Public:* State or local governments; Business or other for-profit.

*Number of Respondents:* 3,000 work sites.

*Frequency:* Once per 160 work sites.

Average Time per Response: 8 hours.

*Estimated Total Burden Hours:* 640.

*Total Annualized Capital/Startup Costs:* $240,000.

Signed at Washington, D.C., this 8th day of July 1997.

**Russell B. Swanson,**

*Director, Directorate of Construction.*

[FR Doc. 97–18396 Filed 7–11–97; 8:45 am]

**BILLING CODE 4510–26–M**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR 97–26]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Trucks Used Underground to Transport Explosives (29 CFR 1926.903(e))—Inspection Certifications

**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) [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 Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for 29 CFR 1926.903(e). 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, 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.

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR 97–26, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION CONTACT:**

Larry Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7198. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Larry Davey at (202) 219–7198, or Yamilet Ramirez at (202) 219–8055 ext. 141. For electronic copies of the Information Collection Request on 29 CFR 1926.903(e) contact OSHA's WebPage on Internet at http://www.osha.gov/ and click on standards.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Occupational Safety and Health Act of 1970 (The Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The inspection certification required in 29 CFR 1926.903(e) is necessary to assure compliance with the requirement for inspection of the electrical system in trucks used for the underground transportation of explosives. The inspection is intended to assure that trucks have a weekly maintenance check of the electrical system to detect any failures which may constitute an electrical hazard. Employers must prepare and retain a certification record of the inspection.

## II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirements contained in 29 CFR 1926.903(e).

*Type of Review:* Extension.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Trucks Used Underground to Transport Explosives (29 CFR 1926.903(e))—Inspection Certifications.

*OMB Number:* 1218–.

*Agency Number:* Docket Number ICR 97–26.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 1.

*Frequency:* Weekly.

*Average Time per Response:* 10 minutes.

*Estimated Total Burden Hours:* 525.

*Total Annualized Capital/Startup Costs:* 50.

Signed at Washington, D.C., this 8th day of July 1997.

**Russell B. Swanson,**

*Director, Directorate of Construction.*

[FR Doc. 97–18397 Filed 7–11–97; 8:45 am]

**BILLING CODE 4510–26–M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR 97–22]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Crawler, Truck and Locomotive Cranes (29 CFR 1926.550(b)(2)—Inspection Certification

**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) [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 Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for 29 CFR 1926.550(b)(2). 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, 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.

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR 97–22, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION CONTACT:** Larry Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7198. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Larry Davey at (202) 219–7198 or Yamilet Ramirez at (202) 219–8055 ext. 141. For electronic copies of the Information Collection Request on 29 CFR 1926.550(b)(2) contact OSHA's WebPage on Internet at http://www.osha.gov/ and click on standards.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Occupational Safety and Health Act of 1970 (The Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The inspection certification records required in 29 CFR 1926.550(b)(2) are necessary to assure compliance with the requirement for all crawler, truck, or locomotives cranes. They intended to assure that tests, inspections, and maintenance checks for cranes are conducted and certification records are retained on file until a new record is prepared.

## II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirements contained in 29 CFR 1926.550(b)(2).

*Type of Review:* Extension.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Crawler, Truck and Locomotive Cranes (29 CFR 1926.550(b)(2))—Inspection certification.

*OMB Number:* 1218–.

*Agency Number:* Docket Number ICR 97–22.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 947,000.

*Frequency:* monthly.

*Average Time per Response:* 30 minutes.

*Estimated Total Burden Hours:* 1,420,500.

*Total Annualized Capital/Startup Costs:* $0.

Signed at Washington, D.C., this 8th day of July 1997.

**Russell B. Swanson,**

*Director, Directorate of Construction.*

[FR Doc. 97–18398 Filed 7–11–97; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–97–33]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Overhead and Gantry Cranes (29 CFR 1910.179 (j)(2)(iii), (j)(2)(iv), (m)(1), and (m)(2))—Inspection Certifications

**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 (PRA 95) (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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in 29 CFR 1910.179. The Agency 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

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR–97–33, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION CONTACT:** Belinda Cannon, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone: (202) 219–8161. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, ext. 100, or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the Information Collection Request on the certification provisions of Overhead and Gantry Cranes, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on ''standards.''

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The inspection certification records required in 29 CFR 1910.179 are necessary to assure compliance with the requirement for overhead and gantry cranes. They are intended to assure that these cranes have periodic and regular maintenance checks and recorded inspections.

#### II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirements contained in 29 CFR 1910.179—Overhead and Gantry Cranes (currently approved under OMB Control No. 1218–0210).

*Type of Review:* Extension.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Overhead and Gantry Cranes (29 CFR 1910.179 (j)(2)(iii), (j)(2)(iv), (m)(1), and (m)(2))—Inspection Certifications.

*OMB Number:* 1218–.

*Agency Number:* Docket Number ICR–97–33.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 35,000.

*Frequency:* Monthly.

*Average Time per Response:* 0.30 hour.

*Estimated Total Burden Hours:* 367,528.

*Total Annualized Capital/Startup Costs:* $0.

Signed at Washington, D.C., this 2nd day of July 1997.

**John F. Martonik,**

*Acting Director, Directorate of Safety Standards Programs.*

[FR Doc. 97–18399 Filed 7–11–97; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR 97–14]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Asbestos in Construction

**AGENCY:** Occupational Safety and Health Administration (OSHA), 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 Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Asbestos Standard 29 CFR 1926.1101. A copy of the proposed information collection request (ICR) can be obtained by contracting the employee listed below in the **ADDRESSES** section of this notice.

Dates: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 12, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information 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 technique or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Written comments must be submitted by September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR 97–14, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION:** Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Barbara Bielaski at (202) 219–8076 or Adrian Corsey at (202) 219–7075. For electronic copies of the Information Collection Request on Asbestos in Construction contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Asbestos standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to asbestos. The standard requires employers to monitor employee exposure to asbestos, to monitor employee health and to provide employees with information about their exposures and the health effects of injuries.

## II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Asbestos Standard. Extension is necessary to provide continued protection to employees from the health hazards associated with occupational exposure to asbestos.

*Type of Review:* Extension.

*Agency:* Occupational Safety and Health Administration.

*Title:* Asbestos in Construction.

*OMB Number:* 1218–0134.

*Agency Number:* Docket Number ICR 97–14.

*Affected Public:* Business and other for-profit, Federal and State government, Local or Tribal governments.

*Total Respondents:* 286,821.

*Frequency:* On Occasion.

*Total Responses:* 53,488,129.

*Average Time per Response:* Time per response ranges from 5 minutes to maintain records to 17.3 hours to train qualified persons.

*Estimated Total Burden Hours:* 5,817,388.

*Estimated Capital, Operation/Maintenance Burden Cost:* $42,774,491.

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: June 30, 1997.

**Adam M. Finkel,**

*Director, Directorate of Health Standards Programs.*

[FR Doc. 97–18400 Filed 7–11–97; 8:45 am]

**BILLING CODE 4510–26–M**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. ICR–97–32]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Restraining Devices for Servicing Large Vehicle Multi-piece and Single Piece Rim Wheels (29 CFR 1910.177(d)(3)(iv))—Manufacturer's Certification of Structural or Welding Repairs

**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 (PRA 95) (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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed approval of the information collection requirements contained at 29 CFR 1910.177(d)(3)(iv). The Agency 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.

**DATES:** Written comments must be submitted on or before September 12, 1997.

**ADDRESSES:** Comments are to be submitted to the Docket Office, Docket No. ICR–97–32, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219-5046.

**FOR FURTHER INFORMATION CONTACT:** Richard Sauger, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219-7202, Ext. 137. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kennedy at (202) 219-8061, ext. 100, or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the Information Collection Request on the certification provision of Servicing Multi-piece and Single Piece Rim Wheels, contact OSHA's WebPage on the Internet at http://www.osha.gov/and click on ''standards.''

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The inspection certification records required in 29 CFR 1910.177(d)(3)(iv) are necessary to assure compliance with the requirement for multi-piece and single piece rim wheels. Included in that standard is a requirement for the employer to ensure that restraining devices and barriers (restraining devices or restraints) are used when large vehicle tires are inflated. Each device is required to be inspected prior to each day's use and after any accident. Any restraining device that is damaged must be immediately removed from service. Any damaged restraining device that has been removed from service. Any damaged restraining device that has been removed from service cannot be reused until it is repaired and reinspected. When the repairs require component replacement or rewelding, the repaired device must be certified by the manufacturer or a registered professional engineer as meeting the strength requirements of 29 CFR 1910.177(d)(3)(iv).

## II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirement contained in 29 CFR 1910.177(d)(3)(iv)—Servicing Multi-piece and Single Piece Rim Wheels (currently approved under OMB Control No. 1218–0210).

*Type of Review:* Extension.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Servicing Multi-piece and Single Piece Rim Wheels.

*OMB Number:* 1218.

*Agency Number:* ICR–37–32.

*Frequency:* Varies.

*Affected Public:* State of local governments; Business or other for-profit.

*Number of Respondents:* 80.

*Estimated Total Burden Hours:* 6 hours.

*Total Annualized Capital/Startup Costs:* $0.

Signed at Washington, D.C., this 7th day of July 1997.

**John F. Martonik,**

*Acting Director, Directorate of Safety Standards Programs.*

[FR Doc. 97–18401 Filed 7–11–97; 8:45 am]

**BILLING CODE 4510–26–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 97–095]**

### Agency Information Collection: Submission for OMB Review, Comment Request

**AGENCY:** National Aeronautics and Space Administration (NASA).

**SUMMARY:** The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this proposal should be received on or before August 13, 1997.

**ADDRESSES:** All comments should be addressed to Ms. Lois Ryno, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt Road, Greenbelt, MD 20771–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

**Reports**

*Title:* Locator and Information Services Tracking System (LISTS).

*OMB Number:* 2700–0064.

*Type of Review:* Reinstatement.

*Need and Uses:* The LIST System is used primarily to support services on the Center dependent upon accurate locator-type information.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 13,111.

*Responses Per Respondent:* 1.

*Estimated Annual Responses:* 13,111.

*Estimated Hours Per Request:* .083.

*Estimated Annual Burden Hours:* 1088.21.

*Frequency of Report:* As required.

**Donald J. Andreotta,**

*Deputy Chief Information Officer (Operations), Office of the Administrator.*

[FR Doc. 97–18433 Filed 7–11–97; 8:45 am]

**BILLING CODE 7510–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–3 and 50–247]**

### Consolidated Edison Company of New York, Inc; Indian Point Nuclear Generating Unit Nos. 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding the proposed corporate restructuring of Consolidated Edison Company of New York, Inc. (Con Edison), the licensee for Indian Point Nuclear Generating Unit Nos. 1 and 2. By letter dated December 24, 1996, Con Edison informed the Commission that it is proposing to become a wholly owned subsidiary of a newly created holding company, which will be named at a later date. Con Edison will remain the holder of its licenses for Indian Point Nuclear Generating Unit Nos. 1 and 2. Under the restructuring, the holders of Con Edison common stock will become the holders of common stock of the holding company on a share-for-share basis. After the restructuring, Con Edison will continue to be a public utility providing the same utility services as it did immediately prior to the restructuring.

According to the application, there will be no effect on the management, or sources of funds for operation, maintenance, or decommissioning, of Indian Point Nuclear Generating Unit Nos. 1 and 2 due to the corporate restructuring.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the licensee's letter dated December 24, 1996. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland this 7th day of July 1997.

For the Nuclear Regulatory Commission.

**Jefferey F. Harold,**

*Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–18363 Filed 7–11–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–413 and 50–414]**

## Duke Power Company, et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to the Duke Power Company, et al. (DPC or the licensee) for operation of the Catawba Nuclear Station, Unit 1 and 2, located in York County, South Carolina.

The proposed amendments, requested by the licensee in a letter dated May 27, 1997, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants,'' dated April 1995. NUREG–1431 has been developed through working groups composed of both NRC staff members and industry representatives and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current Catawba TS, and, using NUREG–1431 as a basis, developed a proposed set of improved TS for Catawba. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change, which was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the existing TS into five general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, less restrictive changes, and removed detail changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1431 and do not involve technical changes to the existing TS. The proposed changes include: (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information which must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

More restrictive changes are those involving more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems and components described in the safety analyses. For each requirement in the current Catawba TS that is more restrictive than the corresponding requirement in NUREG–1431, which the licensee proposes to retain in the improved Technical Specifications (ITS), the licensee has provided an explanation of why it has concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facilities because of specific design features of the plant.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITS. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431 and, thus, provides a basis for these revised TS or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

Removed detail changes move details from the current TS to a licensee-controlled document. The details being removed from the current TS are considered not to be initiators of any analyzed events nor required to mitigate accidents or transients. Therefore, such removals do not involve a significant increase in the probability or consequences of an accident previously evaluated. Moving some details to licensee-controlled documents will not involve a significant change in design or operation of the plant and no hardware is being added to the plant as part of the proposed changes to the current TS. The changes will not alter assumptions made in the safety analysis and licensing basis. Therefore, the changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not reduce the margin of safety since they have no impact on any safety analysis assumptions. In addition, the details to be moved from the current

TS to a licensee-controlled document are the same as the existing TS.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in the TS. Relocated changes are those current TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in that portion of its May 27, 1997, application titled ''Application of Selection Criteria to the Catawba Unit 1 and 2 Technical Specifications'' in Volume 1 of the submittal. The affected structures, systems, components, or variables are considered not to be initiators of analyzed events nor required to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the Updated Final Safety Analysis Report (UFSAR), the TS Bases, the Selected Licensee Commitments Manual, or plant procedures. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 13, 1997, 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, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. 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.

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, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Paul R. Newton, Legal Department (PBO5E), Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated May 27, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 7th day of July 1997.

For the Nuclear Regulatory Commission.

**Herbert N. Berkow,**

*Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–18362 Filed 7–11–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–263, 50–282, and 50–306]**

## Northern States Power Company; Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has permitted Northern States Power Company (NSP, the licensee) to withdraw its December 6, 1995, application for amendments to Facility Operating Licenses Nos. DPR–22, DPR–42, and DPR–60 for the Monticello Nuclear Generating Plant and the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, respectively. The Monticello Nuclear Generating Plant is located in Wright County, Minnesota; the Prairie Island Nuclear Generating Plant is located in Goodhue County, Minnesota.

The proposed amendments would have modified the operating licenses to reflect a transfer of control of the licenses resulting from the proposed merger of NSP with Wisconsin Energy Corporation. By letter dated June 10, 1997, NSP informed the Commission that on May 16, 1997, NSP and Wisconsin Energy Corporation announced an agreement to terminate plans to merge the two companies and that it was withdrawing the application for amendments.

The Commission had previously issued an Order Approving Transfer of Control of Licenses and Notice of Consideration of Proposed Issuance of Associated Amendments published in the **Federal Register** on April 11, 1997 (62 FR 17882). The order becomes null and void on September 30, 1997, by its own terms.

For further details with respect to this action, see the application for amendments dated December 6, 1995, the application for transfer of control of licenses dated October 20, 1995, and the licensee's letter dated June 10, 1997. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Rockville, Maryland, this 7th day of July 1997.

For the Nuclear Regulatory Commission.

**Beth A. Wetzel,**

*Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–18364 Filed 7–11–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–155]**

## Consumers Power Company; Big Rock Point Plants Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–6, issued to Consumers Power Company, (CPCo, the licensee), for operation of the Big Rock Point Plant (BRP), located in Charlevoix County, Michigan.

### Environmental Assessment

*Identification of the Proposed Action*

The proposed action would revise the Facility Operating License No. DPR–6 and the Technical Specifications (TS) appended to Facility Operating License No. DPR–6 for the Big Rock Point Plant. Specifically, the proposed action would amend the license to reflect the change in the licensee's name from Consumers Power Company to Consumers Energy Company.

The proposed action is in accordance with the licensee's application for amendment dated April 30, 1997.

*The Need for the Proposed Action*

The proposed action is to revise the company name in the license to reflect the corporate name change that occurred on March 11, 1997.

*Environment Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed changes to the license and TS. According to the licensee, the name change will not impact the existing ownership of the Big Rock Point Plant or the existing entitlement to power and will not alter the existing antitrust license conditions applicable to CPCo or CPCo's ability to comply with these conditions or with any of its other obligations or responsibilities. As stated by the licensee, ''The corporate structure remains the same, and all legal characteristics remain the same. Thus, there is neither a change in the ownership, state of incorporation, registered agent, registered office, directors, officers, rights or liabilities of the Company, nor the function of the Company or the way in which it does business. The Company's financial responsibility for the Big Rock Point Plant and its sources of funds to support the facility remain the same. Further, this name change does not impact the Company's ability to comply with any of its obligations or responsibilities under the license.'' Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there will be no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action is administrative in nature and does not involve any physical features of the plant. Thus, it does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. 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*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Big Rock Point Plant.

*Agencies and Persons Consulted*

In accordance with its stated policy, on June 13, 1997, the staff consulted with the Michigan State official, Dennis Hahn, of the Michigan Department of Environmental Quality, Drinking Water and Radiological Protection Division, regarding the environmental impact of

the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission 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 April 30, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the North Central Michigan College, 1515 Howard Street, Petoskey, MI 49770.

Dated at Rockville, Maryland, this 7th day of July 1997.

For the Nuclear Regulatory Commission.

**Linh N. Tran,**

*Project Manager, Project Directorate III-I, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–18365 Filed 7–11–97; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL SERVICE

### Specifications for Information Based Indicia Program ''Key Management Plan''

**AGENCY:** Postal Service.

**ACTION:** Notice of proposed specifications with request for comments.

**SUMMARY:** Historically, postage meters have been mechanical and electromechanical devices that (1) maintain through mechanical or electronic ''registers'' (postal security devices) an account of all postage printed and the remaining balance of prepaid postage, and (2) print postage postmarks (indicia) that are accepted by the Postal Service as evidence of the prepayment of postage. A proposed specification has been developed on these subjects, and is entitled ''Information Based Indicia Program (IBIP) Key Management Plan (Draft).'' The IBIP Key Management Plan is a document intended to provide information pertaining to the life cycle of the cryptographic keys used by the United States Postal Service (USPS) Information Based Indicia Program (IBIP). The U.S. Postal Service is seeking comments on this specification.

The Postal Service also seeks comments on intellectual property issues raised by the Key Management Plan if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the specifications, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

**DATES:** Comments on the Key Management Plan must be received on or before October 14, 1997. Comments addressing intellectual property issues must be received on or before August 28, 1997.

**ADDRESSES:** Copies of the Key Management Plan may be obtained from: Terry Goss, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–6807. Mail or deliver written comments to: Manager, Metering Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–6807. Copies of all written comments may be inspected and photocopied between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Terry Goss, (202) 268–3757.

**SUPPLEMENTARY INFORMATION:** The Information Based Indicia Program (IBIP) is a Postal Service initiative supporting the development and implementation of a new form of postage indicia. An ''IBIP Postal Security Device'' provides cryptographic signature, financial accounting, indicium creation, device authorization, and audit functions.

The goal for IBIP is to provide an environment in which customers can apply postage through new technologies that improve postal revenue security. This requires a new form of postage indicia and the adoption of standards to facilitate industry investment and product development.

The Key Management Plan is used to define the generation, distribution, use, and replacement of the cryptographic keys used by the USPS, Product/Service Providers, and Postal Security Devices (see 61 FR 34460, July 2, 1996). The management of cryptographic keys is the most critical function associated with cryptographic security. Security afforded by the cryptographic algorithms in use cannot be guaranteed if the cryptographic keys are not generated, disseminated, stored, used, and ultimately destroyed in a secure manner. The intent of this Key Management Plan is to address all of these issues with respect to IBIP.

It is emphasized that this proposed draft standard is being published for comment and is subject to final definition.

Although exempt from the notice and comments requirements of the Administrative Procedure Act (5 U.S.C. 553 (b),©) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the proposed specification.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 97–18415 Filed 7–11–97; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Privacy Act of 1974; System of Records

**AGENCY:** Postal Service.

**ACTION:** Notice of modifications and addition of three new routine uses to an existing system of records.

**SUMMARY:** This document publishes notice of modifications to Privacy Act system of records USPS 130.040, Philately—Postal Product Sales and Distribution, renamed by this notice to USPS 220.030, Marketing Records—Postal Product Sales and Distribution. The proposed modifications rename the system to better describe the type of information collected; update various segments of the system notice to reflect collection of information relating to new electronic retail concepts; and add three related routine uses.

Two of the three new routine uses allow disclosure of limited information to a contractor to fulfill the agency functions of bank card verification, order shipping, and customer service support. The other routine use allows the Postal Service to discuss with either the sender or recipient the status of an order that may be retrieved by the other's name.

**DATES:** Any interested party may submit written comments on the proposed amendments and additions. This proposal will become effective without further notice on August 25, 1997, unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Written comments on this proposal should be mailed or delivered to Payroll Accounting and Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8800, Washington, DC 20260–5242. Copies of all written comments will be available at the above address for public inspection and photocopying between 8

a.m. and 4:45 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Betty E. Sheriff, (202) 268–2608.

**SUPPLEMENTARY INFORMATION:** Privacy Act system of records USPS 130.040, Philately—Postal Product Sales and Distribution, historically has collected information relating to philatelic sales promotion programs. With the passage of time, information within the system now relates to both philatelic and other Postal Service-sponsored product sales. ''Philately'' in the current title still implies that the system's coverage is limited to philatelic sales. Consequently, this notice renames the system to USPS 220.030, Marketing Records—Postal Product Sales and Distribution. This new name changes categorization of the system from ''Philately'' to the broader ''Marketing Records.''

The modifications to the system notice do not alter the character or use of information contained in the system, but rather improve the system description to reflect information collection in today's environment. As stated above, the system was originally established to collect information related to philatelic sales. Orders for philatelic and, later, other postal products were submitted by way of an order form or other paper medium. Recently the Postal Service introduced new retail concepts that increase the availability of postal products and services. These concepts provide a convenient means for postal customers to place orders by way of the Internet, kiosks, and interactive voice response systems as well as the traditional paper form. The modifications proposed by this notice are intended to cover retail programs and the various means for placing orders. With these modifications, the system description will better inform the public of the circumstances under which the Postal Service may be maintaining information about them.

The new retail programs also prompt the addition of the three routine uses. Routine use numbers 1 and 2 allow the Postal Service to disclose limited information to a contractor for the purpose of providing customer service support and verifying bank card transactions, respectively. Disclosure for these purposes is considered authorized by the Postal Service's general routine use ''f'' (published in the **Federal Register** on October 26, 1989 (54 FR 43654)), which allows disclosure to a contractor to fulfill an agency function. Nevertheless, routine use numbers 1 and 2 are published to better communicate to records subjects the key functions for which information may be disclosed to a contractor. Routine use number 3 permits the Postal Service to disclose to either the sender or recipient of an order information concerning the status of the order. When a customer places an order for a postal product, information may be maintained under that customer's name. However, it is frequently the intended recipient of the order who contacts the Postal Service concerning nonreceipt or other order problems. To resolve the problem, the Postal Service must discuss the order with the recipient. New routine use number 3 permits such disclosure.

Each of the proposed routine uses is compatible with the purpose for collecting the information. The purpose for collecting information is, in part, ''to operate a subscription service or services for customers who remit money for a particular product or products.'' Because the disclosures allowed by these routine uses will enable the Postal Service to accept and fulfill orders for postal products and services, the routine uses are clearly compatible with the system's purpose.

All records within this system continue to be kept in a secured environment. The Safeguards section of the system notice is revised to more fully describe the controls applied, particularly to computer systems and automated records. Controls have been strengthened commensurate with the level of protection required in support of the new retail concepts. Levels of the security architecture of computer systems have been analyzed to ensure security of the systems. Contractors who maintain data collected by this system are subject to the Privacy Act in accordance with subsection (m) and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 130.040, renamed by this notice to 220.030, was last published in its entirety in the **Federal Register** on May 20, 1991 (56 FR 23095). The Postal Service proposes amending that system as shown below.

**USPS 130.040**

[CHANGE TO READ] USPS 220.030.

**SYSTEM NAME:**

[CHANGE TO READ] Marketing Records—Postal Product Sales and Distribution, 220.030.

**SYSTEM LOCATION:**

[CHANGE TO READ] Marketing, Headquarters; Philatelic Fulfillment Center, Kansas City, MO; and contractor sites.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

[CHANGE TO READ] Customers who have responded to various philatelic and other Postal Service-sponsored product sales promotion programs. Programs include, but are not limited to, sales of philatelic products, postal products, and products that include licensed stamp designs, such as phone cards. Response may be received by submission of unsolicited correspondence, such as letters and preprinted and tear off order forms; telephone; interactive voice response systems; on-line orders via Internet and commercial vendors; and orders via other interactive electronic initiatives such as kiosk retail sales applications. Response may involve an order for products, opening a subscription account, or a request to receive future product announcements.

**CATEGORIES OF RECORDS COVERED BY THE SYSTEM:**

[CHANGE TO READ] Name, address, customer profile and telephone number of customer who orders or subscribes to receive postal products; name and address of recipient of order; description of the items ordered and prices; payment type; credit card payment information; order fulfillment information; inquiries on status of orders; claims submitted for defective merchandise; and lists identifying individuals who have submitted bad checks.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

[CHANGE TO READ] Routine use statements a, b, c, d, e, f, g, h, and j listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

**Note:** Phone card information covered by the system is owned by phone card vendors; consequently, no routine uses apply to phone card information.

1. Information from this system may be disclosed to a Postal Service contractor for the purpose of providing customer service support services with

regard to the acceptance and fulfillment of orders for a postal-sponsored product.

2. Information from this system may be disclosed to a contractor for the purpose of verifying bank cards when customers order postal-sponsored products and pay by bank card. Disclosure will be limited to information needed for verification.

3. Information from this system may be disclosed to the purchaser or intended recipient of an order for a postal-sponsored product for purposes of responding to his or her query regarding status of or problems in filling the order. Disclosure of financial information to a recipient will be limited to the explanation that payment is outstanding.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.**

**STORAGE:**

[CHANGE TO READ] Paper forms and correspondence; electronic order forms; microform; magnetic tape and disk; and computer printouts.

**RETRIEVABILITY:**

[CHANGE TO READ] Name of customer (purchaser, recipient, or subscriber) and identifying number, if assigned.

**SAFEGUARDS:**

[CHANGE TO READ] Paper and microform records and computer storage tapes and disks are maintained in closed filing cabinets in controlled access areas or under general scrutiny of program personnel. Computers containing information are located in controlled access areas with personnel access controlled by a cypher lock system, card key system, or other physical access control method, as appropriate. Authorized persons must be identified by a badge. Computer systems are protected with an installed security software package, the use of computer log-on identifications and operating system controls including access controls, terminal and user identifications, and file management. On-line data transmission is protected by encryption. Contractors must provide similar protection subject to operational security compliance reviews by the Postal Inspection Service.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

[CHANGE TO READ] Vice President, Operations Support, United States Postal Service, 475 L'Enfant Plaza SW., Washington DC 20260–7000. Chief Marketing Officer and Senior Vice President United States Postal Service 475 L'Enfant Plaza SW., Washington DC 20260–2400.

* * * * *

**RECORD SOURCE CATEGORIES:**

[CHANGE TO READ] Purchasers of or subscribers to Postal Service products; recipients of Postal Service-sponsored products; and contractors.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 97–18416 Filed 7–11–97; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 22740; 811–4071]**

## Bartlett Management Trust; Notice of Application

July 8, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** Bartlett Management Trust.

**RELEVANT ACT SECTION:** Order requested under section 8(f) of the Act.

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATES:** The application was filed on February 24, 1997, and amended on June 24,1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 4, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC. 20549. Applicant, 36 East Fourth Street, Cincinnati, Ohio 45202.

**FOR FURTHER INFORMATION CONTACT:** Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end management investment company organized as an Ohio business trust. On July 19, 1984, applicant filed a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective and the initial public offering commenced on November 30, 1984. Applicant consists of one series, Bartlett Cash Reserves Fund (the ''Acquired Fund'').

2. On August 12, 1996, applicant's board of trustees (the ''Board'') approved resolutions authorizing applicant to enter into an Agreement and Plan of Reorganization and Termination (the ''Plan'') whereby the assets and liabilities of the Acquired Fund would be exchanged for shares of Legg Mason Cash Reserve Trust (the ''Acquiring Fund''). The Acquiring Fund is organized as a Massachusetts business trust and SEC records indicate that it is a registered investment company.

3. In approving the Plan, the Board considered, among other things, that applicant and the Acquiring Fund had similar investment objectives and policies, there was no compelling reason to maintain and market two substantially similar funds, and the Acquiring Fund could provide applicant's shareholders approximately the same return with the added diversification and liquidity that only a substantially larger fund could provide.

4. Bartlett & Co., applicant's investment adviser, and Western Asset Management Company (''Western Company''), the Acquiring Fund's investment adviser, are both wholly-owned subsidiaries of Legg Mason, Inc. Consequently, applicant and the Acquiring Fund may be deemed to be affiliated persons by reason of having investment advisers that are under common control. Applicant therefore relied on the exemption provided by rule 17a–8 to effect the transaction.[1]

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers. The staff of the Division of Investment Management has stated that it would not recommend that the Commission take

Continued

Pursuant to rule 17a–8 under the Act, the Board determined that the proposed reorganization was in the best interest of applicant and that the interests of the existing shareholders would not be diluted as a result of the proposed reorganization.

5. A proxy statement was filled with the SEC on September 24, 1996, and distributed to applicant's shareholders on November 5, 1996. Applicant's shareholders approved the Plan on December 13, 1996.

6. On December 20, 1996 (the ''Closing Date''), there were 35,882,668.46 shares of common stock of the Acquired Fund outstanding having an aggregate net asset value of $35,873,215.52 and a per share net asset value of $1.00. Pursuant to the Plan, on the Closing Date, applicant transferred all of its assets and liabilities to the Acquiring Fund in exchange solely for shares of the Acquiring Fund. Shares of the Acquiring Fund were distributed *pro rata* to shareholders of the Acquired Fund, causing the liquidation of applicant. The net asset value of shares of the Acquiring Fund was identical to the net asset value of shares of the Acquiring Fund owned by such shareholders.

7. Legg Mason Fund Adviser, Inc., the Acquiring Fund's manager, and Western Company will be liable for all expenses incurred in connection with the reorganization and with applicant's liquidation and winding up, including professional fees, printing and mailing expenses, and the cost of proxy solicitations made by telephone or otherwise. Applicant incurred no expenses in connection with the reorganization.

8. As of the date of the application, applicant had no securityholders, liabilities, or assets, and was not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant has filed with the State of Ohio a Resolution of Withdrawal of Business Trust by the Trustees.

enforcement action under section 17(a) of the Act if investment companies that are affiliated persons solely by reason of having investment advisers that are under common control rely on rule 17a–8. *See e.g.*, Capital Mutual Funds and Nations Fund Trust (pub. avail. Feb. 24, 1994).

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–18373 Filed 7–11–97; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22735; 812–10592]**

## The Riverfront Funds, Inc., et al.; Notice of Application

July 7, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** The Riverfront Funds, Inc. (the ''Company''), The Riverfront Funds (the ''Trust''), and The Provident Bank (the ''Bank'').

**RELEVANT ACT SECTIONS:** Order requested under section 17(b) for an exemption from sections 17(a)(1) and 17(a)(2).

**SUMMARY OF APPLICATION:** Applicants request an order to permit the Company to transfer all the assets and liabilities of certain of its series to the Trust in exchange for shares of corresponding series of the Trust (the ''Reorganization'').

**FILING DATES:** The application was filed on March 26, 1997, and amended on June 20, 1997. By letter dated July 3, 1997, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 30, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. The Company and the Trust, 3435 Stelzer Road, Columbus, Ohio 43219–3035, and the Bank, 309 Vine Street, Cincinnati, Ohio 45202.

**FOR FURTHER INFORMATION CONTACT:** Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Company, a Maryland corporation, is a registered open-end management investment company. The Company operates as a series company and currently offers shares of the following series: The Riverfront U.S. Government Securities Money Market Fund (the ''Company Money Market Fund''), The Riverfront U.S. Government Income Fund (the ''Company Government Income Fund''), The Riverfront Income Equity Fund (the ''Company Income Equity Fund''), The Riverfront Ohio Tax-Free Bond Fund (the ''Company Tax-Free Bond Fund''), The Riverfront Balanced Fund (the ''Company Balanced Fund''), The Riverfront Stock Appreciation Fund (the ''Company Stock Appreciation Fund''), and The Riverfront Large Company Select Fund (the ''Company Large Company Select Fund'') (the ''Acquired Series'').[1] Except for the Company Money Market Fund, each Acquired Series offers shares of two classes, Investor A Shares and Investor B Shares. The Company Money Market Fund offers shares of one class, Investor A Shares.

2. Investor A Shares of each Acquired Series, other than the Company Money Market Fund, are sold with a sales charge of 4.50% which declines as the amount invested increases, all or a portion of which may be waived under certain circumstances. Investor A Shares of the Company Money Market Fund are sold without a sales charge. Investor A Shares of each Acquired Series also are subject to a distribution fee pursuant to rule 12b-1 under the Act (''rule 12b-1 fee'') of up to .25% of average daily net assets. Investor B Shares of each Acquired Series, other than the Company Money Market Fund, are sold subject to a contingent deferred sales charge that declines over time from 4% to 1% and which may be waived for

[1] The Company Stock Appreciation Fund is not an applicant for relief hereunder and, unless stated otherwise, the term Acquired Series as used herein hereinafter will exclude such series.

certain redemptions. Investor B Shares of each Acquired Series, other than the Company Money Market Fund, also are subject to a rule 12b-1 fee of up to 1% of average daily net assets. Investor B Shares outstanding for eight years automatically convert to Investor A Shares.

3. The Trust, an Ohio business trust, has been organized to succeed to the assets, liabilities, and operations of the Company. The Trust is authorized to issue shares of the following series: The Riverfront U.S. Government Securities Money Market Fund (the ''Trust Money Market Fund''), The Riverfront U.S. Government Income Fund, The Riverfront Income Equity Fund, The Riverfront Ohio Tax-Free Bond Fund, The Riverfront Balanced Fund, The Riverfront Small Company Select Fund (the ''Trust Small Company Select Fund''), and The Riverfront Large Company Select Fund (the ''Acquiring Series'').[2] The Acquiring Series' investment objectives, policies and restrictions are identical in all material respects to those of the Acquired Series. Currently, the Trust has four trustees, three of whom are identical to the four directors of the Company. The Trust's officers are identical to the Company's officers. Except for the Trust Money Market Fund, each of the Acquiring Series currently is authorized to offer two classes of shares, Investor A Shares and Investor B Shares. The Trust Money Market Fund currently is authorized to issue shares of one class, Investor A Shares. The Trust has been authorized to enter into written service provider agreements and distribution plans, and has adopted policies and procedures identical in all material respects to the service provider agreements, distribution plans, and policies and procedures now in place for the Company, and with the identical service providers, and has retained the same firm of independent public accountants.

4. The Bank, an Ohio banking corporation, is a subsidiary of Provident Bancorp, Inc., a publicly held bank holding company. The Bank serves as investment adviser, fund accountant, transfer agent, and custodian for both the Company and the Trust. On February 28, 1997, Provident and its affiliates, directly or indirectly, owned, controlled, or held the power to vote 41.9% of the outstanding shares of the Company Money Market Fund, 94.5% of the Company Government Income Fund, 16.0% of the Company Income Equity Fund, 87.4% of the Company Tax-Free Bond Fund, 19.3% of the Company Balanced Fund, 1.9% of the Company Stock Appreciation Fund, and 99.6% of the Company Large Company Select Fund.

5. The Company and the Trust have entered into an agreement and plan of reorganization and liquidation, dated as of March 21, 1997 (the ''Agreement''). The principal purpose of the Reorganization is to change the domicile of the Company from that of a Maryland corporation to that of an Ohio business trust. The board of directors of the Company (the ''Company Board'') believes that operation as an Ohio business trust will provide greater latitude and flexibility of operation than operating the business as a Maryland corporation, which, in turn, may result in some cost savings. Under the Agreement, the Company has agreed to sell all of the assets, subject to liabilities, of each of the Acquired Series to the Trust and its corresponding Acquiring Series, in exchange for assumption of all of the Acquired Series' liabilities and the issuance and constructive delivery [3] of Investor A Shares and Investor B Shares of the corresponding Acquiring Series of the Trust (Investor A Shares only for the Trust Money Market Fund) equal in net asset value, at the close of business on July 31, 1997 (the ''Valuation Time''), to the value of the Investor A Shares and Investor B Shares of the corresponding Acquired Series.[4] Thereafter, such shares constructively will be distributed *pro rata* to the respective Acquired Series' shareholders in proportion to the number and class of Acquired Series shares owned as of 9:00 a.m., on August 1, 1997, upon the liquidation and dissolution of the Company and the Acquired Series.

6. The Company Board, including the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, considered the Reorganization on August 16, 1996, and unanimously approved the Agreement on October 21, 1996. The sole trustee of the Trust (the ''Trust Board'') approved the Agreement on October 21, 1996.[5] Proxy solicitation materials of the Company describing the Trust, the Reorganization and the Agreement were mailed to the Company's shareholders on June 26, 1997, and a special meeting of shareholders will be held to consider the Agreement on or about July 31, 1997. Subject to shareholder approval of the Agreement, and the issuance by the SEC of the requested order, the Reorganization will be completed on or about August 1, 1997. Maryland law and the Company's articles of incorporation require both director and shareholder approvals for certain organizational changes (including change of domicile reorganizations such as the Reorganization).

7. In considering the Agreement, the Company Board, including the directors who are not ''interested persons'' as defined in the Act, and the Trust Board, found that participation in the Reorganization is in the best interests of the shareholders of the Company and the Trust, and that the interests of the shareholders of the Acquired Series and the Acquiring Series, respectively, will not be diluted as a result of the Reorganization. The factors considered by each of the Company Board and the Trust Board included, among others, (a) the business objectives and purposes of the Reorganization, (b) the fact that the investment objectives, policies, and restrictions of the respective Acquired Series are identical to those of the Acquiring Series, (c) the terms and conditions of the Agreement, including the allocation of expenses of the Reorganization, and (d) the tax-free nature of the Reorganization.

8. Each of the Company and the Trust will pay its respective fees and expenses of the Reorganization, and the Trust will pay its own organization costs and the Company will be responsible for the proxy solicitation and other costs associated with the shareholders meeting.

9. Completion of the Reorganization is subject to a number of conditions precedent, in addition to approval of the Agreement by the Company Board and the shareholders, including that (a) the Company and the Acquired Series, and the Trust and the Acquiring Series have received opinions of counsel stating, among other things, that the Reorganization will constitute a

[2] The Trust Small Company Select Fund is not an applicant for relief hereunder and, unless stated otherwise, the term Acquiring Series as used herein hereinafter will exclude such series.

[3] ''Constructive distribution'' means that, for state and tax law purposes, the Trust will issue and deliver to the Company, and the Company will distribute to its shareholders upon its liquidation, shares of the appropriate Acquiring Series only as bookkeeping entries, and that no share certificates representing ownership of the Acquiring Series actually can or will be issued, delivered and distributed.

[4] Because the Acquiring Series will have no assets or liabilities as of the Valuation Time, the net asset value per share of each of the Investor A Shares and Investor B Shares of an Acquiring Series (Investor A Shares only of the Trust Money Market Fund) has been established initially to equal the net asset value per share of the Investor A Shares and Investor B Shares of the corresponding Acquired Series (Investor A Shares of the Company Money Market Fund) as of the Valuation Time.

[5] On such date and in connection with the Reorganization, the officers of the Trust were authorized to cause the Trust to adopt and succeed to the Company's registration statement.

''reorganization'' under section 368(a) of the Internal Revenue Code of 1986, as amended (the ''Code''), that each of the corresponding Acquiring Series and Acquired Series is a ''party to a reorganization'' within the meaning of section 368(b) of the Code and, as a consequence, the Reorganization will be tax-free for each of the Acquiring Series and Acquired Series and their respective shareholders, and (b) the Company and the Trust shall have received the order requested in the application. After entry of an order by the SEC granting the relief requested in the application, neither the Company nor the Trust will make any material changes to the Agreement that affect the application without the prior approval of the SEC staff.

**Applicants' Legal Analysis**

1. Sections 17(a)(1) and 17(a)(2) of the Act prohibit any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling to or purchasing from such registered company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5 per centum or more of the outstanding voting securities of such other person; (b) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with the power to vote, by such other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and, (d) if such other person is an investment company, any investment adviser thereof.

2. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; and (b) the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

3. Rule 17a–8 generally exempts from the prohibitions of section 17(a) mergers, consolations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that, because Provident and its affiliates own, control, or hold with the power to vote 5% or more of the outstanding voting securities of each Acquired Series and because Provident is the investment adviser to the Company and the Trust, and each of their respective series, Provident may be an affiliated person of the Company and the Trust, and each of the Acquired Series and the Acquiring Series, under section 2(a)(3)(C) of the Act for reasons in addition to having common directors/trustees and officers and a common investment adviser. Applicants believe that the Company therefore is an affiliated person of an affiliated person of the Trust prohibited by section 17(a)(1) from selling any security or other property to the Trust, and that applicants may not rely on rule 17a–8. For this reason, applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization.

4. Applicants submit that the Reorganization satisfies the requirements of section 17(b). Applicants state that the shareholders of the Acquired Series, in effect, will become shareholders of Acquiring Series, the investment objectives, policies and restrictions of which are identical to those of the Acquired Series, pursuant to an exchange which is based on the relative net asset values of such shares and no sales charge or contingent deferred sales charge will be incurred by shareholders of the Acquired Series in connection with their acquisition of Acquiring Series shares. In addition, applicants note that the Company Board and the Trust Board, including directors who are not ''interested persons'' as defined in the Act, have respectively determined that the Reorganization is in the best interest of the Company and the Trust and of the shareholders, respectively, of the Acquired Series and the Acquiring Series. Finally, applicants submit that the Reorganization, if undertaken in the manner described in the application, is consistent with the general purposes of the Act as set forth in section 1(b) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–18337 Filed 7–11–97; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #2960]**

### State of Michigan

Allegan County and the contiguous Counties of Barry, Kalamazoo, Kent, Ottawa, and Van Buren in the State of Michigan constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on June 20 and 21, 1997. Applications for loans for physical damages may be filed until the close of business on September 4, 1997 and for economic injury until the close of business on April 3, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE .... | 8.000 |
| HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE ..... | 4.000 |
| BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE .... | 8.000 |
| BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE ..... | 4.000 |
| OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE ..... | 7.250 |
| For Economic Injury: | |
| BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE .... | 4.000 |

The number assigned to this disaster for physical damage is 296006 and for economic injury the number is 952500.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 3, 1997.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 97–18425 Filed 7–11–97; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings, Agreements Filed During the Week of July 4, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* OST–97–2670
*Date Filed:* 6/30/97
*Parties:* Members of the International Air Transport Association
*Subject:*
PTC2 ME 0012 dated June 27, 1997
Within Middle East Resos r1–16
PTC2 ME 0013 dated June 27, 1997
Minutes:
PTC2 ME Fares 0007 dated June 27, 1997
Tables:
Intended effective date: June 16–17, 1997
r–1—001f
r–2—002
r–3—008z
r–4—015v
r–5—042b
r–6—052b
r–7—062b
r–8—070b
r–9—071e
r–10—072c
r–11—079b
r–12—085dd
r–13—090d
r–14—090h
r–15—090r
r–16—091b

**Paulette V. Twine,**

*Chief, Documentary Services.*

[FR Doc. 97–18330 Filed 7–11–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 4, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–97–2673.
*Date Filed:* June 1, 1997.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 29, 1997.
*Description*: Application of America West Airlines, Inc. pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Procedural Regulations, requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail between any point in the United States and any point in Canada.

*Docket Number:* OST–97–2683.
*Date Filed:* June 3, 1997.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 31, 1997.
*Description:* Application of Global Air Cargo, Inc. pursuant to Section 41102 of the Act and Subpart Q of the Procedural Regulations, applies for a certificate of public convenience and necessity so as to authorize it to provide scheduled interstate air transportation of property and mail within and between various points in the United States.

*Docket Number:* OST–97–2684.
*Date Filed:* June 3, 1997.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 31, 1997.
*Description:* Joint Application of Kiwi International Air Lines, Inc., and Kiwi International Holdings, Inc. pursuant to 49 U.S.C. Section 41105, requests either a disclaimer of jurisdiction, or in the alternative, approval of the transfer of Kiwi's certificate of public convenience and necessity to New Kiwi, on or before July 10, 1997.

**Paulette V. Twine,**

*Chief, Documentary Services.*

[FR Doc. 97–18329 Filed 7–11–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Document Availability; Record of Decision for Master Plan Update at Seattle-Tacoma International Airport, Seattle, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of document availability.

**SUMMARY:** The FAA, has signed the Record of Decision on the Master Plan Update at Seattle-Tacoma International Airport. Any person desiring to review the Record of Decision may do so during normal business hours at the following location: Federal Aviation Administration, Airports Division Office, Room 540, 1601 Lind Avenue, S.W., Renton, Washington.

**CONTACT PERSON:** If you desire additional information related to the Record of Decision, please contact: Mr. Dennis Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Avenue, S.W., Renton, Washington, 98055–4056.

Issued in Renton, Washington on July 3, 1997.

**David A. Field,**

*Acting Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.*

[FR Doc. 97–18387 Filed 7–11–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–97–38]**

### Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 4, 1997.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Heather Thorson (202 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 8, 1997.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Petitions For Exemption

*Docket No.:* 28926.
*Petitioner:* United Parcels Service.
*Sections of the FAR Affected:* 14 CFR 121.445(d).
*Description of Relief Sought:* To permit the petitioner to establish a recurrent training program in lieu of requiring pilots to meet the qualification requirements applicable to operations between terminals over a route or area that requires a special type of navigation.

### Dispositions of Petitions

*Docket No.:* 28877.
*Petitioner:* Itzhak Jacoby.
*Sections of the FAR Affected:* 14 CFR 91.109(a) and (b)(3).
*Description of Relief Sought/ Disposition:* To permit the petitioner to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.
Grant, June 19, 1997, Exemption No. 6649.

*Docket No.:* 18881.
*Petitioner:* Experimental Aircraft Association.
*Sections of the FAR Affected:* 14 CFR 91.151(a)(1).
*Description of Relief Sought/ Disposition:* To permit the International Aerobatic Club (IAC) and IAC member participating in IAC-sponsored competitions to begin a daytime flight in an airplane under visual meteorological conditions with enough fuel to fly for at least 20 minutes after the first point of intended landing.
Grant, June 19, 1997, Exemption No. 5745B.

*Docket No.:* 28920.
*Petitioner:* Colgan Air, Inc.
*Sections of the FAR Affected:* 14 CFR 121.359(g).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate certain Beechcraft 1900 C aircraft with oxygen masks that are not equipped with an installed microphone.
Grant, June 19, 1997, Exemption No. 6596B.

*Docket No.:* 28590.
*Petitioner:* Human Flight, Inc.
*Sections of the FAR Affected:* 14 CFR 105.43(a).
*Description of Relief Sought/ Disposition:* To permit Human Flight employees, representatives, and volunteer test jumpers under the direction and control of Human Flight to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed. This exemption also permits (1) a pilot in command of an aircraft to allow such persons to make these parachute jumps, and (2) Mr. Butch William Holman, a 13-year-old minor diagnosed with terminal cystic fibrosis, to fulfill his ultimate wish to skydive.
Grant, June 25, 1997, Exemption No. 6650.

*Docket No.:* 27205.
*Petitioner:* Federal Express Corporation.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit part 135 certificate holders that lease aircraft from FedEx to operate those aircraft under part 135 without TSO-C112 (Mode S) transponders installed.
Grant, June 30, 1997, Exemption No. 5711D.

*Docket No.:* 28244.
*Petitioner:* Puget Sound Seaplanes.
*Sections of the FAR Affected:* 14 CFR 135.203(a)(1).
*Description of Relief Sought/ Disposition:* To permit the petitioner to conduct operations at an altitude below 500 feet over water outside controlled airspace.
Grant, June 30, 1997, Exemption No. 6157A.

*Docket No.:* 28918.
*Petitioner:* Cherry-Air, Inc.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate certain aircraft without a TSO-C112 (Mode S) transponder installed.
Grant, June 30, 1997, Exemption No. 6654.

*Docket No.:* 28933.
*Petitioner:* Omniflight Helicopters, Inc.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, June 30, 1997, Exemption No. 6653.

[FR Doc. 97–18386 Filed 7–11–97; 8:45 am]
**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Notice 97–6]**

### Safety Advisory: Certified IM 101 and IM 102 Steel Portable Tanks With Bottom Outlets Without Internal Discharge Valves or Shear Sections

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Safety advisory notice.

**SUMMARY:** This is to notify owners and users of DOT specification IM 101 and IM 102 portable tanks with filling or discharge connections below the normal liquid level that these tanks may be used for shipping hazardous materials only if they have internal discharge valves and shear sections. Internal discharge valves and shear sections are safety devices required on bottom-outlet IM tanks in hazardous material service to prevent significant release of lading when damage is sustained at the filling/ discharge connection. Without those safety features, damage to a bottom outlet is far more likely to result in loss of a tank's entire lading.

**FOR FURTHER INFORMATION CONTACT:** Douglas S. Smith, telephone, (202) 366–4700, Office of Hazardous Materials Enforcement, or Charles Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** During compliance inspections in Southern Louisiana, inspectors from the RSPA's Office of Hazardous Materials Enforcement have observed portable tanks marked and certified as meeting DOT specifications IM 101 and IM 102 that had bottom outlets, but no internal discharge valves or shear sections. Until January 1, 1997, the Hazardous Materials Regulations (HMR, 49 CFR Parts 171–180) did not specifically require internal discharge valves or shear sections for IM 101 or IM 102 portable tanks with bottom outlets. *See* RSPA's final rule under Docket No.

HM–181H, 61 FR 50628 (September 26, 1996), amending 49 CFR 178.270–12(a) effective January 1, 1997, and the discussion in the preamble to the final rule, 61 FR 50621, and the notice of proposed rulemaking, 61 FR 33223 (June 26, 1996).

The HMR provide that a hazardous material may *not* be loaded in an IM portable tank with filling or discharge connections located below the normal liquid level of the tank unless:

(1) Each filling or discharge connection located below the normal liquid level of the tank has at least two serially-mounted closures consisting of an internal discharge valve and a bolted blank flange or other suitable, liquid-tight closure on each filling or discharge connection; or

(2) When this paragraph [173.32c(g)(2)] is specified for a hazardous material through [a special provision in] § 171.102(c)(7) of [the HMR], each filling or discharge connection located below the normal liquid level of the tank, or compartment thereof, has three serially-mounted closures consisting of an internal discharge valve remote from the valve itself, an external valve, and a bolted blank flange or other suitable liquid-tight closure on the outlet side of the external valve.

49 CFR 173.32c(g).

Accordingly, an IM 101 or IM 102 portable tank with a bottom outlet may *not* be filled with any hazardous material if it does not have an internal discharge valve and shear section. Because the primary purpose of certifying any packaging to a DOT specification or performance standard is to authorize that packaging to be used for transporting a hazardous material, RSPA believes it is appropriate to fully inform all owners and users of IM portable tanks that certain of these tanks exist that may not be filled with hazardous materials.

Issued at Washington, DC on July 8, 1997.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 97–18385 Filed 7–11–97; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–470 (Sub–No. 1X)]**

### Southeast Kansas Railroad Company—Abandonment Exemption—in Montgomery, Labette and Cherokee Counties, KS

On June 24, 1997, Southeast Kansas Railroad Company (SEK) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 421.0 near Coffeyville, KS, to milepost 387.0 near Faulkner, KS, a distance of 34 miles in Montgomery, Labette and Cherokee Counties, KS. The line traverses U.S. Postal Service Zip Codes 67336, 67332, 67342, and 67337.

The line does not contain federally granted rights-of-way. Any documentation in SEK's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 10, 1997.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 4, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–470 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Karl Morell, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 0565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: July 9, 1997.

By the Board, Vernon A. Williams, Secretary.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–18541 Filed 7–11–97; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

June 30, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*Internal Revenue Service (IRS)*

*OMB Number:* 1545–0257.

*Form Number:* IRS Forms 8109, 8109–B, and 8109–C.

*Type of Review:* Extension.

*Title:* Federal Tax Deposit Coupon (8109 and 8109–B); and FTD Address Change (8109–C)

*Description:* Federal Tax Deposit Coupons are used to deposit certain types of taxes at authorized depositaries. Coupons are sent to the IRS Centers for crediting to taxpayers' accounts. Data is used by the IRS to make the credit and to verify tax deposits claimed on the returns. The FTD Address Change is used to change the address on the FTD coupons. All taxpayers required to make deposits are affected.

*Respondents:* Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 9,800,700.

*Estimated Burden Hours Per Respondent:*

Form 8109—2 minutes.

Form 8109–B—3 minutes.

Form 8109–C—1 minute.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 2,016,425 hours.

*OMB Number:* 1545–1086.

*Form Number:* IRS Form 8725.

*Type of Review:* Extension.

*Title:* Excise Tax on Greenmail.

*Description:* Form 8275 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 12.

*Estimated Burden Hours Per Respondent/Recordkeepers:*

Recordkeeping—5 hr., 30 min.

Learning about the law or the form—42 min.

Preparing and sending the form to the IRS—49 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 84 hours.

*OMB Number:* 1545–1091.

*Form Number:* IRS Form 8810.

*Type of Review:* Extension.

*Title:* Corporate Passive Activity Loss and Credit Limitations.

*Description:* Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or/in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 100,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—26 hr., 19 min.

Learning about the law or the form—5 hr., 34 min.

Preparing and sending the form to the IRS—6 hr., 14 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 3,811,000 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–18331 Filed 7–11–97; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

July 1, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0239.

*Form Number:* IRS Form 5754.

*Type of Review:* Extension.

*Title:* Statement by Person(s) Receiving Gambling Winnings.

*Description:* Section 3402(q)(6) of the Internal Revenue Code (IRC) requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. We use the information on Form W–2G to ensure that recipients are properly reporting their income.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 306,000.

*Estimated Burden Hours Per Respondent:* 12 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 61,200 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–18332 Filed 7–11–97; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 2, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms (BATF)**

*OMB Number:* 1512–0538.

*Form Number:* ATF F 1370.2A.

*Type of Review:* Extension.

*Title:* Requisition for Revised ATF F 4473 PT 1 and ATF F 5300.35.

*Description:* The form will be used on a one-time basis to order two revised forms from the ATF Distribution Center. The form notifies ATF of quantity required by respondents and will provide a guide to high volume users of these particular forms.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 125,000.

*Estimated Burden Hours Per Respondent:* 2 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 4,167 hours.

*Clearance Officer:* Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–18333 Filed 7–11–97; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**U.S. Customs Service (CUS)**

*OMB Number:* 1515–0020.

*Form Number:* CF 7539.

*Type of Review:* Extension.

*Title:* Drawback Covering Rejected and Same Condition Merchandise.

*Description:* This collection is used by an importer, filer, or any party at interest to establish the eligibility of Rejected and Same Condition Merchandise, substitution of Same Condition Merchandise or Destroyed Merchandise for return of duties paid. This collection is used by the claimant to provide the necessary information for Customs to approve the drawback claim.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 2,100.

*Estimated Burden Hours Per Respondent:* 2 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 22,000 hours.

*OMB Number:* 1515–0053.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Declaration for Free Entry of Unaccompanied Articles.

*Description:* The Declaration for Free Entry of Unaccompanied Articles, Customs Form 3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the Customs Officer. It serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 10,000.

*Estimated Burden Hours Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 25,000 hours.

*OMB Number:* 1515–0101.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Serially Numbered Substantial Holders or Containers Which Enter the United States Duty Free.

*Description:* The marking is used to provide for duty free entry of holders or containers which were manufactured in the United States and exported and returned without having been advanced in value or improved in condition by any process or manufacture. The regulations provide for duty-free entry of holders or containers of foreign manufacture in duty has been paid before.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 20.

*Estimated Burden Hours Per Respondent:* 4 hours, 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 90 hours.

*OMB Number:* 1515–0183.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Centralized Examination Station.

*Description:* A port director decides when their port needs one or more Centralized Examination Station (CES). They announce this need and solicits applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, the fairness of his fee structure, his knowledge of cargo handling operations and his knowledge of Customs procedures.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 50.

*Estimated Burden Hours Per Respondent:* 2 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 100 hours.

*Clearance Officer:* J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW,. Washington, DC 20229.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–18334 Filed 7–11–97; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

July 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0215.

*Form Number:* IRS Forms 5712 and 5712–A.

*Type of Review:* Extension.

*Title:* Election To Be Treated as a Possessions Corporation Under Section 936 (Form 5712); and Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5) (Form 5712–A).

*Description:* Domestic corporations may elect to be treated as possessions corporations on Form 5712. This election allows the corporation to take a tax credit. Possession corporations may elect on Form 5712–A to share their taxable income with their affiliates under section 936(h)(5). These forms are used by the IRS to ascertain if corporations are entitled to the credit and if they may share their taxable income with their affiliates.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 2,600.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping, 4 hrs., 47 min.

Learning about the law or the form, 35 min.

Preparing and sending the form to the IRS, 42 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 16,607 hours.

*OMB Number:* 1545–1099.

*Form Number:* IRS Form 8811.

*Type of Review:* Revision.

*Title:* Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

*Description:* Form 8811 is used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. It is estimated that there are some 1,000 REMICs currently in existence.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 1,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping, 3 hrs., 35 min.

Learning about the law or the form, 30 min.

Preparing, copying, assembling, and sending the form to the IRS, 35 min.

*Frequency of Response:* Other (Taxpayer must only file once for each obligation issued.)

*Estimated Total Reporting/ Recordkeeping Burden:* 4,670 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–18335 Filed 7–11–97; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

July 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0771.

*Regulation Project Number:* EE–63–88 Final and Temporary; IA–140–86 Temporary; and REG–209785–95 NPRM and Temporary.

*Type of Review:* Extension.

*Title:* Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits (EE–63–88); Fringe Benefits; Listed Property (IA–140–86); and Substantiation of Business Expenses for Travel, Entertainment, Gifts and Listed Property (REG–209785–95).

*Description:* EE–63–88: This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132. The regulation also provides guidance on exclusions from gross income for certain fringe benefits.

*IA–140–86:* This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d). The regulation also provides guidance on the taxation of fringe benefits and clarifies the types of records that are generally necessary to substantiate any deduction or credit for listed property.

*REG–209785–95:* This regulation provides that taxpayers who deduct, or reimburse employees for, business expenses for travel, entertainment, gifts, or listed property are required to maintain certain records, including receipts, for expenses of $75 or more. The regulation amends existing regulations by raising the receipt threshold from $25 to $75.

*Respondents:* Business or other for-profit, Individuals or household, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents/ Recordkeepers:* 28,582,150.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 1 hr., 18 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 37,922,688 hours.

*OMB Number:* 1545–1350.

*Form Number:* IRS Form 9465.

*Type of Review:* Extension.

*Title:* Installment Agreement Request.

*Description:* This form is used by the public to provide identifying account information and financial ability to enter into an installment agreement. The form is used by IRS to establish a payment plan for taxes owed to the Federal Government, if appropriate, and to inform taxpayers about the application fee.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 2,500,000.

*Estimated Burden Hours Per Respondent:* 47 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 2,125,000 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97–18336 Filed 7–11–97; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 97-59]**

### Revocation of Customs Broker License

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Broker license revocation.

**SUMMARY:** Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker license without prejudice.

| Port | Individual | License No. |
|---|---|---|
| New York .... | Harry O. Eckert ... | 1584 |
| New York .... | Vincent Gurge ..... | 2331 |
| New York .... | Walter Duncan .... | 4319 |
| New York .... | Irving G. Friedman. | 0002A |
| New York .... | Lester L. Meinstein. | 1791 |
| New York .... | Vito Pipitone ..... | 3421 |
| New York .... | FNS Corporation | 3181 |
| Houston ..... | Sam Martinez ..... | 6282 |

Dated: July 3, 1997.

**Philip Metzger,**

*Director, Trade Compliance.*

[FR Doc. 97–18423 Filed 7–11–97; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 97-60]**

### Revocation of Customs Broker License

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Broker license revocation.

**SUMMARY:** Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker licenses without prejudice.

| Port | Individual | License No. |
|---|---|---|
| New York | Bruno J. Trocciola ... | 3087 |
| New York | Wolf D. Barth ..... | 4681 |
| New York | William Arthur Marshall. | 3924 |
| New York | Deborah J. Schecter | 9545 |
| New York | Naomi Meyer (Skinner). | 4801 |
| New York | Raymond Tarnok ..... | 13062 |
| New York | Bernard Levine ..... | 2459 |

Dated: July 3, 1997.

**Philip Metzger,**

*Director, Trade Compliance.*

[FR Doc. 97–18424 Filed 7–11–97; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 97–62]**

### Revocation of Customs Broker License

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Broker license revocation.

**SUMMARY:** Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker license without prejudice.

| Port | Individual | License No. |
|---|---|---|
| Seattle ..... | William D. White ..... | 1875 |
| Seattle ..... | A.B. International Freight Services, Inc. | 13609 |
| Seattle ..... | C.F.T. Omni, Inc ..... | 12129 |
| Seattle ..... | Marvin L. Nelson Company. | 11829 |
| Seattle ..... | Clarence J. Swift ..... | 3532 |

Dated: July 3, 1997.

**Philip Metzger,**

*Director, Trade Compliance.*

[FR Doc. 97–18421 Filed 7–11–97; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 97–61]**

### Revocation of Customs Broker License

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Broker license revocation.

**SUMMARY:** Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.52 and 111.74 of the Customs Regulations, as amended (19 CFR 111.52 and 111.74), the following Customs broker licenses are canceled with prejudice.

| Port | Individual | License No. |
|---|---|---|
| New York | A.I.F.S., Inc ..... | 6302 |
| Los Angeles. | John V. Urbano ..... | 6884 |

Dated: July 3, 1997.

**Philip Metzger,**

*Director, Trade Compliance.*

[FR Doc. 97–18422 Filed 7–11–97; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 97–63]**

### Revocation of Customs Broker License

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Broker license revocation.

**SUMMARY:** Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker licenses without prejudice.

| Port | Individual | License No. |
|---|---|---|
| New York | Vincent DiPilato ..... | 5407 |
| New York | John M. Poole ..... | 8050 |
| New York | Dominick Maccone .. | 3471 |
| New York | Edward Michael Keane. | 2662 |
| New York | Vincent V. Czajkowski. | 2983 |
| New York | Helmut Klestadt ..... | 3128 |
| New York | P.S. Clearance Co., Inc. | 7811 |

Dated: July 3, 1997.

**Philip Metzger,**

*Director, Trade Compliance.*

[FR Doc. 97–18420 Filed 7–11–97; 8:45 am]

**BILLING CODE 4820–02–P**

Federal Register

Monday
July 14, 1997

Part II

# Department of Education

**National Institute on Disability and Rehabilitation Research; Final Funding Priority for Fiscal Years 1997–1998 for a Rehabilitation Research and Training Center and Availability of Applications; Notices**

## DEPARTMENT OF EDUCATION

## National Institute on Disability and Rehabilitation Research

## Final Funding Priority for Fiscal Years 1997–1998 for a Rehabilitation Research and Training Center

**AGENCY:** Department of Education.

**ACTION:** Notice of a Final Funding Priority for Fiscal Years 1997–1998 for a Rehabilitation Research and Training Center.

**SUMMARY:** The Secretary announces a final funding priority for the Rehabilitation Research and Training Center (RRTC) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1997–1998. The Secretary takes this action to focus research attention on an area of national need to improve rehabilitation services and outcomes for individuals with disabilities, and to assist in the solutions to problems encountered by individuals with disabilities in their daily activities.

**EFFECTIVE DATE:** This priority takes effect on August 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: David__Esquith@ed.gov

**SUPPLEMENTARY INFORMATION:** This notice contains a final priority to establish an RRTC for research related to medical rehabilitation services and outcomes. This final priority supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

**Note:** This notice of final priority does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

### Analysis of Comments and Changes

On April 21, 1997, the Secretary published a notice of proposed priority in the **Federal Register** (62 FR 19437–19438). The Department of Education received 22 letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

### Rehabilitation Research and Training Centers

*Priority: Medical Rehabilitation Services and Outcomes*

*Comment:* Three commenters supported maintaining the priority's conceptual framework of addressing the topics of medical rehabilitative service delivery and functional assessment and outcome measurement in one RRTC. Twelve commenters suggested that NIDRR fund two centers instead of one. The commenters who supported establishing two centers indicated that one center would not be able to organize sufficient expertise to address all the priority's purposes adequately and that the unique aspects of the two topics require separate research activities.

*Discussion:* The subject of the priority is improving medical rehabilitation services delivery and outcomes. Appropriate use of valid functional assessment measures is one important element toward improving services as well as justifying the availability, utilization, and financing of those services. This is a dynamic field and linking the assessment of functional outcomes with the medical rehabilitation services in which they will be used, while presenting many challenges to the RRTC, reflects the challenges that are occurring in the field of medical rehabilitation services.

RRTCs conduct coordinated and advanced programs of research targeted toward the production of new knowledge to improve both rehabilitation methodology and services. In this priority, improved measurement of outcomes is a vital area of need for methodological research. There is a need for improved use of outcome measures to assess medical rehabilitation services. The RRTC will need to assemble and coordinate the work of experts from diverse fields. While this is a demanding undertaking, it is feasible and necessary in order to fulfill the purposes of the RRTC. NIDRR emphasizes the importance of involving a range of disciplines and collaborative efforts in centers of excellence.

In regard to whether the unique aspects of the two topics require separate RRTCs, applicants have the discretion to propose specific research and training activities that will define the parameters of the RRTC. The priority and application evaluation process are designed to provide applicants with the freedom to address unique aspects of one or more issues. It is not necessary to establish two RRTCs in order to fulfill the purposes of the priority.

*Changes:* None.

*Comment:* The third purpose should focus on the development and validation of methods to evaluate the cost effectiveness and impact on functional performance of specific rehabilitation interventions in diverse settings and populations. The database elements and standards tasks that make-up part of the third purpose are independent of the development of measures.

*Discussion:* The RRTC is intended to improve rehabilitation services and service delivery, applying measures of functional outcomes as a key strategy in this endeavor. Uniform database elements and standards are prerequisites to implementing any system of functional outcome measures in service delivery systems.

*Changes:* None.

*Comment:* One commenter suggested that methods are needed that will provide consumer perspectives on functional abilities and outcomes as well as the effectiveness of interventions. The commenter also indicated that methods are also needed to support the consumer in decision making about interventions including choices about appropriate rehabilitation settings and timing of service delivery, accommodations in the physical environment, and caregiver assistance options. A second commenter suggested that the priority should connect measures of specific disabilities or performances with the person's own values and perceptions.

*Discussion:* All RRTCs are required to involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center. This requirement is sufficient to ensure that the RRTC addresses consumer perspectives on functional abilities and outcomes, the effectiveness of interventions, decision making about interventions, and the connection between measures of specific disabilities or performances with the person's own values and perceptions.

*Changes:* None.

*Comment:* The sixth purpose should be deleted from the priority because it is substantially different than the priority's main emphasis.

*Discussion:* The emphasis of the sixth purpose relates to medical rehabilitation services system applications. The sixth purpose is necessary because it connects the RRTC's work on functional outcome measures to applied service settings.

*Changes:* None.

*Comment:* The RRTC should establish a health policy research fellowship program targeted to people with disabilities seeking to become proficient in health policy research at either the masters or doctoral level within the context of a university-based degree-granting program.

*Discussion:* The priority does not provide the RRTC with the authority to establish a research fellowship program on the general subject of health policy research. An applicant could propose to establish a research fellowship program related directly to medical rehabilitation services and outcomes. The peer review process will evaluate the merit of the proposal.

*Changes:* None.

*Comment:* Many commenters suggested numerous specific activities for the RRTC to carry out. These suggestions include, but are not limited to, developing a theoretical or conceptual model of the disablement process, establishing an interdisciplinary panel of experts to review and author a series of papers summarizing the state of science in their area of expertise and disseminate the papers, studying and emphasizing the relationship between treatment process to patient outcomes, and creating a common metric scale or platform for all functional disabilities.

*Discussion:* Applicants have the discretion to propose the specific activities that the RRTC will undertake in order to fulfill the purposes of the RRTC as set forth in the priority. Providing this degree of discretion to applicants is an acknowledgement of the wide range of approaches that applicants could take. The peer review process will determine the merits of the suggested activities.

*Changes:* None.

*Comment:* The government should insist that any instruments that are developed through grant funds are placed in the public domain.

*Discussion:* According to the Education Department General Administrative Regulations, the Federal government has the right to obtain, reproduce, publish, or otherwise use data first produced under an award, and authorize others to receive, reproduce, publish, or otherwise use these data for Federal purposes. NIDRR is planning to convene a public meeting to inform its decision making on this important issue as it relates to this and other grants.

*Changes:* None.

*Comment:* The terms ''rehabilitation centers'' and ''community-based'' appear in the background statement, but are not defined. It would be helpful if they were defined.

*Discussion:* These terms, and many others that appear in the priority, are not defined in order to provide applicants with the option of proposing their own definitions if they consider it necessary. The peer review process will determine the merits of any proposed definition.

*Changes:* None.

*Comment:* This Center, and others, should publish their research findings in refereed journals.

*Discussion:* The quality of an applicant's proposed dissemination activities are evaluated in the peer review process using applicable selection criteria. No further requirements are necessary.

*Changes:* None.

*Comment:* The reference to telemedicine and multimedia technology is overly prescriptive and should be deleted from the first purpose.

*Discussion:* Community-based rehabilitation settings that use telemedicine and multimedia technology are increasingly common. If the RRTC did not include these settings in their research, the applicability of the research that it carries out under the first purpose would be significantly restricted.

*Changes:* None.

*Comment:* The second purpose should be revised to require the RRTC to develop and validate measures of social and physical environments, and evaluate the ways in which social and physical environments limit or enhance the community participation of medical rehabilitation service recipients.

*Discussion:* The essential difference between the commenter's suggestion and the second purpose as set forth in the priority is that the commenter's suggestion focuses on the ''community participation'' of medical rehabilitation service recipients. An applicant could propose to emphasize community participation under the second purpose, and the peer review process will evaluate the merits of the emphasis.

*Changes:* None.

*Comment:* The third purpose should be revised to address evaluation activities rather than the development of the database elements and the fourth purpose should be revised to address how accrediting bodies can serve to enhance routine measurement.

*Discussion:* Applicants have the discretion to propose to emphasize sundry aspects of a purpose. An applicant could propose to emphasize the evaluation components of the third purpose and propose to address how accrediting bodies can serve to enhance routine measurement under the fourth purpose. The peer review process will evaluate the merits of the proposals.

*Changes:* None.

*Comment:* Four commenters stated that the required purposes under the priority did not address sufficiently the problems discussed in the background statement related to changes in the organization and delivery of medical rehabilitation services. For example, one commenter suggested that the RRTC should document trends in the consolidation of medical rehabilitation services and evaluate the impact of those trends.

*Discussion:* NIDRR assumed that these organization and service delivery issues would be addressed by applicants under existing requirements in the priority. NIDRR agrees with the commenters that the priority as written does not ensure that the RRTC will address these important topics.

*Changes:* A new purpose has been added to the priority that focuses on issues of the organization, financing, and delivery of services, the impact of managed care on the delivery of medical rehabilitation services, consumer access to services, and the capacity of the field of medical rehabilitation.

*Comment:* Two commenters suggested that the priority should identify the most important gaps in current outcome measurement systems and the need for better measures or methods of estimation of severity and case mix.

*Discussion:* Under the first and second purposes, respectively, applicants could propose to identify and address the most important gaps in current outcome measurement systems and develop better measures or methods of estimation of severity and case mix. The peer review process will evaluate the merit of the activities.

*Changes:* None.

*Comment:* It is not necessary to conduct pilot projects in purpose four in order to fulfill the purpose's purpose. The RRTC should conduct research on obstacles to the use of validated functional outcome measures and identify strategies to overcome these obstacles and enhance valid use of these measures.

*Discussion:* The commenter is correct that pilot projects are not the only means that could be used to identify and evaluate strategies to evaluate obstacles in the use of validated functional outcome measures. Applicants should be given the discretion to propose means to evaluate the strategies developed to identify

obstacles in the use of validated functional outcome measures.

*Changes:* The requirement to conduct pilot projects has been eliminated from the fourth purpose.

*Comment:* Instead of emphasizing the development of strategies for determining the long-term results of rehabilitation, the fifth purpose should identify factors that affect whether the results of medical rehabilitation are sustained in the community over the long term, identify linkages between short and long-term outcomes and methods of improving and sustaining rehabilitation outcomes in the long term.

*Discussion:* There a large number of social, economic, and physical factors that could affect whether the results of medical rehabilitation are sustained in the community over the long term. The resources that would be necessary to properly carry out the commenter's suggestion are beyond those that will be provided to the RRTC without significantly limiting its capacity to carry out the RRTC's other purposes. An applicant could propose to identify linkages between short and long-term outcomes and methods of improving and sustaining rehabilitation outcomes in the long term. The peer review process will evaluate the merits of the proposal.

*Changes:* None.

*Comment:* The RRTC should hold a third conference on the cost-benefit and cost-effectiveness of medical and vocational rehabilitation.

*Discussion:* The priority requires the RRTC to support two national conferences. An applicant could propose to support additional conferences, and the peer review process will evaluate the merits of the proposal.

*Changes:* None.

*Comment:* NIDRR should expand the RRTC to address the rehabilitation needs of individuals who are disabled by land mines.

*Discussion:* The rehabilitation needs of individuals who are disabled by land mines is outside the scope of the priority. In developing future priorities, NIDRR will consider the rehabilitation needs of individuals who have been disabled by land mines.

*Changes:* None.

**Rehabilitation Research and Training Centers**

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

**Description of the Rehabilitation Research and Training Center Program**

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

*General: The following requirements will apply to these RRTCs pursuant to the priorities unless noted otherwise:*

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each RRTC must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, in planning and implementing the research and training programs, in interpreting

and disseminating the research findings, and in evaluating the Center.

*Priorities:* Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under these competitions only applications that meets this absolute priority:

*Priority: Medical Rehabilitation Services and Outcomes*

**Background**

Medical rehabilitation services are provided to individuals with disabilities to restore maximum function and independence. Traditionally, these services were provided by physicians, nurses, and allied health professionals in hospitals and rehabilitation centers. Medical rehabilitation service consumers comprise a wide range of diagnostic groups including individuals with stroke, orthopedic conditions, brain injury, spinal injury, and neurologic conditions. The need for medical rehabilitation services for persons with disabilities is expected to continue to grow in the coming decades because of increased chances of survival after trauma, disease, or birth anomaly, increased prevalence of disability related to the general aging of the population, and the increased incidence of individuals with disabilities acquiring secondary disabilities or chronic conditions as a result of increased longevity. Despite large growth projections, the impact of the projected increase in need for medical rehabilitation has not been extensively investigated in relation to long-term costs and outcomes.

Changes in the organization and delivery of health services issues are having a significant impact on the delivery and outcomes of comprehensive medical rehabilitation services. Recent trends, such as decreased length of stay associated with the high costs of inpatient care, have contributed to the growth of rehabilitation programs in sub-acute facilities, such as skilled nursing homes, and increased use of outpatient and home health care. Many rehabilitation hospitals, as well as medical rehabilitation programs within hospitals, have been influenced significantly by program consolidations, changes in ownership, third-party reimbursement provisions, and related factors that have decreased the number of beds and the average length of patient stay. At the same time, demand is increasing for sub-acute rehabilitation and general outpatient physical medicine (''Adapting to a Managed Care World: The Challenge for Physical Medicine and Rehabilitation,'' Lewin-VHI Workforce Study, American Academy of Physical Medicine and Rehabilitation, 1995).

The effectiveness of the treatments and therapeutic interventions that are generally used in clinical practice are, for the most part, not evaluated in terms of their impact on long-term functional outcomes or their cost. The cost-effectiveness and impact of alternative rehabilitative strategies should be evaluated rigorously in order to obtain information that will contribute to cost-effective, rational, and fair decisions regarding the provision of treatment and services. Medical rehabilitation services need an enhanced validated outcome measurement system to inform decisions in management issues facing health care consumers, providers, and insurers. Increasingly, payers are seeking to base decisions of whether to provide coverage for selected services or interventions on the basis of proven efficacy or cost-effectiveness as determined by rigorous scientific evidence such as that gained through randomized controlled trials.

Functional Assessments (FAs) can be used to evaluate an individual's ability to carry out activities of daily living and instrumental activities of daily living such as eating, bathing, moving from place to place, dressing, doing household chores or other necessary business, and taking care of personal hygiene. Data from FAs also are used to predict post-rehabilitation functioning, and to evaluate rehabilitation services. Improving rehabilitation practices and outcomes requires an ability to assess the status and changes in function in many areas. Multiple measures of function and activities of daily living are needed in all rehabilitation settings, including in the home and community. The increased use of telemedicine and multimedia technology is rapidly changing the manner in which functional assessment measures are generated and shared among members of the rehabilitation team. Functional outcome measures are of increasing importance in medical economics, benefits planning, managed care, and program evaluation (Ikegami, N., ''Functional Assessment and Its Place in Health Care,'' *New England Journal of Medicine,* Vol. 332, pgs. 598–599, 1995).

There is a need to collect and analyze data to determine the organization and delivery of rehabilitative care, including parameters such as facility and program sizes (i.e., economies of scale) and the number and mix of health care providers needed to serve various disability groups. Few data are available to define optimal strategies for outpatient services, nor are there methods to apply FAs or gather patient outcome data in non-hospital settings.

Improving rehabilitation medicine and ensuring that disabled individuals will have access to needed medical rehabilitation in the future requires: an ability to assess functional status and changes in status in many functional areas; the ability to evaluate rehabilitation outcomes for individuals with various diagnoses, characteristics, and interventions; and the ability to apply these measures in health services policy research in order to affect policy and funding decisions in the health care delivery context.

In the past, NIDRR has supported the development and application of the ''Functional Independence Measure'' (FIM), a criterion-referenced scale that has been widely accepted in inpatient rehabilitation settings, and also the development of the ''Craig Handicap Assessment and Reporting Technique'' (CHART), which contains scales for assessing the World Health Organization (WHO) dimensions of handicap, and is currently being refined to measure cognitive components of handicap. NIDRR currently supports an RRTC on Functional Assessment that has contributed to the scientific measurement of medical rehabilitation through applications of the FIM, refinement of the CHART, and management and analysis of the Uniform Data System (UDS), a collection of data from the application of FIM measures in many institutions.

Current measurement systems, such as the FIM and the UDS, have made significant contributions, but need modifications to increase their utility and applicability in the new environment of rehabilitation care. For example, many practitioners and theorists have suggested that the FIM does not make adequate provision for the role of assistive technology in attaining functional levels. Like the FIM, most functional assessment measurement systems were designed for use in an inpatient setting. These systems need to be evaluated and modified to measure functional status and functional change outside of hospital and clinical settings, either in community-based facilities or in real-world environments of daily living. The FIM, for example, needs further refinement to address the social and environmental dimensions of disablement. The UDS at present contains data on a limited number of disabilities, and those measurements again are not community-based.

NIDRR also has supported a center on medical rehabilitation services that has looked at factors such as supply and demand for rehabilitation facilities and practitioners, financing, and evaluation of the outcomes of rehabilitation medicine. This center has also addressed the changing context for the delivery of medical rehabilitation and access to medical rehabilitation by various population groups. Both of these centers have made contributions to the maturing of the field of medical rehabilitation and its ability to evaluate and document its interventions and outcomes.

However, it is now clear that the field needs a larger and more integrated effort to refine measures of functional ability, changes in ability over the lifespan or in response to medical rehabilitation interventions, and to apply the measurement system in the changing environment in which medical rehabilitation is delivered. NIDRR therefore is proposing a large-scale effort to involve significant leaders in the classification and measurement of function, the evaluation of rehabilitation interventions, and the broader application of knowledge to the organization and management of medical rehabilitation services in today's environment.

*Priority:* The Secretary will establish an RRTC for the purpose of examining the impact of changes in the field of rehabilitation medicine and developing improved measures for assessing individual function and the impact of medical rehabilitation services. The RRTC shall:

(1) Identify and evaluate validated functional outcome measures that can be used or modified for assessing the impact of medical rehabilitation services in a wide range of rehabilitation settings, with particular emphasis on measures that can be adapted for use in outpatient and community-based settings, including those that use telemedicine and multimedia technology;

(2) Develop or improve measures to assess the impact of the social and physical environment in achieving quality rehabilitation outcomes, including the use of assistive technology in attaining functional outcomes; (3) Identify or develop uniform database elements and standards based on validated individual measures at the person level for determining the cost-effectiveness and functional impact of specific rehabilitation interventions used by medical rehabilitation and allied-health disciplines across multiple settings and disability populations;

(4) Identify obstacles to the use of validated functional outcomes measures in a wide range of settings in which medical rehabilitation services are provided, and in decisions to provide and assess the effectiveness of medical rehabilitation treatments, and develop and evaluate strategies to overcome those obstacles;

(5) Identify strategies for determining the long-term results of medical rehabilitation care, including use of assistive technology;

(6) Analyze how models for the organization of medical rehabilitation services affect outcomes and costs, and how the demographic, economic, and presenting conditions of consumers affect their utilization of rehabilitation services and the outcomes that are achieved;

(7) Analyze the impact of new configurations of medical rehabilitation service delivery and financing, such as capitated managed care and risk adjustment strategies, on access to quality medical rehabilitation services; and

(8) Develop an information dissemination and training program to enable consumers, providers, researchers, policy makers, and relevant others in health and rehabilitation settings to assess the quality of medical rehabilitation services.

In carrying out the purposes of the priority, the RRTC shall:

- Coordinate with rehabilitation medicine research and demonstration activities sponsored by NIDRR, including the RRTC on Health Care for Individuals with Disabilities—Issues in Managed Health Care, the National Center on Medical Rehabilitation Research, Veterans Administration, and the Health Care Financing Administration; and
- Support two national conferences as follows: (1) a conference on the use of functional outcome measures to improve medical rehabilitation practices and interventions, and (2) a conference on improving validity and reliability in the measurement of rehabilitation outcomes.

*Applicable Program Regulations:* 34 CFR Parts 350 and 352.

**Program Authority:** 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Numbers: 84.133B, Rehabilitation Research and Training Center Program)

Dated: July 9, 1997.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 97–18418 Filed 7–11–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.133B]**

## Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications Under the Rehabilitation Research and Training Center (RRTC) Program for Fiscal Year (FY) 1997

*Purpose of Program:* RRTCs conduct coordinated and advanced programs of research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities. RRTCs provide training to service providers at the pre-service, in-service training, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services. They also provide advanced research training to individuals with disabilities and those from minority backgrounds, engaged in research on disability and rehabilitation. RRTCs serve as national and regional technical assistance resources, and provide training for service providers, individuals with disabilities and families and representatives, and rehabilitation researchers.

The final priority for this award, entitled ''Medical Rehabilitation Services and Outcomes,'' is published in this issue of the **Federal Register**. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their application.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

*Eligible Applicants:* Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

*Applications Available:* July 15, 1997.

*Application Deadline:* August 28, 1997.

*Maximum Award Amount Per Year:* $950,000.

**Notes:** The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)). The

maximum award amount per year includes direct and indirect costs.

Estimated Number of Awards: 1.

**Note:** The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 and 352; and (c) the notice of final priority published elsewhere in this issue of the **Federal Register**.

*For Applications Contact:* The Grants and Contracts Service Team, Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3317, Washington, DC 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** 29 U.S.C. 760–762.

Dated: July 9, 1997.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 97–18419 Filed 7–11–97; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
July 14, 1997

Part III

# Office of Management and Budget

**Office of Federal Procurement Policy**

**48 CFR Part 9903**

**Cost Accounting Standards Board; Changes in Cost Accounting Practices; Proposed Rule**

**OFFICE OF MANAGEMENT AND BUDGET**

**Office of Federal Procurement Policy**

**48 CFR Part 9903**

## Cost Accounting Standards Board; Changes in Cost Accounting Practices

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Cost Accounting Standards Board (CASB) invites a supplemental round of comments on proposed amendments to the regulatory provisions contained in chapter 99 of title 48. The proposed amendments being promulgated today, when issued as a final rule, would revise the current definitions, exceptions and illustrations governing changes in cost accounting practices and add a new subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances. The proposed subpart would establish contractor notification requirements for changes in compliant cost accounting practices and delineate the process for determining and resolving the cost impact of either a compliant change in cost accounting practice or a noncompliant practice on covered contract and subcontract prices and/or costs. For covered contracts and subcontracts awarded to an educational institution, the proposed subpart includes a waiver provision that would permit the establishment of a uniform set of requirements for the notification and resolution of compliant changes to established cost accounting practices and/or the correction of noncompliant practices that affect covered contracts, covered subcontracts and other Federally sponsored agreements.

Due to the complexity of the proposed coverage, the Board has decided to request an additional round of public comments prior to the promulgation of a final rule. In preparing this notice, the Board considered the public comments received in response to the original Notice of Proposed Rulemaking (NPRM) that was promulgated on September 18, 1996 (61 FR 49196). Potential commenters need not resubmit their previously submitted concerns and suggestions. Specifically, the Board desires comments on the revisions being proposed for the first time to the extent such comments do not duplicate previously submitted comments. The Board is also requesting additional comments to determine to what extent, if any, there may be support for the establishment of new provisions that would exempt certain cost accounting practice changes from the Board's contract price and cost adjustment requirements (For details, see Section F., Additional Public Comments).

**DATES:** Comments must be submitted in writing, by letter, and should be received by September 12, 1997.

**ADDRESSES:** Comments should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9001, Washington, DC 20503. Attn: CASB Docket No. 93–01N(2). To facilitate the CASB's review of your submitted comments, please include with your written comments a three point five inch (3.5″) computer diskette copy of your comments and denote the format used. A format that is compatible with WordPerfect 6.1 or 5.1 is preferred. The submission of public comments via the internet by ''e-mail'' will not satisfy the specified requirement that public comments must be submitted in writing, by letter, as receipt of a readable data file is not assured.

**FOR FURTHER INFORMATION CONTACT:** Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

**SUPPLEMENTARY INFORMATION:**

### A. Regulatory Process

The CASB's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard (CAS), complete a prescribed rulemaking process. The process generally consists of the following four steps:

(1) Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (e.g., promulgation of a Staff Discussion Paper (SDP)).

(2) Issue an Advance Notice of Proposed Rulemaking (ANPRM).

(3) Issue a Notice of Proposed Rulemaking (NPRM).

(4) Promulgate a final rule.

This promulgation supplements previously completed step 3 of the four step process.

### B. Background

*Prior Promulgations*

Many commenters have identified the Board's regulatory coverage on ''changes in cost accounting practice'' as a matter requiring clarification and/or further coverage. The CASB requested public comments from interested parties on this topic in a SDP published in the **Federal Register** on April 9, 1993 (58 FR 18428) and in an ANPRM published on April 25, 1995 (60 FR 20252). On September 18, 1996, the CASB, in an NPRM published in the **Federal Register** (61 FR 49196), proposed to amend the Board's current coverage governing changes in cost accounting practices. That original NPRM, hereafter referred to as the ''prior NPRM,'' included proposed amendments to conform the language contained in the contract clauses for ''Full'' and ''Modified'' coverage, specify certain Federal agency responsibilities, and expand the criteria for desirable change determinations. A new subpart was also proposed to delineate the actions to be taken by the contracting parties when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice.

*Public Comments*

Of the thirty-five sets of public comments received in response to the prior NPRM, nineteen were provided in a timely manner. The public comments were received from contractors, professional associations, Federal agencies, accounting organizations, educational institutions, and other individuals. A number of commenters supported the proposed amendments contained in the prior NPRM. Some did not. The more significant comments and concerns expressed by commenters are summarized below.

The contractor community concluded that the Board's existing definitions of the terms ''cost accounting practice'' and ''change to a cost accounting practice'' need not be amended because, in their view, CAS 418 (at 48 CFR 9904.418) provides the Government with adequate protection when disparate cost pools are combined or split-out. As discussed below, under Section E, Public Comments, contractors advocated that the Board's existing rules and regulations be retained and applied based on their interpretations of what the existing rules and regulations require. Their interpretations were, however, selective and did not cover the entire spectrum of possibilities under the Board's existing rules and regulations.

Contractors believe that the proposed definitional revisions (if adopted) will increase the number of cost accounting practice changes that would have to be administered as contrasted with the practices currently followed in implementing the Board's existing rules. Consequently, they opined that the overall administrative burden imposed by the Board's rules will increase.

Some commenters believe that the Truth in Negotiations Act, the Board's Standards, and novation agreements provide adequate protection for organizational changes and resulting shifts in costs allocated to CAS-covered contracts.

On the other hand, Federal commenters indicated that they were in general agreement with, and supported, the Board's proposed amendments. One agency commented that the revised language will assist contracting parties in addressing both changes in cost accounting practices and the cost impact process.

Both the contractor community and the Government agency representatives generally supported the Board's proposal to establish a new subpart to streamline the notification and cost impact process associated with compliant cost accounting practice changes and noncompliances.

After consideration of the public comments received, the Board concluded that contractors and Federal officials continue to interpret the Board's rules and regulations governing a change in cost accounting practice differently. The Board disagrees with the view put forth by several commenters that the Board's existing rules are adequate and therefore there is no need for the Board to do anything as it can rely on the ''protection'' provided by the existing provisions at 9904.418–50(b). To resolve the described issues and concerns, the Board herein proposes to amend chapter 99 as follows:

—*Definitions:* Revise the definitions, explanations and illustrations governing cost accounting practice changes, for purposes of making it explicit that a change in the methods and techniques used to accumulate cost in indirect cost pools for allocation to final cost objectives constitutes a change in cost accounting practice. The revisions will make explicit that the combination of existing pools, the split-out of an existing pool, or the transfer of an existing function from one pool to one or more different cost pools constitutes a change in cost accounting practice.

—*Exceptions:* Retain, with certain modifications, the existing exceptions for circumstances that are not considered to be a change in cost accounting practice.

—*Cost Impact Process:* Add a new subpart 9903.4 to establish the notification process to be followed by a contractor making compliant changes in cost accounting practices. It would also establish the process for the submission of cost impact data for compliant changes and noncompliances, and the contract price and cost adjustment process for resolving the resulting cost impacts on individual CAS-covered contracts and subcontracts.

The various comments, as well as the concerns, expressed by the commenters are discussed in greater detail under Section E., Public Comments. The Board Members and the CASB staff express their appreciation for the divergent views, constructive technical comments and editorial suggestions provided by the commenters. Many of the expressed concerns and editorial suggestions aided the CASB's deliberations and have been incorporated into the proposed amendments being issued today.

*Benefits*

In the Board's judgment, regulatory guidance is needed to encourage consistency in the treatment of cost accounting practice changes and to reduce the amount of time required to resolve these actions. The Board believes that the application of the proposed provisions, as set forth in this supplemental NPRM, will clarify what constitutes a change in cost accounting practice and facilitate the notification, cost impact and contract price and cost adjustment processes attributable to changes in compliant cost accounting practices and noncompliant practices.

Consequently, the potential for disagreements over what constitutes a change in cost accounting practices should be significantly reduced.

Although the added rules and regulations being proposed for subpart 9903.4 are detailed and extensive, the Board remains convinced that they are necessary to promote consistency, equity and timeliness in the handling of cost impact proposal actions related to changes in accounting practices and noncompliances. The Board's proposed amendments, when promulgated as a final rule, are expected to result in the reduction of administrative costs currently being experienced by contractors and Federal officials when contractor changes in cost accounting practices and noncompliances are processed.

Significant benefits and administrative cost savings should also evolve from the finalization of the Board's proposed expansion of the criteria and coverage applicable to ''desirable changes,'' particularly with respect to practice changes resulting from actions taken to improve the efficiency and effectiveness of a contractor's operations. The proposed coverage should encourage, not discourage, such organizational changes in the future. As a result, these proposed regulatory amendments should generally further the goal of acquisition streamlining and reform, and should lead to much greater simplification of the contract administration process as related to the administration of Cost Accounting Standards. These goals have been endorsed by the so-called ''Section 800'' Panel (Report of the Acquisition Law Advisory Panel to the United States Congress, January 1993).

*Proposed Amendments*

A brief description of the proposed amendments follows:

*Part 9903, Contract Coverage*

In subpart 9903.2, CAS Program Requirements, subsection 9903.201–4 is amended to conform certain language in the ''Full'' and ''Modified'' contract clauses and to clarify the provisions governing changes made to a contractor's established cost accounting practices and changes made to correct noncompliant practices. Subsection 9903.201–6 is amended to establish criteria on when the Government shall determine that a contractor proposed change in cost accounting practice is desirable and not detrimental. Subsection 9903.201–7 is revised to specify certain cognizant Federal agency responsibilities for administering CAS-covered contracts and subcontracts.

In subpart 9903.3, CAS Rules and Regulations, section 9903.301 is amended to incorporate definitions for the terms ''Function'' and ''Intermediate cost objective.'' In subsection 9903.302–1, Cost Accounting Practice, the definition is amended to incorporate language changes and to add clarifying guidance. Subsection 9903.302–2, Change to a cost accounting practice, is revised to make explicit the types of changes that are to be regarded as a change in cost accounting practice. The illustration of a change in cost accounting practice at 9903.302–3(c)(3) is replaced by a new illustration. In 9903.302–3(c) and in 9903.302–4, several illustrations have been included to provide additional guidance regarding the revised definitions of the

terms ''cost accounting practice'' and ''change in cost accounting practice.''

A new subpart 9903.4 is added to establish the notification and cost impact resolution process to be followed by a contractor and the cognizant Federal negotiator when a CAS-covered contractor or subcontractor changes a compliant cost accounting practice, fails to comply with an applicable Standard or fails to consistently follow its established cost accounting practices.

*Summary Description of Proposed CAS Coverage*

In subpart 9903.2, the proposed amendments, when promulgated as a final rule, will:

Conform the contract clause language for ''Full'' and ''Modified'' coverage. The contract clause provisions are also revised to clarify the actions required when a contractor or a subcontractor is required to change a cost accounting practice or elects to replace an established practice with another compliant cost accounting practice. Also specified are the corrective actions required when a contractor's estimated cost proposal was based on a noncompliant practice and/or actual contract cost accumulations were based on a noncompliant practice.

Provide criteria for determining when a contractor proposed change in cost accounting practice shall be determined to be a desirable change that is not detrimental to the Government.

Require Federal agencies, in accordance with agency procedures, to:

—Establish internal policies and procedures for administering CAS-covered contracts when the agency is and is not the cognizant Federal agency for contractors performing agency contracts.

—Designate the agency office or official responsible for administering the agency's CAS-covered contracts and subcontracts.

—Delegate contracting authority to designated agency officials, as required, for the negotiation of cost impact settlements and associated contract price or cost accumulation adjustments.

—Concurrently settle, on a Government-wide basis, the cost impacts on all CAS-covered contracts and subcontracts affected by a contractor's or subcontractor's change in cost accounting practice or noncompliant practice.

In subpart 9903.3, proposed for inclusion in 9903.301, are two definitions to clarify the terms ''Function'' and ''Intermediate cost objective.'' The proposed amendments to 9903.302–1(c), allocation of cost to cost objectives, make explicit the methods and techniques that are considered a cost accounting practice, including the methods and techniques used to accumulate the cost of specific activities. Additional subparagraphs are proposed to clarify what is meant by the selection and composition of cost pools and their allocation bases.

The proposed amendments to 9903.302–2 expand the existing coverage by specifying that, as used in part 9903 and the applicable contract clauses, changes in cost accounting practices include pool combinations, pool split-outs and transfers of existing ongoing functions. The existing cost accounting practice exceptions cited in 9903.302–2 (a) and (b) are restated and modified in new subparagraphs.

Within 9903.302–3, a new introductory paragraph is proposed to be added regarding the use of the illustrations that follow. Introductory paragraphs (a), (b) and (c) are proposed to be revised to clarify that the illustrations involve ''cost accounting practices'' that have changed. The illustration at 9903.302–3(c)(3) is proposed to be replaced by new illustrations depicting changes in cost accounting practices that are consistent with the revised definitions. The new illustration at 9903.302–3(c)(3) illustrates that the use of a different base for the allocation of indirect costs to final cost objectives is a change in cost accounting practice. Additional illustrations are added to 9903.302–3(c) and 9903.302–4 to depict various changes which do and do not result in changes in cost accounting practices when a contractor combines, eliminates or splits-out pools, transfers functions or when business combinations due to mergers and acquisitions occur.

A new subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances, is proposed. It details the methodology for determining required contract price or cost accumulation adjustments due to changes in a contractor's cost accounting practices and specifies the actions to be taken by the contractor and the cognizant Federal official (e.g., the contracting officer, administrative contracting officer (ACO) or other agency official authorized to act in that capacity), including the negotiation of cost impact settlements on behalf of the Government. The proposed subpart provides coverage on the applicability and purpose of the subpart, materiality considerations, definitions of terms related to the subpart, procedures for changes in compliant cost accounting practices, and procedures for noncompliance actions. An additional section is also included to illustrate the application of the proposed coverage. The proposed coverage is briefly described below.

Section 9903.405, Changes in Cost Accounting Practices, includes subsections on the following areas: contractor notification of changes in cost accounting practices; Government determinations, approvals and initiating the cost impact process; contractor cost impact submissions; and negotiation and resolution of the cost impact action.

Section 9903.405 provides a streamlined process which does not require submissions of cost impact estimates or contract price adjustments for every CAS-covered contract affected by a change in accounting practice. It provides flexibility to the cognizant Federal agency official in determining the level of detail required for a cost impact submission and materiality thresholds for required contract price and cost adjustments. To this end, it creates a three-step sequential process which includes (1) An initial evaluation to determine if the cost impact of the accounting change is obviously immaterial, (2) the use of a general dollar magnitude (GDM) settlement proposal, and if ultimately determined necessary, (3) the submission of a detailed cost impact proposal for contracts exceeding Government determined materiality thresholds. The procedure encourages settlement of material cost impacts based on the contractor's GDM settlement proposal to the maximum extent possible, without having to resort to a detailed cost impact proposal. It also provides for contract price adjustment on individual contracts only when the cost impact amount is material.

Section 9903.405 includes rules for the use of the offset process. It allows for the use of the offset process to reduce the number of contract price and cost adjustments required as a result of a change in cost accounting practice, while still providing for adjustments of individual contracts when the cost impact amount is material. The rules provide that offsets of increased costs against decreased costs shall only be made within the same contract type.

Section 9903.405 also explains when and what action needs to be taken to preclude increased costs paid by the Government as a result of a voluntary change in cost accounting practice. It clarifies how increased costs to the Government are measured on firm fixed-price contracts as a result of a change in accounting practice. It also makes clear that action must be taken to preclude increased costs from being paid when

the estimated aggregate higher allocation of costs on flexibly-priced contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs on firm fixed-price contracts subject to adjustment as a result of a voluntary change in accounting practice.

Section 9903.406, Noncompliances, provides detailed rules and regulations for handling noncompliant actions. It outlines the procedures to be followed when the parties agree or disagree on whether a noncompliant condition exists. An example of an acceptable GDM Settlement Proposal format that the contracting parties may use to resolve a noncompliance is included. The proposed section contains separate coverage on estimating practice noncompliances and cost accumulation practice noncompliances to clarify the different actions, particularly to recover increased costs and/or applicable interest on increased costs paid, that need to be taken under these different noncompliant conditions. It also provides procedures to be followed when a noncompliant condition does not result in material increased costs paid by the Government.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal, because this proposal imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. § 3501, *et seq.*

**D. Executive Order 12866 and the Regulatory Flexibility Act**

The economic impact of this proposal on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this NPRM will not result in the promulgation of a ''major rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

**E. Public Comments**

This NPRM was developed after consideration of the public comments received in response to the Board's NPRM that was published in the **Federal Register** on September 18, 1996, 61 FR 49196, wherein public comments were invited. The comments received and the Board's actions taken in response thereto are summarized in the paragraphs that follow:

*Cost Accounting Practice Definitions*

*Comment:* Several contractor representatives advocated that the proposed amendments making explicit that pool combinations and split-outs are changes in cost accounting practices were not necessary because:

—Only a change in the selection of an allocation base ''method'' used to allocate pooled costs to cost objectives is a change in cost accounting practice.

—As long as cost pools are homogeneous, in compliance with 9904.418, before and after a pool is combined or split-out, then no change in cost accounting practice has occurred.

—9904.418 provides adequate protection if material differences in the amount of costs allocated to cost objectives result due to pool combinations or split-outs.

—One commenter stated: ''* * * Pool combinations split-outs do not necessarily result in a change to cost accounting practice. When pools are combined or a single pool is split into two or more pools, we do not agree that a change in cost accounting practice has necessarily occurred. If the combined pools consist of the same functions and the allocation bases are the same (e.g. direct labor dollars, * * *) then the composition of the cost pools has not changed. Only the amounts are different. The same is true for pool split outs. * * *''

—Regarding shifts in cost allocations to contracts, another commenter expressed the belief that the Board's concerns are eliminated by 9904.418–50(b)(2). ''* * * if the splitting out or merging of pools and bases results in material differences from that which existed prior to the split-out or merger, the pools cannot be changed without risking a 418 noncompliance (which protects the Government) or without causing a change in cost accounting practice (e.g., use of an allocation base of labor dollars instead of labor hours), in which case the Government interests are again protected.''

*Response:* For the reasons set forth below, the Board does not agree with the commenters' interpretations and conclusions.

CAS 418 Does Not Explicitly Provide the Protection Alluded to by the Commenters

Before concluding that the cited 9904.418 provisions provide adequate protection, one must accept the commenters' unstated premise that the contracting parties agree on how to determine whether combined or spilt-out pools continue to have the same beneficial or causal relationship to cost objectives or if material differences in the amounts of cost allocated to individual cost objectives have resulted after a pool combination or split-out. Such a premise, however, is not self-evident. For example, some contractors have taken the position that as long as the original pools have similar activities (purchasing and purchasing, inspection and inspection, etc.), then the resulting pool combination is still compliant with CAS 9904.418 and that no change in cost accounting practice has occurred, irrespective of disparate pool demographics and resulting shifts of indirect costs allocated to cost objectives.

The Board is not persuaded that most contractors, in individual cases, would agree with the commenters' inferences, i.e., that a comparison of the difference between the costs allocated to individual cost objectives utilizing the original pool configurations versus the new combined pool or split-out pools is clearly required under CAS 9904.418 or, if a material difference occurs, that a noncompliant condition requiring corrective action exists.

In order to be compliant with CAS 9904.418, both the original pool(s) and resulting pool combinations or split-outs, must be homogeneous. Essentially, the CAS 9904.418 criteria involves two concepts: One requires that activities included in a pool have the same or similar beneficial or causal relationship to cost objectives, and the other requires that ''pooled'' costs allocated to cost objectives not be materially different from the allocation that would result if the cost of activities included in that pool were allocated separately.

However, the CAS 9904.418 criteria is not explicit regarding comparisons of costs allocated to cost objectives based on different groupings of similar activities, such as through the use of existing pools (or pool) versus a new combined pool or split-out pools. The cited 9904.418–50(b) language does not specify that the contracting parties must determine if materially different cost allocations result due to pool combinations or split-outs, nor are such comparisons precluded. The commenters did not indicate how cost

allocation comparisons between the original pool(s) and the resultant combined pool or split-out pools could be accomplished under CAS 9904.418 in order to provide the Government with sufficient protection in cases where material differences in cost allocations to cost objectives result. Thus, the Board disagrees with the commenters' premise that CAS 9904.418 comparisons provide adequate protection in the event of material differences in cost allocations to cost objectives attributable to pool combinations or split-outs, particularly since some commenters and contractors have argued that combining pools with similar activities is compliant with CAS 9904.418, and not a practice change, irrespective of the impact it may have on cost allocations to cost objectives.

Adoption of the commenters' concept that the Government can achieve equity in the event significant cost shifts occur after a pool combination or spilt-out by simply pursuing a CAS 9904.418 noncompliance would most likely result in recurring controversies and potential disputes, particularly if a noncompliance determination were predicated on a material difference between cost allocations resulting under the old and new pool configurations.

Administrative Cost Implications of Noncompliances

If the Government determined that a merged or split-out pool was not in compliance with CAS 9904.418, the noncompliant cost accounting practice would have to be corrected and the CAS contract price or cost adjustment remedies for estimating and/or cost accumulation noncompliances would apply. To correct the noncompliance, the contractor would have to replace the newly established cost accounting practice with a compliant practice, by probably changing back to the original practice. It is not self-evident how the commenters' suggested alternative ''noncompliance approach'' would result in lower administrative costs and motivate contractors to implement economy and efficiency changes unless one were to conclude that CAS 9904.418 provides little, if any, protection for shifts in costs allocated to cost objectives due to pool mergers and or split-outs.

Cost Accounting Practice Definition Considerations

Compliance with CAS 9904.418 before and after a pool combination or split out does not in itself mean that there was no change in the cost accounting practices used to accumulate pooled costs and allocation base activities. When indirect cost pools are combined or split out, the costs of the same ongoing activities (functions) are grouped and accumulated differently. The intermediate cost objectives used as the cost accumulation points in the contractor's cost accounting system may change, e.g., intermediate cost objectives for similar functions may be combined or split-out. There is a change in the number of pools used to accumulate the indirect costs of specific activities for the allocation of cost to final cost objectives. Although the pools are compliant with CAS 9904.418, before and after the change, the methods and techniques used to accumulate costs in intermediate cost objectives, the selection and composition of the pool(s) and the composition of the allocation base(s) have changed. It is precisely these changes in the pattern of accumulating the costs of indirect functions and activities and the accumulation of base activities that were addressed in the proposed revisions to the definition of a ''cost accounting practice''.

Potential CAS 9904.401 Noncompliances

If the Government relied exclusively on CAS 9904.418, as suggested, contractors might erroneously assume that indirect costs can be estimated and accumulated differently. For example, a contractor might estimate indirect costs in contract cost proposals based on the use of two pools and, after award, accumulate actual costs based on the use of one combined pool. This would, however, violate the consistency and comparability objectives and requirements of 9904.401.

The CAS 9904.401 provision at 9904.401–50(a)(2) provides that ''* * * the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to * * * (2) The indirect cost pools to which each element or function of cost is charged or proposed to be charged * * *'' Therefore it could be argued that if pool combinations and split-outs are not treated as compliant changes in cost accounting practices, a contractor could never combine or split-out a pool because that would result in a CAS 9904.401 noncompliance.

That line of reasoning is, however, not what the current CAS contract clause provisions stipulate for compliant changes. The Board's rules clearly permit contractors to combine or split-out pools as a voluntary change from one compliant practice to another compliant practice. However, to remedy any material shifts in costs allocated to cost objectives resulting from such compliant changes, the contractor is specifically required to agree to contract price and cost adjustments under the CAS contract clauses.

In Brief

Under the Board's existing rules, pool combinations and split-outs resulting in cost accounting practice changes are permitted as compliant changes to established cost accounting practices. However, the practice change is subject to the Board's notification and disclosure requirements, and the resulting cost impact of the practice change on CAS-covered contracts is subject to the applicable CAS contract price and cost adjustment provisions.

The commenters' recommendations avoid resolution of the primary issue, i.e., what constitutes a change in cost accounting practice? It only moves the issues concerning pool combinations and split-outs from disagreements over whether a change in cost accounting practice has occurred to disagreements over whether there is a CAS 9904.401 or CAS 9904.418 noncompliance. It does not resolve the underlying issue.

The argument that pool combinations and split-outs should not be considered changes in cost accounting practice that are subject to the Board's rules for contract price and cost adjustment, as suggested by the commenters, appears inconsistent with the resulting actions necessitated by such actions. For example:

—New forecasted indirect cost rate agreements and/or billing rates need to be established.

—The contractor's Disclosure Statement, if required, must be updated to reflect the selection and composition of the new combined or split-out pools and the composition of each new pool's allocation base.

Under the Board's proposed approach in this NPRM, if the original pools were compliant with CAS 9904.418 and the new combined pool or split-out pools is/are CAS 9904.418 compliant, then the resulting changes in the methods and techniques used to accumulate the costs of indirect activities and allocation base data, the selection and composition of the pool(s) and the composition of the allocation base(s), can be treated as a compliant change in cost accounting practice. The outcome of the proposed approach is more predictable than the commenters' suggested approach which could result in noncompliances. The administrative costs and financial risks to contractors associated with compliant changes should be less than the

administrative costs and financial risks associated with contractor corrective actions that would be required if a practice change is implemented and it is subsequently determined to be noncompliant.

Accordingly, the commenters' suggestions that the amendments proposed in the prior NPRM not be promulgated were not adopted.

*Comment:* Several commenters stated that the proposed language concerning ''cost accumulation'' was confusing and that cost accumulation was not a cost accounting practice but the result of the application of a contractor's cost accounting practices.

*Response:* The proposed coverage was intended to make it explicit that the term ''cost accounting practice'' includes the methods and techniques used to accumulate costs of specific activities in specific intermediate cost objectives and to accumulate the costs of specific activities, or groups of activities, in specific indirect cost pools for subsequent allocation to intermediate and/or final cost objectives. This concept, although questioned by several commenters, is consistent with 9904.401–50(a)(2) which specifically requires that:

''(a) * * * The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element or function. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to ''* * * (2) The indirect cost pools to which each element or function of cost is charged or proposed to be charged * * *''

Since commenters opined that the proposed language may be interpreted differently, the Board has essentially retained the existing language at 9903.302–1(c) that cited ''* * * methods and techniques used to accumulate costs * * *'' in an attempt to mitigate the commenters' expressed concerns and to facilitate implementation of the amendments being proposed today. The Board wishes to emphasize, however, that the proposed coverage contained in this NPRM is not intended to alter the meaning of any Standard in parts 9904 or 9905 of the Board's regulations. Rather, the intent is to facilitate an understanding that the Board's definition of a cost accounting practice, in part 9903, includes the methods and techniques used to accumulate cost in specific intermediate cost objectives and the *selection* of the number of pools established to accumulate the costs of specific functions (or activities). Specifically, that the number of pools established to accumulate the costs of specific activities, or groups of activities, included therein, is a method or technique used to allocate indirect costs, i.e., a cost accounting practice. Accordingly, the phrase ''selection * * * of cost pools'' was added to the definition of a cost accounting practice (see 9903.302–1(c)(1)(iii)). Where deemed appropriate, the illustrations proposed in the prior NPRM for inclusion in section 9903.302–3 were revised to further clarify these cost accounting practices.

*Comment:* Several commenters opined that existing regulations provide the Government with adequate protection against significant cost shifts resulting from pool combinations and split-outs. One commenter stated: ''* * * The Truth in Negotiations Act requires full disclosure of contractor decisions and plans (regarding organizational changes) prior to contract award. The causal beneficial relationship and homogeneity requirements of the Standards require that major elements of indirect pools have the same or similar relationship to benefiting cost objectives. Novation agreements prevent improper cost increases to the Government * * *''

*Response:* The referenced laws and regulations serve different purposes.

The Truth in Negotiations Act (TINA) only applies to the specific data that the contractor identifies and certifies as being accurate, complete and current as of a specified date. A signed certification is normally obtained prior to contract award when contract negotiations are completed or agreement on contract price occurs. After contract award, TINA provides no protection for decisions or plans made to change the cost accounting practices used to accumulate the costs of contract performance. Also, TINA provides no protection for contracts priced using noncompliant practices. The Board's rules and Standards do. Applicable CAS contract clauses require that the same cost accounting practices used to develop contract cost proposal estimates be applied consistently when accumulating the costs of contract performance, after contract award. Changes in compliant practices are permitted but affected contract prices and costs are subject to adjustment for the cost impact of the change in practice. TINA and CAS are completely independent concepts that have entirely different applications and purposes.

As discussed in a prior comment, 9904.418, in and of itself, does not address all aspects relative to changes in cost accounting practices resulting from pool combinations or split-outs.

Novation agreements do not address a contractor's cost increases or decreases due to changes in cost accounting practices. Novation agreements are used only when a contract is transferred or assigned from the original performing entity to a subsequent performing entity (''successor-in-interest''). Novation agreements limit the cost to the Government (amount paid by the Government) by precluding increased contract costs for the novated contracts. The novation agreement enables the Government to disallow any higher level of costs incurred by the successor in interest.

*Comment:* One commenter suggested that the words ''at specified locations'' proposed for 9903.302–1(c) (2) and (3) be replaced with ''for a particular segment, home office, or business unit'' because contractors may not accumulate costs by location.

*Response:* The suggestion was adopted.

*Comment:* Several commenters suggested that certain language in proposed 9903.302–1(c) (1), (2) and (3) be deleted or conformed with the language in the Board's rules and applicable Standards.

*Response:* To the extent deemed appropriate, the Board has revised the proposed language for 9903.302–1(c) for improved conformity with the language contained in the Board's rules and applicable Standards.

*Comment:* In reading the prior NPRM preamble comments at 61 FR 49199, some commenters concluded that to move work from one segment to another is deemed a cost accounting practice change by the Board. One commenter stated the prior NPRM implies that a contractor cannot decide to move contract work to another segment without generating a cost accounting practice change.

*Response:* If there is a change in the place of performance for some part of the contract work, the costs estimated to be performed in-house by the proposing segment will not be accumulated in the proposing segment's cost accounting records under the same elements of cost as proposed, e.g., as direct material, labor and allocable overhead cost. Instead the allocable contract costs will still be accumulated by the same performing segment, but as a different cost element, e.g., intra-company transfer cost, in accordance with the segment's established cost accounting practices. Such intra-company

''purchases'' or ''orders'' that result in the accumulation of costs under different cost elements by the proposing segment do not constitute a change to that segment's established cost accounting practices.

However, the prior NPRM also stated that if the responsibility for performing a contract is transferred in its entirety from one segment to another segment, that ''neither segment's cost accounting practices may have changed * * * Such changes in the place of contract performance are subject to applicable procurement regulations * * *'' In such cases, the costs of contract performance estimated in accordance with the original segment's cost accounting practices would not be incurred, accumulated and reported by the original proposing segment. Instead, a different segment, i.e., the acquiring segment, would accumulate the costs of contract performance in accordance with its established cost accounting practices. The contract transfer does not constitute a change to either segments' established cost accounting practices. Such contract transfers in place of performance are not specifically addressed under the Board's regulations which presume that contracts and subcontracts will be performed by the segment or segments designated in the contractor's proposal. Resolution of contract transfers resulting in changes in the place of contract performance remain subject to applicable procurement regulations.

*Comment:* One commenter stated that the prior NPRM appears inconsistent. Specifically: ''* * * the NPRM states that a change in the composition of a cost pool or allocation base represents an accounting practice change. However, performing an additional contract within that cost pool and allocation base, or completing an existing contract does not represent an accounting practice change. Similarly, the transfer of an ongoing G&A function, such as Marketing, from a Home Office to a Business Segment, is treated in the NPRM as a change but transfers of employees are not * * *'' Another commenter stated that under the prior NPRM, composition of the pool would be defined as a volume change.

*Response:* There is no inconsistency.

The Board's underlying concept is that the indirect cost of performing a specific function (or activity) must be accumulated in the same intermediate cost objective and included in the same indirect cost pool when a contractor estimates and accumulates costs. An entire function cannot be transferred from one indirect cost pool to another indirect cost pool after award unless the contractor processes a compliant change in cost accounting practice. Otherwise, the transfer is not in compliance with the requirements of 9904.401 or 9905.501, as applicable.

An individual employee can change duties to support different functions and be transferred from function to function or from pool to pool. Such employee transfers are not a change in cost accounting practice as long as the costs of the ongoing functions or activities continue to be accumulated in the same intermediate cost objectives and the intermediate cost objectives remain in the same indirect cost pools.

Volume changes (e.g., adding contract work or completing work) are not a cost accounting practice change. There is no inconsistency because the addition of new work and completion of existing work is considered in the contractor's forecasts when direct and indirect cost levels are estimated to support the contractor's forecasted indirect cost rates that are used to estimate contract costs.

*Comment:* A commenter concluded that the Government may deem equipment transfers to be a change in cost accounting practice.

*Response:* Presumably, the commenter is referring to the physical transfer of equipment whose costs are depreciated and recovered as an indirect cost. A change in cost accounting practice would not result if the physical transfer of equipment occurs because the equipment will be used to support a different function or activity. The Board's assumption is that the original function and the different function did not move, i.e., the indirect costs of each function are included in the same indirect cost pool or pools before and after the transfer. Only the equipment and its depreciation charge moved because the equipment is now used to support the different function. Therefore, the described transfer of equipment is similar to the employee transfer discussed above and the ''employee transfer'' illustration that is proposed to be added as ''not a change in cost accounting practice'' (see 9903.302–4(h) in this NPRM).

*Change to a Cost Accounting Practice—Exceptions*

*Comment:* Regarding the proposed revisions for 9903.302–2(b)(1), one commenter recommended that the undefined term ''company-wide'' proposed in the prior NPRM be replaced with the term ''home office''.

*Response:* The commenter's recommendation was adopted. In addition, the last sentence was revised to clarify that the exception does not apply to transfers of ongoing functions between segments as well as to transfers of ongoing functions between pools within a segment.

*Comment:* Regarding the proposed addition of a new exception at 9903.302–2(b)(4), commenters expressed concern that the rationale for the proposed exception was not clear, that the proposed language was not clear and/or that certain technical aspects required expansion. Another opined that the cost impact of the change would be zero and that there was no benefit from this exception. A Federal agency commented that the described exception is a cost accounting practice change that should be disclosed to the Government and treated as an ''exemption'' from the cost impact and contract price and cost adjustment process.

*Response:* The unintended confusion and concerns generated by this proposed exception have been interpreted by the Board to mean that the anticipated costs of implementation associated with this proposed exception could far exceed the potential benefits envisioned by the Board. Accordingly, the Board is not proceeding with the previously proposed exception in this supplemental NPRM. Consequently, when a contractor makes the types of changes that were proposed in the prior NPRM as exceptions to the Board's definition of a ''change to a cost accounting practice,'' such changes shall not be treated as exceptions to the Board's rules. Instead, the determination of whether a change in cost accounting practice has or has not occurred shall continue to be made in accordance with the Board's promulgated definitions of the terms ''cost accounting practice'' and ''change to a cost accounting practice.''

*Exemptions From Contract Price And Cost Adjustment Proposed in the Prior NPRM That Are Withdrawn*

9903.302–2(c)(1)—Physical Changes To Improve Management Efficiency and Effectiveness

*Comments:* Contractors conceptually supported the proposed exemption for improved effectiveness and efficiencies but recommended significant language changes and questioned the level of detail needed to obtain the exemption. The concern was that the administrative cost of requesting the exemption would approximate the same levels of cost needed to prepare and support a cost impact proposal. Examples of recommendations were that:

—Detailed guidance be developed on what constitutes ''improved

management efficiency and effectiveness,'' to eliminate the potential requirement of a cost impact as measurable proof of such efficiency and effectiveness.

—The criteria should not be limited to just ''* * * changes in cost accumulation practices * * *'' It should apply to all applicable cases. The term ''physical realignment'' should be clarified.

Other commenters did not support the proposed exemption.

One respondent recommended ''* * * deletion of the (c)(1) exemption since it does not support consistency, the primary objective of the Cost Accounting Standards. It also does not support the objective of fairness since the contractor's interests are placed above the interests of the government with no legal recourse. Historically at this contractor location, the contract price and cost adjustment process has not hindered contractor accounting change decisions that result in more economical business operations . . . Further, the current exemption criterion is too broad, does not appear consistent with the prefatory response requiring significant physical and cost level changes, and promotes inconsistent treatment of organizational accounting changes. The tremendous resources expended to enhance the Cost Accounting Standards, especially in the cost impact area, will be neutralized by this one sentence exemption, if implemented. Contractor's will be allowed to submit nearly all future accounting changes under this exemption while the improved CAS cost impact regulations may rarely ever be used . . .''

A Federal agency representative recommended deletion of the exemption proposed in the prior NPRM and reinstatement of the desirable change criteria that was proposed in the ANPRM. Another Federal agency official recommended that the proposed exemption be revised to ''* * * state that in order for a change in cost accumulation practice to be exempt from a contract price and cost adjustment, it must result from restructuring activities and the contractor must notify the cognizant Federal agency official of the change prior to beginning the restructuring activities or by some other mutually agreeable date.''

*Response:* The contractor community indicated that the administrative costs associated with the submission of data and other efforts needed to support a request for the proposed exemption may exceed the administrative costs associated with the cost impact process. If the request for exemption were denied, the contractor would still be subject to potential contract price and cost adjustment and the CAS cost impact process. The contractor community advocated expansion of the proposed cost accumulation exemption criteria (which was designed to mitigate the cost impact process associated with pool combinations and split-outs) to include all cost accounting practice changes. Additionally, the contractor community advocated that the criteria for desirable changes also be expanded to include changes made to improve the economy and efficiency of the contractor's operations.

The Federal agency's recommendation that only a change in cost accounting practice resulting from restructuring activities be exempted, implies that a contractor's exemption request would not be approved unless the restructuring activities are determined to result in savings in accordance with that agency's procedures. The Board does not believe that CASB rules and agency procurement regulations should be so inextricably interwined.

In order to arrive at an equitable balance between the previously proposed ''exemption'' provision and the equitable adjustment provisions applicable to ''desirable changes,'' the Board, in this supplemental NPRM, proposes to replace the previously proposed exemption coverage with expanded ''desirable change'' coverage as described below, under the heading ''Desirable Changes.'' The Board believes such expanded ''desirable change criteria'' when finalized in the Board's regulations will result in greater use of that provision, and that it would not discourage contractor's from implementing economy and efficiency measures that result in cost accounting practice changes. The approach being proposed in this NPRM should also minimize the costs required to administer compliant changes made to a contractor's cost accounting practices.

Additional comments relative to this matter are requested under Section F.

9903.302–2(c)(2)—Changes in the Selection and Composition of Overhead and General and Administrative Expense Pools when Specified Criteria are Met

*Comment:* Several contractor and two Federal agency representatives recommended deletion of this previously proposed exemption. One commenter supported the Board's proposal. Another recommended that the proposed one percent corridor be expanded.

*Response:* The proposed exemption was intended to allow contractors to combine or split-out pools that included the same or similar types of activities with common beneficial or causal characteristics; provided, the resulting indirect cost allocations to final cost objectives would closely approximate the indirect cost allocations that would have resulted had the pool combination or split-out not been made. In such circumstances, contractors would provide notification of the change in cost accounting practice, demonstrate that the resulting indirect cost rates are expected to fall within a prescribed corridor, but they would not be required to incur the administrative costs associated with the cost impact process. The proposal was not supported by either the contractor community or by Federal representatives. The Board has, therefore, withdrawn this proposed exemption from the supplemental NPRM being issued today.

Additional comments relative to this matter are requested under Section F.

*Illustrations—Changes in cost accounting practices*

*Comment:* Commenters suggested certain editorial changes to the illustration proposed at 9903.302–3(c)(4) in the prior NPRM. One commenter stated that the illustration did not represent a change in cost accounting practice since the accounting method or technique had not changed.

*Response:* The proposed illustration is consistent with the Board's definitions of the terms ''cost accounting practice'' and ''change to a cost accounting practice.'' The illustration was revised to incorporate suggested editorial changes and to emphasize how the methods and techniques had changed with respect to cost accumulation, selection and composition of the pool, and composition of the allocation base.

*Comment:* In regard to the illustrations proposed at 9903.302–3(c)(5) and (6) in the prior NPRM, one commenter disagreed that the illustrations depicted changes to cost accounting practices and recommended that they be deleted. Others inquired regarding the application of the Board's proposed exemptions to the illustrated practice change.

*Response:* The purpose of the proposed illustrations was to provide examples of practice changes subject to the proposed exemptions from the contract price and cost adjustment. Since the proposed exemptions have

been withdrawn, the proposed illustrations have also been withdrawn.

*Comment:* A commenter recommended deletion of the illustration proposed at 9903.302–3(c)(9) in the prior NPRM because ''* * * the method or technique has not changed * * *'' Another indicated that the illustration represented a change in cost accounting practice because there has been a ''* * * a change in the allocation base * * *'' but that the illustration was confusing in that the change was referred to as ''* * * a change in the selection of the allocation base activity * * * perhaps if the word ''activity'' is deleted, users will not have to interpret what was intended.''

*Response:* The illustrated transfer of the entire inspection function from one pool to another pool is a change in cost accounting practice because several of the methods or techniques listed as examples in the definition of the term ''cost accounting practice'' have changed. The proposed illustration was revised to more precisely cite the methods or techniques that changed (see 9903.302–3(c)(7)).

*Comment:* The illustration proposed at 9903.302–3(c)(10) in the prior NPRM introduces the concept of contract practices versus contractor practices. Extending the voluntary change concepts to contract practices that change because of a merger or acquisition is inappropriate. One commenter did not agree that the depicted pool split-out was a change in cost accounting practice.

*Response:* The purpose of the proposed illustration is to make explicit that a cost accounting practice change made to an acquired segment's established cost accounting practices by an acquiring contractor after the effective date of a merger or acquisition is a change to that segment's established cost accounting practices with regard to the acquired CAS-covered contracts that will be completed by the acquired segment. The Board agrees with the commenter that the Board's rules governing changes to a cost accounting practice apply to the contractor's cost accounting practices established for the performing segment or business unit, and that separate practices are not to be established for individual contracts. However, the Board's rules are applied to individual contracts through the incorporation of an applicable CAS contract clause which requires the contractor to comply with applicable Standards and to consistently follow the contractor's established (or if required, disclosed) cost accounting practices when accumulating and reporting contract performance cost data. Thus, when the acquiring contractor elects to change the cost accounting practices previously used by the acquired segment to estimate and accumulate contract costs, a cost accounting practice change occurs for the acquired CAS-covered contracts affected by the practice change, and such covered contracts are subject to potential contract price and cost adjustment. The proposed illustration was modified to reflect that the contracting parties agreed that a change to a cost accounting practice had occurred (see 9903.302–3(c)(8)).

*Comment:* The use of the words ''identified'' in the illustration proposed to be added as 9903.302–4(i) in the prior NPRM is not clear.

*Response:* The illustration, promulgated in this proposed rule at 9903.302–4(h), was revised to clarify that the transfer of an employee from one intermediate cost objective to a different intermediate cost objective does not result in a change to a cost accounting practice when the costs of the ongoing functions or activities continue to be accumulated consistently in the same intermediate cost objectives and that the intermediate cost objectives remain in the same indirect cost pools, before and after the employee is transferred. The words ''identified'' were deleted where it appeared.

*Comment:* With respect to the illustration proposed to be added as 9903.302–4(j) in the prior NPRM, the increase in the base for the allocation of home office costs resulting from the creation of a new segment is not an ''initial adoption'' of a cost accounting practice.

*Response:* The initial allocation of home office costs to a newly created segment constitutes the initial adoption of a cost accounting practice for that entity. If the same established practices used for existing segments are applied (e.g., volume increase in base) or if a special or different allocation method or technique is established to reflect the beneficial or causal relationship of the home office costs to the new segment, a cost accounting practice is established for the first time, and, if required, must be disclosed. However, such first time adoptions are treated as an exception from the definition of a change to a cost accounting practice in order not to trigger the CAS contract price and cost adjustment provisions. The proposed illustration, promulgated in this rule at 9903.302–4(i), was revised to make explicit that the described ''increase in the base for the allocation of home office costs'' is a first time adoption of a cost accounting practice, i.e., an exception to the definition of a change to a cost accounting practice.

*Contract Clauses*

*Comment:* A commenter recommended deletion of the proposed words ''or will result'' in paragraph (a)(5), entitled ''Noncompliance,'' of the proposed contract clause because the commenter believed that the meaning and resulting application of the phrase was unclear. The commenter inquired: Does it apply to increased costs under the contracts that have been awarded by the date of noncompliance or is a projection based on future awards required?

*Response:* The intent of the phrase ''will result'' is to require consideration of the amounts remaining to be paid under existing CAS-covered contracts affected by a noncompliant cost accounting practice that was used to estimate contract costs. For example, assume that a noncompliant practice was used to estimate contract costs for a fixed-price contract which resulted in the negotiation of an overstated price. After award, at the time the noncompliance is being resolved, the affected fixed-price contract is partially complete with units of production remaining to be billed at the negotiated contract unit price. In such cases, increased costs paid occurred when the Government paid for the units that were completed and delivered. Increased costs paid by the Government would also result in the future as the contractor receives payment for the remaining contract items when they are completed and delivered. Resolution of estimating noncompliances, in the form of required contract price adjustments for affected cost-type and/or fixed-price contracts, need not wait until the Government actually pays the increased costs included in the negotiated contract price. The proposed provision was retained.

*Comment:* A commenter recommended that the ''access to records'' paragraph be revised by deleting the proposed coverage describing the type and form of records covered. The commenter expressed concern that the proposed language regarding providing copies of computer software may involve third party agreements.

*Response:* The previously proposed references to ''software'' have been deleted from the revised contract clause language being proposed today.

*Comment:* A Federal agency recommended that the contract clause at 9903.201–4(d), applicable to negotiated contracts awarded to a United Kingdom contractor, and 9903.201–4(e) Cost

Accounting Standards—Educational Institutions, be modified for consistency with the amendments proposed for the contract clauses at 9903.201–4(a), Full Coverage, and 9903.201–4(c), Modified Coverage.

*Response:* Clause (d), for United Kingdom contractors, is quite different from the other referenced provisions. In addition, it is both brief and simple. In the absence of any identified implementation problems, that clause does not appear to be in need of modification. The clause for educational institutions was promulgated on November 8, 1994. In response to one related ANPRM comment, the Board asked in the prior NPRM (61 FR 49206) for further comments on the desirability and support for making such revisions. Only this one comment was received. Accordingly, the Board believes that such revision is not currently warranted.

*Desirable Changes*

*Comment:* Several contractors urged the Board to retain the ANPRM provisions that included economy and efficiency changes as examples of desirable changes. A professional association recommended: ''* * * make it clear that organizational changes intended to produce cost savings are desirable and should be administered using equitable adjustment procedures.''

Response: The ANPRM criteria for desirable changes was deleted when the NPRM exemption for economy and efficiency changes was proposed. The Board concluded that performing contractors and Federal officials should not be able to choose which of the two types of coverage should be applied to changes in cost accounting practices that result from contractor actions taken to improve the economy and efficiency of operations. In practice, such provisions could result in endless debates and produce potential disputes between the contracting parties. Accordingly, the ANPRM desirable change criteria citing economies and efficiencies were not incorporated in the prior NPRM issued on September 18, 1996.

As discussed under the heading ''Exemptions From Contract Price And Cost Adjustment Proposed in the Prior NPRM are Withdrawn,'' a number of commenters expressed concern that the proposed exemptions, while appreciated for their fairness, would increase rather than decrease contract administrative costs. Some also believed that the exemptions should be expanded and that more detailed procedural provisions were needed. After considering the comments received, the Board concluded that the proposed ANPRM economy and efficiency criteria provide for an equitable resolution process that can be reasonably implemented, in a fairly predictable manner, with a minimum of administrative effort. Further, the ANPRM approach was generally supported by contractors and a commenting Federal official. Accordingly, the Board proposes to adopt the commenters' recommendations to reinstate the ANPRM ''economy and efficiency'' criteria for ''desirable'' changes (and to also delete the previously proposed ''exemptions'') in this supplemental NPRM. Additionally, the previously proposed permissive use of the ANPRM economy and efficiency criteria was replaced by mandatory language that states a change in cost accounting practice ''shall'' be deemed a desirable change if a listed criterion is met.

Specific comments relative to this proposed provision are requested under Section F.

*Comment:* Clarify that the proposed criteria are not conjunctive by adding the phrase ''one or more of'' after ''not limited to.''

*Response:* The proposed criteria are not conjunctive. The recommended phrase was added at 9903.201–6(b) to clarify that only one criterion needs to be met for a practice change to be deemed a desirable change.

*Comment:* Several commenters from the contractor community again recommended that the Board include as desirable changes, accounting changes required by law or regulation, as well as accounting changes required for conformity with changes in generally accepted accounting principles (GAAP) promulgated by the Financial Accounting Standards Board.

*Response:* The Board continues to disagree with the commenters. As stated in the prior NPRM, the original CASB concluded that all contractor proposed changes in cost accounting ''... for any reason ...'' should be considered for contract adjustment and that if major changes in cost accounting practice were required in order for contractors to comply with an express provision of law, the Board would appropriately modify its Standards (Preamble J, Changes compelled by law or regulation (43 FR 9775, March 10, 1978)). Accounting procedures required to conform with laws, regulations or GAAP are generally not mandated for Federal contract cost accounting purposes. While a contractor must comply with such requirements for tax reporting purposes or financial statement reporting purposes to stockholders, such requirements are not *per se* required cost accounting practices for Federal contracting purposes. Hence, any contractor desired change to an established cost accounting practice used to estimate, accumulate and report the costs of performing CAS-covered contracts and subcontracts remains subject to the Board's Standards, rules and regulations, including the CAS contract clause adjustment provisions governing changes in cost accounting practices. Accordingly, each contractor change in cost accounting practice made for any reason must be considered on a case-by-case basis in order to determine whether the change is or is not desirable.

C*omment:* Several commenters recommended deletion or revision of the proposed criteria at 9903.201–6(b)(1) which provides that if the Government determines that a change in cost accounting practice is ''necessary'' in order for the contractor to remain in compliance with an applicable Standard, the practice change shall be deemed to be a ''desirable'' change. The commenters believed such changes are ''required'' changes that are subject to equitable adjustments under the CAS contract clause provisions for required changes. Furthermore, contractors should not be required to request a second determination that a change ''required to remain in compliance'' be deemed a desirable change.

*Response:* As stated in the prior NPRM preamble comments (61 FR 49202), the CAS contract clause provisions that refer to a ''required'' change only pertain to a change in cost accounting practice that is made in order to comply with a new Standard, modification or interpretation thereto when it first becomes applicable to an existing covered contract through the award of a subsequent CAS-covered contract or subcontract. It does not apply to changes in cost accounting practices made subsequently by a contractor due to changed circumstances in order to remain in compliance with an existing Standard already applicable to an existing contract. By treating such subsequent changes as ''desirable'' changes, the contracting parties can negotiate equitable adjustments for covered contracts and/or subcontracts materially affected by subsequent changes that the cognizant Federal agency official has determined, on a case-by-case basis, were necessary in order for the contractor to remain in compliance with an applicable Standard.

When a determination is made that a practice change was ''necessary,'' it is expected that the cognizant Federal

agency will treat that determination as the equivalent of a desirable change determination. No further paperwork is envisioned by the Board in such cases. If not determined ''necessary'' and the practice change is not otherwise considered to be a desirable change, the compliant practice change would be a voluntary change that is subject to the ''no increased cost to the Government'' provisions of affected CAS-covered contracts and subcontracts.

To distinguish subsequent changes in cost accounting practices from first time ''required'' practice changes, the Board has retained the proposed criteria, including the proposed designation of ''necessary'' in the rule being proposed today. The proposed procedures at 9903.405–2(d) for requesting that a voluntary change be considered a desirable change were modified to also require the submission of data demonstrating that a change was ''necessary'' to remain in compliance with an applicable Standard.

*Comment:* Two Federal commenters objected to the criteria proposed at 9903.201–6(b)(2) in the prior NPRM. One stated that the provision is subject to misinterpretation, that contractors are responsible for initiating voluntary changes and that the Government only determines if a practice change is adequate and compliant. The other commenter also believes it is inappropriate for the Government to make recommendations to contractors to change an accounting practice.

*Response:* In response to the ANPRM, some contractors advocated that a change in cost accounting practice recommended by the cognizant Federal agency official and implemented by the contractor be considered a desirable change, since they apparently had experienced such conditions. A Federal agency recommended deletion of the proposed provision because in their view this provision would rarely be used and it would avoid contractor interpretations of discussions held with Federal officials as representing recommended changes. In the prior NPRM, a requirement for a written Government recommendation was added to preclude contractor actions or misinterpretations of conversational exchanges with Government representatives.

The Board has reconsidered this matter and agrees with the Federal commenters that the Government should not recommend specific cost accounting practices to be applied by contractors. Rather, authorized Government representatives should limit their oversight activities to determining whether a contractor's proposed or established cost accounting practices are in compliance with the Board's applicable Standards. Accordingly, the referenced provision has been deleted from this supplemental NPRM.

*Cognizant Federal Agency Responsibilities*

*Comment:* Representatives from two Federal agencies expressed a number of concerns regarding proposed subsection 9903.201–7 and one recommended deletion of proposed paragraph (d) therein. The primary concerns were that the proposed amendments may conflict or duplicate existing and/or future provisions in Federal Acquisition Regulation (FAR) subparts 30.6 and 42.3, and that the proposed responsibilities for obtaining funding may go beyond the control of the cognizant Federal agency official.

*Response:* The Board continues to recognize that responsibility for administering CAS-covered contracts rests with the various Federal agencies, including civilian agencies that are subject to CASB rules and regulations. The Board, in reviewing how the CAS cost impact process was conducted at a number of contractor locations, concluded that this process was generally not being accomplished in a timely or efficient manner. One contributing factor was that neither the Board's rules nor applicable agency regulations clearly set forth the complete process to be followed or actions to be taken by the contracting parties. This supplemental NPRM proposes a precise yet flexible approach for the submission of cost impact data due to compliant changes in cost accounting practices and noncompliances and for determining the resultant contract price or cost adjustments required under the Board's rules and regulations. The Board believes such specificity will facilitate the CAS administrative process, reduce administrative costs and improve timeliness.

However, the Board also recognizes that certain implementing administrative policies and procedures need to be established in applicable agency regulations. Accordingly, the Board has modified the previously proposed provisions to provide agencies with more flexibility in developing applicable implementing policies and procedures. Proposed paragraph (d) has been significantly modified in this supplemental NPRM. It was retitled to reflect its applicability to just the processing of contractor changes in cost accounting practices. The proposed language was revised to state that actions are to be taken in accordance with applicable agency regulations. A new paragraph (3) was added to clarify that other methods may be used to resolve negotiated cost impact settlements if the cognizant Federal agency official determines that funds needed to effect contract price modifications will not be made available in a timely manner.

The Board is of the opinion that modification of contract and subcontract prices, as prescribed in the regulations being proposed today, represents the preferred method to be used to resolve material cost impacts due to a change in cost accounting practice. Modification of contract prices enable the contracting parties to establish contract prices for covered contracts that correlate with the increased or decreased cost allocations to such contracts that result due to practice changes. This facilitates contract administration by permitting meaningful comparison of estimated and actual costs. The Board is also aware that often the necessary funding required to increase some contract prices may not be readily available. In the NPRM being issued today, revised coverage has been added to emphasize that the decision on how to best achieve an equitable solution, in the aggregate, remains a cognizant Federal agency official responsibility.

*Cost Impact Process*

*Comment*: A Federal agency expressed concern about the extent of detailed administrative responsibilities and requirements included in the prior NPRM. An industry representative presented a similar view by stating that some of the proposed material was overly prescriptive.

*Response*: In order to fully and clearly describe the cost impact process, inclusion of certain administrative responsibilities and requirements is unavoidable. However, the Board agrees that some of the prior NPRM material may have been overly instructional and prescriptive in nature. The Board has deleted such material.

*Comment*: Industry commenters questioned the fairness of having ''strict'' time requirements put on contractors for cost impact responsibilities, while the Government had ''suggested'' time periods for completion of their required actions. A Federal agency commenter, on the other hand, wanted more flexibility with regard to time requirements applied to the responsibilities of cognizant agency officials.

*Response*: In order to fairly respond to both industry and Government groups, all specific time frame requirements,

with the exception of the advance notification requirements for changes in cost accounting practices, have been deleted from the NPRM being issued today. Previously proposed time requirements were replaced with language that states that actions should be taken ''on or before the date specified by the cognizant Federal agency official or other mutually agreeable date''. However, the Board concluded that the length of time taken to complete the change in cost accounting practice and noncompliance cost impact and resolution process has been a problem in the past, and believes the problem will continue if not adequately addressed by procurement officials. The Board therefore urges Federal agencies to establish reasonable and specific time guidelines in their implementing regulations for the completion of the various steps to be specified in subpart 9903.4 when this rulemaking process is completed.

*Comment*: One industry commenter suggested that the term ''voluntary'' be eliminated from the definition of a desirable change because not all desirable changes are voluntary. A Government commenter suggested that the rule refer to changes that are not required changes as either voluntary changes ''not deemed desirable'' or as voluntary changes deemed ''desirable'', as applicable.

*Response*: The Board believes that through usage and practice the contracting parties familiar with the requirements of the CAS contract clause provisions governing compliant changes in cost accounting practices have assigned distinct meanings to the terms ''voluntary'' and ''desirable'' changes. The usage of and reference to these terms in most of the commenters' responses affirms the Board's belief. The Board therefore does not wish to disturb this commonly accepted and understood usage of these terms. The proposed definition of a voluntary change was revised for greater consistency with the common usage of the term by adding that it is a change ''that is not deemed desirable by the cognizant Federal agency official and for which the Government will pay no increased costs''. Similarly, the definition of a desirable change has been expanded to indicate that these are changes which become subject to ''equitable adjustments'' if covered contracts are affected by the change. Thereafter in the proposed subpart being issued today, practice changes are referred to as ''voluntary'' when no increased costs will be paid by the Government and as ''desirable'' when equitable adjustments will apply.

*Comment*: Several industry commenters objected to the proposed notification requirement for required changes (at 9903.405–2(b)(1) in the prior NPRM). The commenters contended that the proposed 60 day advance notification requirement was not always practical or even possible when a Request For Proposal provides a shorter time period for proposal submissions.

*Response*: Estimated costs proposed for a CAS-covered contract must be predicated on cost accounting practices that are compliant with the CAS that will apply to the potential contract, if awarded. The proposed advance notification requirement was intended to provide the Government with additional time to determine if the contractor's changed cost accounting practice to be used for contract cost estimating purposes was adequately disclosed and compliant with the potentially applicable CAS. However, the Board agrees with the commenters that the 60 day advance notification requirement may not always be practical. The proposed requirement was revised to require notification ''* * * as soon as it becomes known that a required change must be made, but no later than the date of submission of the price proposal in which the contractor must first use the changed practice to estimate costs for a potential CAS-covered contract.''

*Comment*: Industry commenters, in general, objected to the proposed provisions (at 9903.405–2(b)(2) (i) and (ii) in the prior NPRM) which precluded contractors from using a proposed new accounting practice for estimating costs for the first time (the effective date) until the earlier of 60 days after notification or the date a determination of adequacy and compliance is made by the cognizant Federal agency official. A Government agency expressed concern about applying different treatment for contracts awarded between the notification date and effective date based on the ''preclusion of use'' provision, than for other contracts awarded prior to the notification date for voluntary changes. They recommended that the Board delete the ''special equitable adjustment'' treatment included in the prior NPRM for these contracts. A group of ''concerned U.S. Taxpayers'' raised several questions with regard to the ''special equitable adjustment'' provisions which indicated that the procedure included in the prior NPRM for these ''special'' contracts may be difficult to apply.

*Response:* The Board, in researching this issue, learned that a lack of consistency exists as to the point in time when contractors actually begin to use a changed cost accounting practice to estimate costs in price proposals. Some used immediate implementation, while others waited until the cognizant Federal agency official made a determination of adequacy and compliance. The Board's purpose in proposing the ''special equitable adjustment treatment'' provision was to promote consistency in use of changed practices for estimating costs for price proposals.

After considering the many negative comments received about this provision, the Board has decided to withdraw the proposed requirement which would have precluded contractors from immediately using proposed new practices for estimating purposes. The Board is also eliminating the related ''special equitable adjustment'' provisions proposed for contracts awarded between the notification and effective dates (at 9903.405–2(f), 9903.405–5(d)(7) and 9903.407–1(h) in the prior NPRM). Due to this elimination, the effective date for voluntary changes being proposed in this supplemental NPRM is the date on which the contractor first begins using the new practice for estimating costs for potential CAS-covered contracts. In the event that the cognizant Federal agency official subsequently determines that the new practice is noncompliant with an applicable Cost Accounting Standard, the contractor's implementation of the noncompliant practice for estimating purposes would be handled in accordance with 9903.406–3.

The Board has also revised the previously proposed requirements for the notification date for voluntary changes based on the elimination of the ''preclusion of use'' and ''special equitable adjustment'' provisions. As revised, the requirement for notification is ''60 days before the applicability date'' or the date of submission of the first contract price proposal which reflects the use of the voluntary change (see 9903.405–2(b)(2) in this NPRM). The previously proposed provision of concern to some commenters regarding the establishment of a ''revised notification date'' (at 9903.405–3(a) in the prior NPRM) has also been eliminated since this related to the 60 day window period for the ''preclusion of use'' and ''special equitable adjustment'' provisions.

*Comment:* Several Government commenters requested that the Board include a provision requiring the Federal agency official to notify the contractor of the desirable change determination so that a voluntary

change could be treated as a ''desirable'' change for cost impact and contact price adjustment purposes.

*Response:* Since there is a proposed requirement for the contractor to submit a written request and provide written justification for desirable changes, the Board agrees that the cognizant Federal agency official's decision and response should also be in writing. The Board proposes to establish this requirement at 9905.405–3(b). When the contractor provides the required notification, a determination has not yet been made by the cognizant Federal agency official as to whether a voluntary change is or is not desirable. Accordingly, 9903.405–2(b)(2) was revised to clearly reflect that the notification requirement applies to a voluntary change. A similar requirement concerning the determination made on planned voluntary changes with retroactive applicability dates is also proposed at 9903.405–3(c).

*Comment:* In the interest of streamlining, both industry and Government commenters recommended that the general dollar magnitude (GDM) submissions and Cost Impact Settlement Proposal submissions (at 9903.405–4 (a) and (b) in the prior NPRM) be combined into one submission.

*Response:* The Board agrees with this recommendation. A combined submission format is being proposed at 9903.405–4(a)(4). The Board has decided to refer to the submission as a ''GDM Settlement Proposal'' in order to give recognition to the submission's two purposes: (1) To provide a general dollar magnitude estimate of the aggregate cost impact amounts by contract type; and (2) to provide the contractor an opportunity to propose specific adjustments to settle the cost impact of a change in cost accounting practice. Previously proposed paragraph (c) covering the submission of a detailed cost impact proposal has been moved to 9903.405–4(b).

*Comment:* One commenter suggested that a contractor's cost impact submissions be shown by two contract groups rather than by contract type. The suggested groups were ''firm fixed-price'' and ''other than firm fixed-price''.

*Response:* The Board believes that the suggested ''other than firm fixed-price'' grouping to be inappropriate because it would combine contracts that should not be combined, e.g., incentive contracts with non-incentive contracts. In order to reduce the number of contract types that must be listed in the GDM Settlement Proposal, the Board believes that in most situations, the contract types may be limited to the following groups: firm fixed-price (FFP); time and material (T&M); incentive type (FPI/CPIF); and all other cost reimbursement contracts. These contract ''type'' groupings are illustrated in the GDM Settlement Proposal being proposed today at 9903.405–4(a)(4).

*Comment:* One industry commenter recommended that a contractor initially only be required to submit a GDM estimate of the aggregate impact of changes in cost accounting practices so that a materiality determination can be made prior to requesting any individual contract data. A Government commenter supported the submission of some contract data, as proposed in the prior NPRM, by opining that ''a GDM alone does not furnish any information on the expected impact on specific large contracts, and the lack of data may cause delays and requirements for a detailed cost impact proposal''.

*Response:* The submission of some individual contract data with the GDM aggregate estimate serves three purposes. First, it provides reasonable assurance with regard to the accuracy of the aggregate estimate by contract type submitted in the GDM. Secondly, it provides additional and needed support to determine if a cost impact due to changes in cost accounting practices is material both in the aggregate and for individual contracts. Finally, it provides a contractor an opportunity to propose specific adjustments to settle the cost impact without resort to a detailed cost impact proposal. The Board included in the prior NPRM, and has more prominently displayed in this NPRM, a provision that states that if the cognizant Federal agency official determines that the impact of a change is obviously immaterial, the process will be considered completed (see 9903.405–3(d)). Absent an ''obviously immaterial'' condition, the Board continues to believe that individual contract data is needed to evaluate the accuracy of the GDM aggregate estimate and to determine the materiality of the impact both for the aggregate amounts and for individual contracts. The Board has therefore retained the proposed requirement for the submission of individual contract data along with the GDM aggregate estimate (as part of the GDM Settlement Proposal).

*Comment:* A Government commenter recommended that the previously proposed provision at ''* * * 9903.405–3(b) be expanded to specifically require the contractor to submit a GDM. Disputes have arisen over who is required to submit a GDM, the contractor or the Government''.

*Response:* In order to make clear that it is the contractor that is required to prepare and submit the GDM Settlement Proposal, the Board has included revised wording at 9903.405–3(e) in this NPRM.

*Comment:* One commentator suggested that the baseline for computing the cost impact due to changes in cost accounting practices be the ''before change'' cost data baseline as opposed to the ''after change'' cost data baseline as proposed at 9903.405–4(a)(3).

*Response:* The most important factors in the computation of the cost impact of a change in cost accounting practice are: (1) to use a consistent cost data baseline; and (2) to isolate the cost impact of cost allocation differences on covered contracts that are due solely to the application of the original and changed cost accounting practices. If this is done properly, there should not be a significant difference in the cost impact amount, regardless of which baseline is used. The Board continues to believe that the ''after change'' cost data baseline is preferable for the reason stated at 9903.405–4(a)(3). The Board has not mandated its use, however, as evidenced by the proposed use of the word ''should'' and the phrase ''in most cases'' included in this subparagraph. To provide added flexibility for determining the data to be used for cost impact computation purposes, additional language was inserted to reflect the Board's preference for the use of the latest forecasted data used for forward pricing purposes, while still permitting the use of other data that ''is considered preferable and agreed to by both the contractor and cognizant Federal agency official.''

*Comment:* One industry commenter suggested that the Board establish specific materiality thresholds for the aggregate, ''all other'' contract, and individual contract amounts for contract price adjustment purposes.

*Response:* The Board's decision not to specify materiality amounts for cost impact thresholds is consistent with the position the Board has taken in the past with regard to this issue. The Board leaves such materiality determination decisions to the cognizant Federal agency officials who must evaluate the specific circumstances on a case-by-case basis in making these determinations.

*Comment:* Several industry commenters argued that the use of the ''netting'' process described in the prior NPRM be expanded to required and desirable changes, and not be limited to ''no increased costs'' voluntary changes. One Government commenter recommended deleting the term ''netting'' because ''* * * it is confusing for the rule to discuss the two different terms, 'offset' and 'netting'. Since

'offsets' is the term currently used and most contractors and contracting officers are familiar with it, we see no reason to introduce a new term.''

*Response:* The concept of ''netting'' only has relevance for a voluntary change for which there will be no increased costs to the Government. The proposed use of the term ''netting'' was to be associated with the process used to determine if the Government would potentially pay increased costs, in the aggregate, after giving consideration to appropriate adjustments of all affected contracts, due to the cost impact of a voluntary change in cost accounting practice. Since increased cost to the Government is not a concern for required or desirable changes which result in equitable adjustments upward or downward based on the cost impact, ''netting'' simply does not apply to such practice changes. The Board agrees with the Government commenter that the introduction of the term has caused some additional confusion concerning this process. The term ''netting'' has therefore been eliminated from this NPRM.

The process for determining whether increased costs to the Government would result after all potential contract price adjustments are considered is still an essential action that must be accomplished for a voluntary change. The required process is specified at 9903.405–5(d) in this NPRM.

*Comment:* Regarding the ''preclusion of increased cost'' matrix previously proposed at 9903.405–5(d)(3) for voluntary changes, one industry commenter argued that it was not equitable that no upward adjustments be made when a higher amount of costs are to be allocated to both flexibly priced and firm fixed-price contracts, while downward adjustments to both flexibly priced and firm fixed-price contracts are made when a lower amount of costs were to be allocated to these contract types as a result of voluntary changes in cost accounting practices. Other commenters argued that downward adjustments to CAS-covered fixed-price contracts should be limited to corresponding upward adjustments to CAS-covered flexibly priced contracts, or otherwise a ''windfall'' accrues to the Government.

*Response:* The proposed matrix is intended to show that for voluntary changes, the Government will not pay increased costs in the aggregate by precluding any net upward price adjustments. The Board's proposed rule is predicated on the basic concept that the Government should not pay more than the Government would have paid had the voluntary change not been made. That is the important distinction between a voluntary change and a desirable or required change.

If the same scenarios that appear in the matrix were applied to required or desirable changes, there would be no limit on upward or downward adjustments, nor would there be a concern with regard to whether the cost allocation increases or decreases were coming from other CAS-covered work, other Government non-CAS-covered work, or commercial work. For required or desirable changes, CAS-covered contracts are subject to equitable adjustments under the changes clause of the contract. Therefore, in the scenario for required and desirable changes in which the costs to be allocated are higher for all contract types, the CAS-covered contracts are equitably adjusted upward to reflect the impact of the change (see 9903.405–5(d)(6)). The Government certainly could not claim an ''offset'' against the upward adjustment of the flexibly priced contracts by saying that a corresponding higher amount of costs to be allocated to firm fixed-price contracts represents ''decreased'' cost, thereby denying the contractor its equitable adjustments. The same is true of the opposite scenario of a lower amount of costs to be allocated to all contract types due to required and desirable changes. The contractor similarly has no ''offset'' claim here, and the Government is entitled to its downward equitable adjustments under the contract clause provisions for required and desirable changes.

The contract clause provision for changes in cost accounting practices which applies to ''any change'' is that ''the change must be applied prospectively'' and that ''if the contract price or cost of this contract is materially affected by such changes, such adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause'' (see (a)(2) of the contract clause at 9903.201–4(a)). Therefore, in accordance with this provision, contract prices are to be adjusted upward or downward to reflect any material cost impact due to compliant changes in cost accounting practices. The only exception results from the ''no increased cost'' provision for voluntary changes at (a)(4)(ii) of the contract clause. This precludes net upward contract price adjustments for voluntary changes. There is no similar preclusion of net downward contract price adjustments for voluntary changes.

The Government should be left no worse off as a result of a voluntary change than it is for a required or desirable change with regard to contract price adjustments. Therefore, net downward contract price adjustments can and should be made if the cost impact reflects a lower amount of costs in the aggregate to be allocated to CAS-covered contracts as a result of changes in cost accounting practices. Such net downward adjustments do not create a ''windfall'' to the Government. Nor do these downward contract price adjustments result in recovery by the Government of costs greater than the lesser allocation of costs in the aggregate on the relevant contracts subject to price adjustment (this would only occur if the Government made downward contract price adjustments greater than the aggregate lower cost allocation amounts reflected by the cost impact). The contract price adjustments merely adjust the affected contract values to make them consistent with the costs expected to be accumulated under the changed cost accounting practices to be used to accumulate costs on those contracts for the remainder of their contract performance period.

Due to the apparent continuing confusion regarding the use of the term ''increased costs'', the Board re-examined the proposed definitions contained in the prior NPRM. The Board concluded that it was not commonly understood that the definition of increased cost was dependent upon the type of contract involved and whether the contract price would or would not reflect the changes in cost allocations resulting from a change in cost accounting practice. The Board has therefore modified the proposed definitions to clarify that the term ''increased cost'' refers to ''increased cost to the Government'' and that the definition is from the point of view of the condition that would result if no contract price or cost adjustments were made to achieve equity.

*Comment:* Another commenter recommended substituting ''Increased Costs'' and ''Decreased Costs'' for ''Higher'' and ''Lower'' in the matrix to conform with the terms used throughout the NPRM with regard to cost impacts due to changes in cost accounting practices.

*Response:* Since ''Increased Costs'' has a certain defined connotation in the CAS Board's rules and regulations, use of this term disturbs the various scenarios and related conclusions presented in the column entitled ''Actions To Be Taken To Preclude Increased Costs''. However, in order to make clear what is meant by ''Higher'' and ''Lower'' in the matrix with regard to shifts of costs resulting from voluntary changes, descriptive footnotes have been added in the matrix (see

9903.405–5(d)(3)). The proposed language is consistent with the language used in the definitions of increased costs included in 9903.403.

*Comment:* One commenter suggested that the Board eliminate the term ''disallow'' in the matrix since we are dealing with costs that are otherwise allowable except for the ''no increased cost'' provision for voluntary changes.

*Response:* The Board proposes to replace the term with the phrase ''preclude payment of'' to be consistent with the wording in the contract clause provision for voluntary changes.

*Comment:* One commenter interpreted the prior NPRM as requiring that, for noncompliances, detailed cost impact proposals must be submitted, and stated that ''requiring a detailed cost impact proposal for all noncompliances is contrary to acquisition reform and streamlining Government regulations.''

*Response:* The Board did not intend that a detailed cost impact proposal be submitted for all noncompliances. The Board's prior proposal has been revised to clarify this point. In this NPRM, the proposed language at 9903.406–2(e) specifies that a cost impact submission may be in a format similar to the GDM Settlement Proposal shown at 9903.405–4(a)(4), the detailed cost impact proposal specified at 9903.405–4(b) or other mutually agreeable format which will accomplish the objectives of 9903.406–3 (c) and (d) for a cost estimating noncompliance or 9903.406–4 (c) and (d) for a cost accumulation noncompliance. Also, an example of a GDM Settlement Proposal format for a noncompliance action has been added to 9903.406–2(e). Elsewhere in proposed 9903.406, the previously proposed phrase ''cost impact proposal'' was replaced with the phrase ''cost impact submission'' in order to avoid the perception that a detailed cost impact proposal was being required for all noncompliances.

*Comment:* One commenter recommended using the phrase ''cost accounting noncompliance'' in lieu of ''cost accumulation noncompliance''.

*Response:* The Board proposed the terms ''estimating'' and ''accumulating'' to describe the two types of noncompliances that can occur. The two terms are consistent with the terminology used in 9904.401 which requires consistency in the cost accounting practices used to estimate and accumulate costs. The Board believes that use of the phrase ''cost accounting noncompliance'' would lead to confusion since cost accounting practices are used to both estimate and accumulate costs.

*Comment:* One commenter recommended that a provision be added that would allow a contractor to submit data demonstrating that the impact of a noncompliance is immaterial and therefore could be handled under 9903.406–5 as a Technical Noncompliance.

*Response:* The Board agrees with this recommendation and proposed language has been added at 9903.406–3(a) and 9903.406–4(a) to reflect this permitted action.

*Comment:* One commenter suggested that the Board add an illustration to show that a situation similar to the one described in the prior NPRM illustration proposed at 9903.407–1(e)(1) could be resolved by adjusting one contract rather than three contracts.

*Response:* The Board has added such an illustration at 9903.407–1(d)(2) in this NPRM.

*Comment:* One commenter advised that, in the proposed illustration at 9903.407–1(g)(2), the statement that increased cost on a CPFF contract was ''coming from a shift of costs from both Contract A and other non-government work'' implies that the need to preclude costs depends on how the costs are shifted and recommended its deletion.

*Response:* The Board did not intend to imply that, when changes in cost accounting practices result in shifts of costs to or from CAS-covered contracts, the resolution of the cost impact and resulting contract price adjustments would be affected or influenced by whether the cost shift was coming from or going to other CAS-covered work or non-CAS-covered work. In order to avoid any unintentional implications or inaccurate inferences, the cited reference to the source of the shift of costs onto the CPFF contract was deleted (see the revised illustration at 9903.407–1(f)(2) in this NPRM).

*Comment:* A commenter did not understand why the proposed resolution of the estimating noncompliance illustrated in the prior NPRM, at 9903.407–2(a)(2), did not result in net upward adjustments to the affected fixed-price contracts. Specifically, the commenter stated that ''we are unable to determine either the logic or the regulatory basis for the Government to keep the windfall profit''.

*Response:* The commenter's assertion appears to be that fixed-price contract prices should be adjusted upward to reflect the full amount by which the estimated costs contained in the contractor's cost proposals were understated due to the application of a noncompliant cost accounting practice. This contrasts with the proposed resolution shown in the referenced illustration which limited the upward adjustment on one fixed-price contract to the downward adjustment experienced on a different fixed-price contract, i.e., an approach that results in no increased cost, in the aggregate, to the Government when an estimating noncompliance is corrected. The proposed illustration was consistent with the regulatory provisions proposed in the prior NPRM at 9903.406–3(c)(2). The Board's rationale was based on the opinion that contractors are expected to consistently apply their established cost accounting practices, in compliance with applicable Cost Accounting Standards when estimating costs for potential CAS-covered contracts, and, if the contract is awarded, when accumulating and reporting the costs of contract performance. The Board's continuing objective is to encourage contractors to utilize compliant cost accounting practices in a consistent manner when submitting cost proposals that are intended to reflect the estimated costs of contract performance expected to be accumulated in the contractor's cost accounting records if the contract were awarded.

In questioning the Board's basis for the proposed solution, perhaps the commenter is advocating that the correction of a contractor's estimating noncompliance, as illustrated in the prior NPRM, should result in revised contract prices that are higher, in the aggregate, than the amounts agreed to by the contracting parties at the time of negotiation. If such a policy were established, a contractor that inadvertently or knowingly proposed a lower estimated cost by using a noncompliant cost accounting practice would have the potential ability to gain a competitive advantage or mislead the Government regarding the eventual cost to the Government while being assured that after contract award, by initiating action to correct the noncompliant practice, the contract price would be revised upward to fully cover the understated costs. The Board does not agree with the thrust of the commenter's inquiry.

Accordingly, the illustration proposed in the prior NPRM was retained in this NPRM. In addition, 9903.406–3(d) was revised to clarify that estimating noncompliances cannot result in net upward contract price adjustments. A schedule was also added to illustrate whether contract price adjustments are to be required for flexibly-priced and/or fixed-price contracts when an estimating noncompliance results in the negotiation of contract prices that are higher or lower than the prices that

would have resulted had a compliant practice been used.

*Comment:* One commenter advised that it would be useful if the Board would prescribe which of the two ''underpayment interest rates'' prescribed at 26 U.S.C. 6621 specifically applies to the CAS contract price adjustment interest provision required by 41 U.S.C. 422(h)(4) and included in the various CAS contract clauses.

*Response:* The Board agrees with the commenter that this issue has engendered some confusion among contractors and Government agencies. The Board's enabling statute, and the various CAS contract clauses, specify that the interest rate prescribed at 26 U.S.C. 6621 shall be used in making such calculations. At the time the Board's current enabling statute was enacted, this provision only contained one ''underpayment interest rate''. Subsequntly, the statute was amended to include two different ''underpayment interest rates''. Upon careful consideration of this issue, the Board has concluded that the lesser of the two ''underpayment rates'' should be used in making the appropriate interest adjustment calculation. The Board has reached this conclusion after considering the specialized nature of the more recently enacted ''underpayment rate for large corporations'' and what would appear to be its limited use in certain Internal Revenue Service tax enforcement actions. In addition the interest rate specified at 26 U.S.C. 6621(a)(2) was the rate in effect at the time that the Board's current enabling statute was enacted. To effect the requested clarification, a revision has been made at 9903.306.

*Educational Institutions*

*Comment:* Several commenters suggested that the Board exempt educational institutions from the requirements of proposed subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances. They believed that OMB Circular A–21, Cost Principles for Educational Institutions, as amended April 26, 1996, which now incorporates the Board's applicable Standards and Disclosure Statement, provides sufficient coverage and guidance for the reporting of changes to established cost accounting practices and for making required price or cost adjustments if a practice change or a noncompliance results in a material cost impact on Federally sponsored agreements, including any CAS-covered contracts.

*Response:* As proposed, subpart 9903.4 would have applied to all CAS-covered contractors, including educational institutions. However, a waiver provision authorizing cognizant agencies to waive, on a case-by-case basis, any CAS unique 9903.405 requirements for determining the cost impact of compliant changes in cost accounting practices under CAS-covered contracts awarded to educational institutions was also provided at 9903.401–2 in the prior NPRM. The waiver provision was intended to provide maximum flexibility when the cognizant Federal agency official must concurrently determine contract price and cost adjustments for CAS-covered awards and make similar adjustments for non CAS-covered contracts and Federal grants in accordance with applicable OMB Circular A–21 requirements. Under the proposed waiver authority, the cognizant Federal agency official can waive specific CAS adjustment methodologies so that one set of calculations can be applied, in a consistent manner, to the total universe of Federally sponsored agreements affected by a compliant change in cost accounting practice. However, actions specified in subpart 9903.4 requiring notification to the Government when a practice change is made and to equitably resolve the cost impact resulting from the use of a noncompliant cost accounting practice used to estimate, accumulate or report costs were not subject to the proposed waiver.

Although OMB Circular A–21 does not contain the specificity contained in subpart 9903.4 for determining the cost impact of a cost accounting practice change or a noncompliance on CAS-covered contracts, the Board is sympathetic with the commenters' expressed concerns. To promote the concept that the cognizant Federal agency official should administer all Federally sponsored agreements on a consistent basis with regard to cost accounting matters, the Board, in the NPRM being issued today, has expanded the proposed waiver authority to include all of the requirements of subpart 9903.4 except for the adequacy and compliance determinations required by 9903.405–3(a). As revised, the proposed provision requires the cognizant Federal agency official to administer the cost accounting aspects of CAS-covered contracts awarded to an educational institution in accordance with proposed subpart 9903.4 procedural requirements but where alternate procedures are deemed appropriate and necessary in order to achieve a uniform and consistent approach for all Federally sponsored agreements being performed by an educational institution, the cognizant official is authorized to waive subpart 9903.4 requirements on a case-by-case basis. A provision requiring the cognizant Federal agency official to determine the specific procedures to be applied for providing notification of a cost accounting practice change and resolving the cost impact due to a change in cost accounting practice or a noncompliance is also being proposed (see 9903.401–2).

**F. Additional Public Comments**

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed amendments contained in this NPRM. All comments must be in writing and submitted timely to the address indicated in the **ADDRESSES** section of this NPRM.

The Board is considering the establishment of certain new provisions that it believes would facilitate the overall process governing compliant changes in cost accounting practices and noncompliances. Therefore, the Board invites interested parties to specifically comment on the following amendments being proposed today:

—Proposed 9903.201–6(c)(2), Desirable changes, which proposes to establish that when cost savings are expected to result from management actions that will be taken to improve the economy and efficiency of operations, changes in cost accounting practices associated with such operational changes shall be deemed to be desirable and not detrimental to the Government. Such determinations would permit the equitable adjustment of existing CAS-covered contracts materially affected by such changes in cost accounting practices.

—Proposed 9903.401–2, Educational Institutions, which proposes to establish that the cognizant Federal agency official is required to administer the cost accounting aspects of CAS-covered contracts and other Federally sponsored agreements in a uniform and consistent manner. Where determined necessary, the proposed provisions would permit the cognizant Federal agency official to waive applicable subpart 9903.4 requirements to attain that objective.

—Proposed 9903.406–2(e) which includes a newly proposed General Dollar Magnitude Settlement Proposal format for determining and resolving the estimated cost impact of a noncompliant cost accounting practice.

—Proposed 9903.406–3(d) which includes a newly proposed schedule

for determining the contract price adjustments to be required when an estimating noncompliance occurs.

Exemption provisions under consideration.

In addition to requesting public comments on the proposed amendments being promulgated today, the Board requests interested parties to provide their views on the potential establishment of ''exemption'' coverage in the Board's rules and regulations that would exempt compliant changes in cost accounting practices from contract price and cost adjustment when specified criteria are met.

The Board, after considering the public comments received in response to the ''exemptions'' that were proposed in the prior NPRM, is proposing in this NPRM to establish expanded coverage for ''desirable change determinations'' inlieu of the previously proposed ''exemptions'' as discussed in section E above under the topic heading ''Exemptions From Contract Price And Cost Adjustment Proposed in the Prior NPRM are Withdrawn.'' However, the Board will consider this matter further if commenters responding to this NPRM indicate that there is a compelling need and strong support for the establishment of such exemptions, in addition to the proposed amendments being issued today in this NPRM.

To assist interested parties wishing to comment on this matter, the Board is providing below the draft ''exemption'' coverage that was prepared by the CASB staff as ''Option B'' and ''Option C'' for the Board's consideration. Specifically of interest to the Board are the potential commenters' views regarding the draft exemption criteria and procedural requirements. Commenters may wish to indicate under what specific circumstances, if any, they believe a particular draft exemption should be applied or modified. For example: Should the Option B exemption be limited to major nonrecurring organizational changes that materially alter a contractor's operations? Should it only apply to restructuring activities approved in advance under agency regulations? The submission of specific alternative criteria and/or procedural requirements that commenters believe could result in the establishment of workable regulatory exemption coverage are also welcome.

*Option B—Draft Exemption for Improved Management Efficiency and Effectiveness*

Commenters primarily opined that it was not clear how the exemption proposed in the prior NPRM at 9903.302–2(c)(1) would be administered or what evidence was needed to obtain the proposed exemption. To that end, the CASB staff drafted for the Board's consideration coverage along the following lines:

1. In section 9903.302–2, add a new paragraph ''(c)'' to read as follows:

(c) *Voluntary Cost accounting practice changes exempt from contract price and cost adjustment.* The types of voluntary changes in cost accounting practice described in (1) below shall not be subject to contract price or cost adjustment. However, the cost accounting practices resulting from such changes must comply with all applicable Cost Accounting Standards and notification of the change in cost accounting practice must be provided as required by 9903.405–2.

(1) Changes in the allocation of cost to cost objectives involving the transfer of functions or merger of cost pools that are made due to management actions which are undertaken for improved management efficiencies and effectiveness and which involve the physical realignment or reduction of facilities or personnel.

(2) To qualify for this exemption the contractor must, prior to making the change:

(i) Request the exemption.

(ii) Submit a comprehensive description of the planned change(s) intended to improve the segment's or business unit's economy and efficiency of operations and of the voluntary changes to the contractor's established cost accounting practices that will be made to implement the planned change(s).

(iii) Provide a summary schedule of the aggregate increase or decrease in the total amount of costs expected to be allocated to all existing CAS-covered fixed-price contracts and flexibly-priced contracts (by contract types; such as fixed-price incentive, cost-reimbursement, etc.) after the change(s) are made.

(iv) Demonstrate that an equal or lesser amount of costs, in the aggregate, will be allocated to any existing CAS-covered contracts that are flexibly priced, by contract type, after the planned changes are implemented.

(3) The required cost comparison calculation methodology is summarized below:

| | Fixed-price contracts | Flexibly priced contracts, by contract type |
|---|---|---|
| 1. Total amount of costs that would be allocated to existing CAS-covered contracts, in accordance with established cost accounting practices, at the estimated cost levels that would continue if the contemplated economy and efficiency changes were not made. | | |
| 2. Total amount of costs that would be allocated to existing CAS-covered contracts, in accordance with the new changed cost accounting practices, at the estimated new cost levels that would result if the planned economy and efficiency management changes were made. | | |
| 3. Difference (1. minus 2.). | | |

(4) When the requirements of 9903.302–2(c)(2)(iv) are met, the cognizant Federal agency official shall notify the contractor that the voluntary change(s) to established cost accounting practices resulting from the planned management changes will be exempt from the contract price and cost adjustment provisions of affected CAS-covered contracts.

(5) When the requirements of 9903.302–2(c)(2)(iv) are not met, the cognizant Federal agency official shall determine, in writing, if the voluntary change to the contractor's established cost accounting practices resulting from the planned management changes otherwise qualifies for the exemption, i.e., that the potential savings to be realized in cost proposals for anticipated future CAS-covered contracts and subcontracts when the planned economy and efficiency changes are implemented will substantially exceed any increased cost allocations to flexibly-priced contracts identified under (c)(3) above. If so determined, the cognizant Federal agency official shall notify the contractor that the voluntary change to the contractor's established cost accounting practices otherwise qualifies

for the requested exemption, i.e., the voluntary practice change will be exempt from the contract price and cost adjustment provisions contained in existing CAS-covered contracts affected by the changes.

(6) When the cognizant Federal agency official determines the voluntary change to the contractor's cost accounting practices resulting from the planned management changes does not qualify for the requested exemption, the cognizant Federal agency official shall inform the contractor of the determination and initiate the cost impact process in accordance with 9903.405–3. The contractor may request a desirable change determination in accordance with 9903.201–6 and subpart 9903.4 prior to the submission of a requested cost impact submission.

2. Modify paragraph 9903.201–6(c)(2) proposed in this NPRM by deleting the economy and efficiency criteria proposed at 9903.201–6(c)(2)(i) or by replacing that proposed mandatory provision with a permissive provision that reads as follows:

*Section 9903.201–6 Desirable changes.*

* * * * *

(''x'') The cognizant Federal agency official should determine that a change in cost accounting practice is beneficial and not detrimental if cost savings, in the aggregate, will occur under existing and/or future CAS-covered contracts and subcontracts, e.g., cost accounting practice changes attributable to:

(i) An organizational change that combines, separates or centralizes operations, and the contractor or subcontractor demonstrates that more efficient and economical operations will result.

* * * * *

*Option C—Draft Exemption for Changes in the Selection and Composition of Overhead and General and Administrative Expense Pools.*

The contractor community did not appear to object to an equitable process to determine and resolve material differences in the amount of costs allocated to CAS-covered contracts that may occur due to a pool combination or split-out. Rather, they expressed concerns regarding the rigid process that was proposed in the prior NPRM. Accordingly, the CASB staff prepared for the Board's consideration the following draft exemption provision that would provide the cognizant Federal agency official with a flexible process for determining if a requested exemption for a practice change attributable to a pool combination or split should be granted.

1. In section 9903.302–2, add a new paragraph ''(d)'' to read as follows:

(d) *Voluntary cost accounting practice changes exempt from contract price and cost adjustment.* The types of voluntary changes in cost accounting practice described in (1) below shall not be subject to contract price or cost adjustment. However, the cost accounting practices resulting from such changes must comply with all applicable Cost Accounting Standards and notification of the change in cost accounting practice must be provided as required by 9903.405–2.

(1) Changes in the selection and/or composition of an overhead or general and administrative expense pool resulting from the consolidation of existing pools or the expansion of an existing pool into two or more pools that meet all of the following conditions:

(i) The elements of cost and the functions included in the original and resultant merged or split-out pools remain the same. After the change, the costs of the ongoing functions are accumulated in intermediate cost objectives that are now included in the resultant merged pool or split-out pools.

(ii) The selected allocation base remains the same for the affected pools. After the change, only the composition of the allocation base will change since the merged or split-out allocation base(s) are now accumulated in a new configuration for each selected pool in the post-change pool structure.

(iii) The merged or split-out pools involve the allocation of similar pooled overhead or G&A costs to similar final cost objectives and the underlying levels of pooled costs and allocation base measures retain their proportional relationships with respect to the existing CAS-covered contracts. This test is met if the cognizant Federal agency official determines that, after the change, the resultant pools are homogeneous (see 9904.418–50(b)) and the amount of indirect costs allocated to individual CAS-covered contracts affected by the change is not materially different from the amounts that would have been allocated to such final cost objectives if the pool combination(s) or split-out(s) had not occurred.

(2) To qualify for this exemption the contractor must, prior to making the change:

(i) Request the exemption.

(ii) Submit a comprehensive description of the planned pool combinations or split-outs, including details concerning the estimated amount of costs to be accumulated in the original and resultant pool or pools, the respective allocation base totals, and their respective indirect cost rates.

(iii) Provide a summary schedule of the aggregate increase or decrease in the total amount of costs expected to be allocated to all existing CAS-covered fixed-price contracts and flexibly-priced contracts (by contract types; such as fixed-price incentive, cost-reimbursement, etc.) after the change(s) are made.

(3) In making the determination required under 9903.302–2(d)(1)(iii) above, the cognizant Federal agency official may determine that a material difference in the amount of indirect costs allocated to CAS-covered contracts will not result if the rates (or rate) used to allocate pooled indirect costs to final cost objectives fall within a corridor that is plus or minus a stated percentage (to be determined by the cognizant Federal official on a case by case basis) of the rate (or rates) that would have resulted if the combination or expansion had not occurred. The comparison shall be based on the level of ongoing pooled costs and allocation base activity that is expected to occur after the change is made. For example, assuming a one percent corridor was determined to be an appropriate range and under the original cost accounting practices followed for a single pool the overhead recovery rate is expected to be 200%, then the resultant split-out rates must fall within the corridor of 198% to 202%. In the case of a combination of pools and their respective allocation bases, the corridors around the two forecasted rates that would result if there were no combination must converge or overlap to be considered similar, e.g., if the continued use of two pools would result in rates of 101% and 99%, their respective ''one percent'' corridors of 100% to 102% and 98% to 100% would overlap.

(4) The cognizant Federal agency official shall determine, in writing, if the voluntary change to the contractor's established cost accounting practices resulting form the planned pool combination or split-out qualifies for the exemption. The cognizant Federal official shall inform the contractor of the determinations made. If the voluntary change is determined to be exempt, no further action is required. If not determined to be exempt, the cognizant Federal official will initiate the cost impact process in accordance with 9903.405–3. The contractor may request a desirable change determination in accordance with 9903.201–6 and subpart 9903.4 prior to the submission of a requested cost impact submission.

**List of Subjects in 48 CFR Part 9903**

Cost accounting standards, Government procurement.

**Richard C. Loeb,**

*Executive Secretary, Cost Accounting Standards Board.*

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9903 continues to read as follows:

**Authority:** Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

## PART 9903—CONTRACT COVERAGE

### Subpart 9903.2—CAS Program Requirements

2. Section 9903.201–4 is proposed to be amended by revising paragraphs (a)(1) and (c), and the contract clauses set forth in paragraphs (a) and (c), to read as follows:

**9903.201–4 Contract clauses.**

(a) *Cost Accounting Standards—Full Coverage.* (1) The contracting officer shall insert the following clause, Cost Accounting Standards—Full Coverage, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraphs (d) or (e) of this subsection is used.

(2) * * *

COST ACCOUNTING STANDARDS—FULL COVERAGE

(June 1997)

(a) The provisions of part 9903 of 48 CFR chapter 99, including the definitions and requirements contained therein, are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement as required by 9903.202. The practices disclosed for this contract shall be the same practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with all CAS contained in part 9904, including any modifications and interpretations thereto, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any CAS, including any modifications or interpretations thereto, which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be a desirable change.

(5) Noncompliance. As required by subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, relating to compliance with the requirements of this clause.

(d) Flowdown to subcontracts. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

* * * * *

(c) *Cost Accounting Standards—Modified Coverage.* (1) The contracting officer shall insert the following clause, Cost Accounting Standards—Modified Coverage, in negotiated contracts when the contract amount is over $500,000, but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2), unless the clause prescribed in paragraphs (d) or (e) of this subsection is used.

(2) The following clause requires the contractor to comply with 9904.401, 9904.402, 9904.405 and 9904.406, to disclose (if it meets certain requirements) actual cost accounting

practices, and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS—MODIFIED COVERAGE (JUNE 1997)

(a) The provisions of part 9903 of 48 CFR chapter 99, including the definitions and requirements contained therein, are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement, if it is a business unit of a company required to submit a Disclosure Statement, pursuant to 9903.202. The practices disclosed for this contract shall be the same practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting For Unallowable Costs; and 9904.406, Cost Accounting Period; including any modifications or interpretations thereto, in effect on the date of award of this contract, or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any modifications or interpretations to such CAS which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be a desirable change.

(5) Noncompliance. As required by subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, relating to compliance with the requirements of this clause.

(d) Flowdown to Subcontracts. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

3. Section 9903.201–6 is proposed to be revised to read as follows:

**9903.201–6 Desirable changes.**

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clauses set forth in 9903.201–4(a), 9903.201–4(c) or 9903.201–4(e), the cognizant Federal agency official shall make a finding that the change is desirable, as defined at 9903.403, i.e., desirable and not detrimental to the interests of the Government.

(b) The determination as to whether or not a change in cost accounting practice is desirable should be made on a case-by-case basis in accordance with, but not limited to, one or more of the criteria specified in paragraph (c) of this subsection.

(c) A change in cost accounting practice shall be deemed to be desirable and not detrimental if the cognizant Federal agency official determines that:

(1) For a Cost Accounting Standard which the contractor has complied with, the change is necessary in order for the contractor to remain in compliance with that Standard.

(2) Cost savings, in the aggregate, will occur under existing and/or future CAS-covered contracts and subcontracts, e.g., cost accounting practice changes attributable to:

(i) An organizational change that combines, separates or centralizes operations, and the contractor or subcontractor demonstrates that more efficient and economical operations will result.

(ii) The development of a new and significantly improved cost accounting system that will be implemented at a specific date in the future. The purpose of the new cost accounting system is to improve the contractor's or subcontractor's financial management

capabilities and there is a reasonable expectation that more efficient and economical operations will result and benefits will accrue to the Government.

(3) Circumstances, other than those listed in paragraphs (c) (1) and (2) of this section, included as justification in the contractor's written request for a desirable change determination clearly demonstrate that the change is otherwise desirable and not detrimental to the interests of the Government.

(d) The cognizant Federal agency official's finding should not be made solely because of the financial impact of the proposed change on a contractor's or subcontractor's current CAS-covered contracts. A change may be determined to be desirable and not detrimental to the Government's interest even though costs of existing contracts may increase, provided there is a reasonable expectation that benefits will accrue to the Government in future awards.

4. Section 9903.201–7 is proposed to be revised to read as follows:

**9903.201–7 Cognizant Federal agency responsibilities.**

(a) The requirements of 48 CFR chapter 99, shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of chapter 99 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts and/or subcontracts or more than one Federal agency are involved, the cognizant Federal agency official and affected agencies shall coordinate their activities in accordance with applicable agency regulations. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that aggregate contract price and cost adjustments required under CAS-covered contracts for changes in cost accounting practices or CAS noncompliance issues are determined and resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Agencies are urged to coordinate on the development of such regulations.

(c) Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts and subcontracts at each contractor and subcontractor business unit and the delegation of necessary contracting authority to agency individuals authorized to negotiate cost impact settlements under CAS-covered contracts, e.g., Contracting Officers, Administrative Contracting Officers (ACO's) or other agency officials authorized to perform in that capacity.

(d) *Processing changes in cost accounting practices.*

(1) The cognizant Federal agency official shall, in accordance with applicable agency regulations:

(i) Make all required determinations for all CAS-covered contracts and subcontracts affected by a change in cost accounting practice, including cost impact materiality determinations, in the aggregate.

(ii) Coordinate with affected agencies on the potential modification of CAS-covered awards, prior to actual negotiations.

(iii) Negotiate the cost impact settlement, in the aggregate, for all CAS-covered contracts and subcontracts materially affected by the change in cost accounting practice.

(iv) Inform the affected agencies of the negotiation results, by distribution of the negotiation memorandum.

(v) When contract and/or subcontract price adjustments are negotiated:

(A) Request affected agencies to prepare implementing contract modifications and to obtain implementing subcontract modifications from the next higher-tier contractor, as appropriate. The modifications shall be predicated on the negotiated cost impact settlement reflected in the negotiation memorandum and are to be forwarded for signature by the contractor through the cognizant Federal agency official.

(B) Concurrently, obtain contractor signatures for all contracts and subcontracts to be modified and distribute the executed modifications to the awarding agencies.

(2) Awarding agencies shall, in accordance with applicable agency regulations:

(i) Coordinate with and support the cognizant Federal agency official.

(ii) Prepare and/or obtain contract modifications needed to implement negotiated cost impact settlements, as requested by the cognizant Federal agency official.

(iii) When the cognizant Federal agency official has properly determined a cost impact settlement on behalf of the Government, make every effort to provide funds required for increased contract price modifications to affected Contracting Officers for obligation so that the cognizant Federal agency official can concurrently execute all the requested contract modification(s) needed to settle the cost impact action in a timely manner.

(3) If the cognizant Federal agency official makes a written determination that funding needed to execute required modifications is not expected to be available, an equitable solution by use of any other suitable technique which resolves the negotiated cost impact settlement may be used (see 9903.405–5(c)(3)).

## Subpart 9903.3—CAS Rules and Regulations

5. Section 9903.301 is proposed to be amended by adding two definitions in alphabetical order to read as follows:

**9903.301 Definitions.**

(a) * * *

* * * * *

*Function,* as used in this part, means an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished. Examples of functions include activities such as accounting, marketing, research, product support, drafting, assembly, inspection, field services.

* * * * *

*Intermediate cost objective* means a cost objective that is not a final cost objective. Intermediate cost objectives are used to accumulate the costs of specific functions or groups of functions that are generally included in specific indirect cost pools and then allocated as pooled cost to other intermediate and/or to final cost objectives. Intermediate cost objectives may also be used to accumulate direct costs that are included in a cost pool and allocated to final cost objectives as a direct charge.

* * * * *

6. Section 9903.302–1 is proposed to be amended by revising paragraph (c) to read as follows:

**9903.302–1 Cost accounting practice.**

* * * * *

(c) *Allocation of cost to cost objectives,* as used in this part, refers to the cost accounting methods or techniques used to assign an item of cost or a group of items of cost to intermediate and final cost objectives.

The allocation of cost to cost objectives includes both the direct and indirect allocation of costs.

(1) Examples of cost accounting practices involving the allocation of cost to cost objectives are the methods and techniques used to:

(i) Accumulate cost in the contractor's cost accounting system,

(ii) Determine whether a cost is to be directly or indirectly allocated to intermediate or final cost objectives,

(iii) Determine the selection and composition of cost pools, and

(iv) Determine the selection and composition of the appropriate allocation bases.

(2) The selection of cost pools involves the determination to establish one or more cost pools for the accumulation of specific costs to be allocated to other intermediate and/or to final cost objectives for a particular segment, home office, or business unit. The composition of cost pools involves the determinations to accumulate, by elements of cost, the costs of the specific functions or groups of functions to be included within each established cost pool.

(3) The selection of an allocation base involves the determination on what type of allocation measurement activity (e.g., labor hours, square footage, labor dollars, total cost input) will be used as the basis for the allocation of the total costs accumulated in each selected pool to intermediate and/or final cost objectives for a particular segment, home office, or business unit. The composition of an allocation base involves the determination to accumulate and measure the selected allocation base data associated with each selected pool that was established. The composition of an allocation base includes the specific functional groupings within the base. The composition of a home office allocation base includes the grouping of segments within the applicable base. Examples of allocation bases include direct engineering labor hours for a specific direct engineering function performed at a specified location, total cost input of a particular segment, total payroll costs for specific segments reporting to the same group or home office.

7. Section 9903.302–2 is proposed to be revised to read as follows:

**9903.302–2 Change to a cost accounting practice.**

(a) *Change to a cost accounting practice,* as used in this part, including the contract clauses prescribed at 9903.201–4, means any alteration in a cost accounting practice, as defined in 9903.302–1, whether or not such practices are covered by a Disclosure Statement, including the following changes in cost accumulation:

(1) *Pool combinations.* The merging of existing indirect cost pools.

(2) *Pool split-outs.* The expansion or breakdown of an existing indirect cost pool into two or more pools.

(3) *Functional transfers.* The transfer of an existing ongoing function in its entirety from an existing indirect cost pool to a different pool or pools.

(b) *Exceptions.* (1) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. This exception shall be applied at the segment or home office level, depending upon the nature of the cost or the function involved. At the segment level, different segments can establish different cost accounting practices for the same type of cost when the cost is incurred for the first time or a function is created by each segment. This exception does not apply to transfers of ongoing functions, e.g., from one pool or segment to another pool, segment or home office.

(2) The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice.

(3) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

(c) Mergers and Acquisitions. (1) Each CAS-covered contract requires that the performing contractor consistently follow its established or disclosed cost accounting practices over the contract's entire period of performance.

(2) When a business unit or a segment performing a CAS-covered contract is acquired by a different contractor through a merger or acquisition, the acquired business unit or segment shall accumulate and report costs incurred from the effective date of acquisition or merger through completion of the acquired contract consistently in accordance with the cost accounting practices established by the acquired business unit or segment. Compliant or noncompliant changes made to such established and/or disclosed cost accounting practices after the effective date of the merger or acquisition by the acquiring contractor shall be processed as changes in cost accounting practice in accordance with the requirements of part 9903.

(3) This paragraph (c) applies equally to CAS-covered subcontracts acquired by a contractor or subcontractor.

8. Section 9903.302–3 is proposed to be amended by adding a new introductory paragraph, revising the introductory text to paragraphs (a), (b) and (c), revising the illustration at (c)(3) and by adding new illustrations (c)(4) through (c)(9) to read as follows:

**9903.302–3 Illustrations of changes which meet the definition of ''change to a cost accounting practice.''**

The following illustrations are not intended to cover all possible changes in cost accounting practices nor are the illustrations to be used as limitations for determining if an accounting change has occurred. Further, each illustration is not intended to be all-inclusive. Accordingly, the lack of a mentioned change in cost accounting practice does not mean that there is not a change in cost accounting practice. The decision as to whether a change in cost accounting practice has or has not occurred, requires a thorough analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

(a) The cost accounting practice used for the measurement of cost has been changed.

* * * * *

(b) The cost accounting practice used for the assignment of cost to cost accounting periods has been changed.

* * * * *

(c) The cost accounting practice used for the allocation of cost to cost objectives has been changed.

| Description | Accounting treatment |
|---|---|
| * * * * * | |
| (3) The contractor changes to a different allocation base ..... | (3)(i) Before change: The contractor used a direct manufacturing labor hours base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives.<br>(ii) After change: The contractor uses a direct manufacturing labor dollars base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives.<br>(iii) The described change from a direct labor hours base to a direct labor dollars base represents a change in the selection of the allocation base measurement activity. |
| (4) A Segment combines two similar ongoing functions .....<br>(i) The ongoing direct and indirect assembly operations at Plants A and B are merged. | (4)(i) Before change: The Segment established separate assembly overhead pools to accumulate the indirect costs applicable to Plant A's and Plant B's respective assembly functions. Pooled costs were allocated to individual final cost objectives based on Plant A's and Plant B's respective assembly direct labor dollars allocation bases.<br>(ii) After change: The indirect costs of the two ongoing assembly functions are combined and accumulated in one indirect assembly cost pool. Pooled costs are allocated to individual final cost objectives based on a total assembly direct labor dollars allocation base applicable to the two plant locations.<br>(iii) The methods and techniques used to accumulate cost changed because the indirect cost pools used to accumulate the cost of specific activities have changed from two pools to one pool. The selection of pools used to allocate the segment's indirect costs to final cost objectives changed from two pools to one. The composition of the pools changed because the specific activities originally included in the two indirect cost pools are now included in one pool. The composition of the allocation base changed because the selected allocation base measurement activity originally accumulated separately for each selected pool is now accumulated in one combined base for one pool. |
| (5) Assume the same circumstances as in (c)(4) of this illustration, except that Plants A and B are separate Segments A and B that are combined as Segment C. | (5)(i) Before change: Segments A and B each established an assembly overhead pool to accumulate the indirect costs applicable to their respective assembly functions. Pooled costs were allocated to final cost objectives based on Segment A's and B's respective assembly direct labor dollars.<br>(ii) After change: Segment C establishes a single assembly overhead pool to identify and accumulate the costs of Segment A's and Segment B's ongoing indirect assembly functions. Pooled costs are allocated to final cost objectives based on Segment C's total assembly direct labor dollars generated by the two ongoing but separate assembly operations<br>(iii) For the same reasons cited in (c)(4)(iii) of this illustration, a cost accounting practice change has occurred. |
| (6) The contractor changes how the ongoing indirect costs of the manufacturing and assembly operations are accumulated and allocated to final cost objectives by a segment. | (6)(i) Before change: The indirect costs applicable to the manufacturing and assembly functions were accumulated in a plant-wide indirect cost pool and allocated to final cost objectives by use of a direct labor dollars base comprised of manufacturing and assembly direct labor dollars. During each cost accounting period, a single plant-wide indirect cost rate was used to allocate the accumulated indirect costs to individual final cost objectives<br>(ii) After change: The ongoing indirect manufacturing and assembly costs are split-out and accumulated separately in a manufacturing pool and assembly pool. The pooled costs are allocated to final cost objectives by use of a manufacturing direct labor dollars base and an assembly direct labor dollars base, respectively. Two indirect cost rates are now used to allocate the ongoing indirect costs to individual final cost objectives<br>(iii) The decision to accumulate the ongoing costs of the manufacturing and assembly functions separately, in two pools instead of one, represents changes in the methods and techniques used to accumulate indirect costs and in the selection and composition of the pool (see explanations in illustration (c)(4)(iii)). The decision to allocate the accumulated pool costs to final cost objectives by use of separate allocation bases for the manufacturing and assembly functions instead of one plant-wide allocation base represents a change in the composition of the base. |

| Description | Accounting treatment |
|---|---|
| (7) The contractor transfers the incoming materials inspection function<br>(i) Incoming materials are inspected in the same manner before and after the change. | (7)(i) Before change: The cost of performing the incoming inspection function was accumulated in an intermediate cost objective that was included in the Segment's manufacturing overhead expense pool. Accumulated pool costs were allocated to final cost objectives based on manufacturing direct labor dollars.<br>(ii) After change: The accumulated cost of the incoming inspection function is included in the Segment's materials handling overhead pool. These pooled costs are allocated to final cost objectives based on direct material costs.<br>(iii) The decision to include the accumulated cost of the ongoing inspection function in a different cost pool represents a change in the methods and techniques used to accumulate indirect cost because the costs accumulated in the intermediate cost objective for the incoming inspection function are included for accumulation in a different indirect cost pool and a change in the composition of the two pools because the incoming inspection function is now included in a different pool. The decision to allocate incoming inspection costs to final cost objectives by use of a material cost base rather than a labor dollars base represents a change in the selection of the allocation base measurement activity for the incoming inspection function. |
| (8) A contractor establishes a new product line by acquiring another company. Both entities are performing CAS-covered contracts.<br>(i) The acquired company will be treated as a new segment. The acquired segment will complete the CAS-covered contracts that were novated from the prior company to the contractor. It will not perform any work associated with the contractor's existing lines of business. | (8) As of the effective date of acquisition, the contractor requires the new segment to accumulate and report the continuing costs of the acquired ongoing functions differently, e.g., the acquired company's single overhead pool is split into two new pools. The contracting parties agree that the pool split-out resulted in changes to the acquired segment's previously established cost accounting practices<br>(i) The cost accounting practice changes are subject to the contract price and cost adjustment provisions of the acquired CAS-covered contracts<br>(ii) The initial adoption exception provided by 9903.302–2(b)(1) would not apply because this is not a first time incurrence of cost or creation of a function, with regard to the ongoing acquired CAS-covered contracts |
| (9) A contractor expands the existing product line of Segment A by acquiring another company. Both entities are performing CAS-covered contracts.<br>(i) Segment A will operate and manage the acquired company's ongoing operations.<br>(ii) Segment A will complete the acquired CAS-covered contracts that were novated from the prior company to the contractor. | (9)(i) As of the effective date of acquisition, Segment A merges the continuing functions of the acquired company with Segment A's similar functions and merges the indirect costs of the acquired company's ongoing functions into Segment A's indirect cost pools, in accordance with Segment A's established cost accounting practices. The acquired company's allocation base is similarly merged into Segment A's allocation base.<br>(ii) The cost accounting practices that will be used to accumulate and report costs of Segment A's existing and acquired contracts will be different than the practices that were previously used to estimate, accumulate and report contract costs.<br>(iii) The methods and techniques used to accumulate costs have changed. The acquired contractor's intermediate cost objectives used to accumulate the costs of its ongoing indirect functions and activities have been eliminated, because the ongoing costs are now accumulated in Segment A's intermediate cost objectives. Indirect cost accumulation changed because the costs of the ongoing activities previously accumulated in two pools are now accumulated in one pool. Accumulation of the allocation base activity changed since the base activity previously accumulated in two bases is now accumulated in one combined base.<br>(iv) The pool and base combinations made by the acquiring contractor represent changes in the selection and composition of the pools and the composition of bases for the existing Segment and acquired company.<br>(v) The cost accounting practice changes are subject to the contract price and cost adjustment provisions of the existing and acquired CAS-covered contracts. |

9. Section 9903.302–4 is proposed to be amended by adding an introductory paragraph, and illustrations (h) through (j) to read as follows:

**9903.302–4 Illustrations of changes which do not meet the definition of ''Change to a cost accounting practice.''**

The following illustrations are not intended to cover all possible changes that are not changes in cost accounting practice nor are the illustrations to be used as limitations for determining that an accounting change has not occurred. The decision as to whether a change in cost accounting practice has or has not occurred, requires a thorough analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

| Description | Accounting treatment |
|---|---|
| * * * * * * * | |
| (h) The contractor transfers an inspection department employee from Plant A to Plant B. | (h)(1) Before the transfer, the employee's salary was accumulated as inspection labor and was included in Plant A's overhead pool.<br>(2) After the transfer, the employee's salary is similarly accumulated in an intermediate cost objective that is included in Plant B's overhead pool. The salaries of all employees performing the inspection function at Plants A and B continue to be accumulated in their respective intermediate cost objectives which continue to be included in their respective pools.<br>(3) Since the cost of the inspection functions at Plants A and B continue to be accumulated within the same intermediate cost objectives and the selection and composition of the pools has not changed, before and after the employee transfer, no change in cost accounting practice has occurred. |
| (i) A contractor with a corporate home office creates a new segment for the purpose of entering a new line of business. The new segment will not perform any work associated with the contractor's existing CAS-covered contracts. | (i)(1) After change: The costs of the contractor's home office continue to be accumulated and allocated to segments in accordance with the contractor's established cost accounting practices. The new segment is added to the applicable home office allocation base or bases used to allocate home office costs to segments.<br>(2) The addition of the new segment to the applicable home office allocation base represents an initial adoption of a cost accounting practice for the segment when it was created (see exception at 9903.302–2(b)(1)). Since the selection and composition of the home office pool and applicable allocation bases were not otherwise changed, the described increase in the base for the allocation of home office costs represents an initial adoption of a cost accounting practice that is not subject to the contract price or cost adjustment process. |
| (j) Assume the same circumstances as in (i) of this illustration, except that:.<br>(1) The contractor acquired a new segment that is performing CAS-covered contracts from another company.<br>(2) The acquired segment will continue to estimate, accumulate and report costs in accordance with the original company's compliant and previously disclosed cost accounting practices for that segment. A new Disclosure Statement is filed to that effect. Also disclosed is the contractor's home office cost allocation to the segment. | (j)(1) For the reasons stated in (i) of this illustration, the described home office change is not a cost accounting practice change.<br>(2) At the segment level, the first time incurrence of the acquiring contractor's home office cost allocation is an initial adoption of a cost accounting practice (see exception at 9903.302(b)(1). Since the contractor adopted the acquired segment's previously established cost accounting practices, no change in established cost accounting practices occurred for the acquired CAS-covered contracts. |

10. Section 9903.306 is proposed to be revised to read as follows:

**9903.306 Applicable interest rate.**

The interest rate applicable to any contract price adjustment shall be the annual rate of interest established under section 6621(a)(2) of Title 26 (26 U.S.C. 6621(a)(2)) for such period. Such interest shall accrue from the time payments of the increased costs were made to the contractor or subcontractor to the time the United States receives full compensation for the price adjustment.

11. A new subpart 9903.4 is proposed to be added to read as follows:

**Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances**

Sec.

9903.401 Applicability of subpart.
9903.401–1 CAS-covered contracts and subcontracts.
9903.401–2 Educational institutions.
9903.402 Purpose.
9903.402–1 Changes in cost accounting practice.
9903.402–2 Failure to comply (noncompliances) with an applicable cost accounting standard or to follow any cost accounting practice consistently.
9903.403 Definitions.
9903.404 Materiality determination for making adjustment.
9903.405 Changes in cost accounting practice.
9903.405–1 General.
9903.405–2 Notification of changes in cost accounting practices.
9903.405–3 Determinations, approvals and initiating the cost impact process.
9903.405–4 Contractor cost impact submissions.
9903.405–5 Negotiation and resolution of the cost impact.
9903.406 Noncompliances.
9903.406–1 General types of noncompliances.
9903–406–2 Noncompliance determinations and initiating the cost impact process.
9903–406–3 Cost estimating noncompliance.
9903–406–4 Cost accumulation noncompliance.
9903–406–5 Technical noncompliances.
9903.407 Illustrations.
9903.407–1 Changes in cost accounting practice—illustrations.
9903.407–2 Noncompliance illustrations.

**Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances**

**9903.401 Applicability of subpart.**

**9903.401–1 CAS-covered contracts and subcontracts.**

(a) This subpart 9903.4 applies uniformly to all CAS-covered contracts and subcontracts affected by a compliant change in cost accounting practice and/or a noncompliant cost accounting practice. By accepting the first CAS-covered contract or subcontract that incorporates part 9903, which includes this subpart 9903.4, the contractor agrees to process cost accounting practice changes and noncompliance actions occurring after the award of that contract or subcontract in accordance with this subpart for all existing CAS-covered contracts and subcontracts affected by the change or noncompliance.

(b) To aid in meeting the requirements set forth in this subpart 9903.4 for processing cost accounting practice changes and noncompliance actions, the contractor shall maintain a system for identifying all existing CAS-covered

contracts and subcontracts, and their periods of performance.

**9903.401–2 Educational institutions.**

(a) This subpart 9903.4 applies to all CAS-covered contracts and subcontracts awarded to educational institutions. Such CAS-covered contracts and subcontracts incorporate part 9903 by reference and contain specific terms and conditions that require the educational institution to disclose its cost accounting practices (if specified criteria are met), provide notification if a change to a cost accounting practice is made and to agree to contract price or cost adjustments for material cost impacts attributable to compliant changes in cost accounting practices and/or to noncompliant practices. This subpart 9903.4 establishes procedures for providing such notifications, the submission of requested cost impact data, and determining the required adjustments.

(b) On April 26, 1996, the Office of Management and Budget (OMB) incorporated in OMB Circular A–21, Cost Principles for Educational Institutions (61 FR 20880, May 8, 1996), the Disclosure Statement (Form CASB DS–2) and the CAS applicable to educational institutions that were promulgated by the Board at 48 CFR chapter 99 (59 FR 55746, November 8, 1994). As amended, Circular A–21 also contains certain requirements and guidance regarding the notification to be provided when an educational institution changes a cost accounting practice and the cost adjustments that may be required or other actions to be taken by the cognizant Federal agency when Federally sponsored agreements (contracts, grants and cooperative agreements) are affected by compliant practice changes or noncompliant practices.

(c) The amended CASB and OMB requirements were intended to be compatible and are to be administered by the cognizant Federal agency official in a uniform and cost effective manner. To the maximum extent feasible, the cognizant Federal agency official should apply a single set of procedures when obtaining notifications, cost impact data and when determining the adjustments that may be required for individual CAS-covered contracts and other Federally sponsored agreements subject to amended OMB Circular A–21 that are affected by the same practice change or noncompliance. The procedures applied to all Federally sponsored agreements, including CAS-covered contacts and subcontracts, should be consistent with this subpart 9903.4 requirements and objectives. The cognizant Federal agency official may use applicable portions of this subpart 9903.4 as guidance and, if mutually agreed to by the educational institution, the contracting parties may elect to apply the 9903.4 provisions as deemed appropriate in the circumstances.

(d) *Waiver authority.* When an educational institution changes a compliant cost accounting practice or fails to comply with an applicable Cost Accounting Standard that affects CAS-covered contracts and other Federally sponsored agreements, the cognizant Federal agency official may waive or modify, on a case-by-case basis, applicable requirements of this subpart 9903.4 for affected CAS-covered contracts and subcontracts as deemed necessary in order to establish appropriate alternative procedures or methods for obtaining notifications of practice changes, the submission of cost impact data or determining contract price or cost adjustments in a uniform manner for all Federally sponsored agreements. The basis for the waiver and the alternate procedures utilized shall be documented in a written determination. This waiver authority does not apply to the adequacy and compliance determinations required by 9903.405–3(a).

(e) A written determination to apply the provisions of this subpart 9903.4, OMB Circular A–21, or other appropriate procedural guidance to educational institutions shall be made by the cognizant Federal agency official. Educational institutions should contact their cognizant Federal agency for specific instructions within 60 days after receipt of a CAS-covered contract that is subject to this subpart.

**9903.402 Purpose.**

**9903.402–1 Changes in cost accounting practice.**

The contract clauses prescribed in 9903.201–4, Contract clauses, set forth the requirements for changes in cost accounting practices that a contractor may be required to make in order to comply with a standard, modification or interpretation thereof that becomes applicable to existing covered contracts for the first time due to the subsequent award of a covered contract or may otherwise decide to make, e.g., a voluntary change from an established or disclosed compliant cost accounting practice to another compliant cost accounting practice. Section 9903.405 establishes the specific actions to be taken by the contracting parties for such compliant cost accounting practice changes. Section 9903.405 also establishes procedures for adjusting contract amounts that are materially affected by compliant changes in cost accounting practices, while not requiring adjustment of all contracts that are affected by such changes.

**9903.402–2 Failure to comply (noncompliances) with an applicable cost accounting standard or to follow any cost accounting practice consistently.**

The contract clauses prescribed in 9903.201–4, Contract clauses, require the contractor or subcontractor to agree to an adjustment of the contract price or cost if the contractor or subcontractor fails to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, and such failure results or will result in any increased cost paid, in the aggregate, by the United States, under CAS-covered contracts and subcontracts. Section 9903.406 establishes the actions to be taken by the contracting parties in order to resolve the noncompliant condition and/or effect recovery of any increased costs paid as a result of the noncompliance.

**9903.403 Definitions.**

This section 9903.403 defines terms as used in this part 9903, including the contract clauses prescribed at 9903.201–4. Where the defined terms refer to a ''contractor'' or ''contract'' the definition is intended to apply equally, as applicable, to a ''subcontractor'' or ''subcontract.''

*Applicability date* means—

(1) For required cost accounting practice changes, the date on which a contractor is first required to accumulate and report costs in accordance with an applicable Standard, modification or interpretation thereto; or

(2) For voluntary cost accounting practice changes, the date on which a contractor begins to use a new cost accounting practice for cost accumulation and reporting purposes.

*Contracts subject to adjustment* means CAS-covered contracts and subcontracts, including definitized contract options, that:

(1) Have contract performance beyond the applicability date of a change in cost accounting practice, and have their current contract prices based on a previous cost accounting practice; or

(2) Are affected by the application of a noncompliant practice that was used to estimate or accumulate costs.

*Cost impact* means the increase or decrease in estimated or actual costs allocable to a CAS-covered contract or subcontract due to a compliant change in cost accounting practices, a

noncompliance with a Cost Accounting Standard, or a failure to follow cost accounting practices consistently.

*Desirable change* means a voluntary change to a contractor's established or disclosed cost accounting practices that the cognizant Federal agency official finds is desirable and not detrimental to the Government pursuant to 9903.201–6 and is therefore subject to the equitable contract price adjustment provisions of CAS-covered contracts affected by the change.

*Detailed cost impact proposal* means a proposal that shows the cost impact of a change in cost accounting practice for contracts subject to adjustment that have an estimate-to-complete which exceeds a threshold amount specified by the cognizant Federal agency official.

*Effective date* means:

(1) For compliance with Standards, modifications and interpretations thereto, the date on which a contractor is first required to estimate proposed contract costs in accordance with an applicable standard, modification or interpretation, as specified by the CAS Board; or

(2) For voluntary cost accounting practice changes, the date on which a contractor begins using a new cost accounting practice for cost estimating purposes.

*General dollar magnitude estimate* means an estimate of the aggregate cost impact, by contract type, of a change in cost accounting practice, or a noncompliant practice on contracts subject to adjustment.

*Increased costs to the Government due to a change in compliant cost accounting practices* means:

(1) For flexibly priced CAS-covered contracts, when a greater amount of cost will be allocated to the contract than would have been allocated to it had the contractor not changed its cost accounting practices and no actions are taken to preclude the payment of the increased costs; or

(2) For firm fixed-price CAS-covered contracts, when the costs to be allocated to the contract are less than the amount of costs that would have been allocated to it had the contractor not changed its cost accounting practice(s) and the contract price is not adjusted downward to reflect the contractor's lesser allocation of cost to the contract.

*Increased costs to the Government due to a cost accumulation noncompliance* means increased costs resulting from a contractor's failure to comply with applicable Cost Accounting Standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when accumulating costs under CAS-covered contracts, and such failure results in a higher amount of costs allocated to these CAS-covered contracts than would have been allocated to the contracts had the contractor complied with applicable Standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

*Increased costs to the Government due to a cost estimating noncompliance* means increased costs resulting from a contractor's failure to comply with applicable standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when estimating proposal costs for a contemplated CAS-covered contract, and such failure results in a higher contract price than would have been negotiated had the contractor complied with applicable standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

*Increased costs paid* means the amount the Government actually pays, in the aggregate, for increased costs resulting from compliant cost accounting practice changes or noncompliant cost accounting practices used to estimate or accumulate costs.

*Notification date* means the date on which the contractor formally notifies the cognizant Federal agency official of a planned change in cost accounting practices.

*Offset process* means the combining of cost increases to one or more affected contracts of a given type with cost decreases to one or more affected contracts of the same type, for the purpose of mitigating action that needs to be taken due to changes in cost accounting practices.

*Required change* means a change in cost accounting practice that a CAS-covered contractor is required to make in order to comply with applicable standards, modifications or interpretations thereto, that subsequently become applicable to an existing contract due to the receipt of another CAS-covered contract or subcontract.

*Technical noncompliance* means a noncompliant cost accounting practice that does not currently result in material increased costs to the Government.

*Voluntary change* means a change in cost accounting practice from one compliant practice to another that a contractor with CAS-covered contracts elects to make that has not been deemed desirable by the cognizant Federal agency official and for which the Government will pay no increased costs.

**9903.404 Materiality determination for making adjustment.**

Contract price adjustments or actions to preclude or recover the payment of increased costs resulting from compliant changes in cost accounting practice, or failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, shall only be required if the amounts are material. In determining materiality, the cognizant Federal agency official shall use the criteria specified in 9903.305. The cognizant Federal agency official should forego submission of a General Dollar Magnitude (GDM) Settlement Proposal or a detailed cost impact proposal (refer to 9903.405–4), and not adjust contracts, if the cognizant Federal agency official determines that the amount involved is immaterial.

**9903.405 Changes in cost accounting practice.**

**9903.405–1 General.**

A CAS-covered contractor shall make changes to its established or disclosed cost accounting practices when required in order to comply with applicable Cost Accounting Standards, including any modification and interpretations promulgated thereto. A contractor may change its established cost accounting practices voluntarily, provided the cognizant Federal agency official is notified of the change and the new practice complies with applicable Cost Accounting Standards. CAS-covered contracts and subcontracts affected by changes in cost accounting practices that are either required to comply with Cost Accounting Standards, modifications or interpretations thereto, or are made voluntarily for which the cognizant Federal agency official has made a finding that the change is desirable in accordance with 9903.201–6 are subject to equitable contract price adjustments. For all other voluntary accounting changes, disclosed in accordance with 9903.405–2, the cognizant Federal agency official shall take action to preclude the payment of increased costs by the United States as a result of the change, as prescribed in 9903.405–5(d). With the exception of such action to preclude the payment of increased costs for voluntary changes, the administrative procedures for handling potential contract price or cost adjustments will be consistent for all compliant accounting changes, as set forth in subsections 9903.405–2 through 9903.405–5. Implementation of any change in cost accounting practice without submission of the notification

required under 9903.405–2 shall be considered a failure to follow a cost accounting practice consistently, and shall be processed as a noncompliance condition in accordance with 9903.406.

**9903.405–2 Notification of changes in cost accounting practices.**

(a) The contractor shall submit to the cognizant Federal agency official a description of any planned change in cost accounting practices. The date of submission is hereafter referred to as the notification date.

(b) The contractor shall notify the cognizant Federal agency official in accordance with the following:

(1) Required changes shall be disclosed as soon as it becomes known that a required change must be made, but no later than the date of submission of the price proposal in which the contractor must first use the required change to estimate costs for a potential CAS-covered contract.

(2) Voluntary changes (including those ultimately deemed desirable) shall be disclosed as soon as the contractor decides to change an established or disclosed cost accounting practice. Notification shall be provided no later than 60 days before the applicability date or on the date of submission of the price proposal in which the contractor first uses the changed practice to estimate costs for a potential CAS-covered contract.

(c) If a contractor proposes to make the applicability date of a voluntary change (including those ultimately deemed desirable) retroactive to the beginning of the current fiscal year in which the notification is made, the contractor must submit rationale for such action and obtain the cognizant Federal agency official's approval. The rationale must state the reasons for making a retroactive change.

(d) When requesting that a voluntary change be deemed desirable, the contractor shall provide rationale and data demonstrating that the accounting change is desirable and not detrimental to the Government's interests or that the change in cost accounting practice was necessary to remain in compliance with an applicable Cost Accounting Standard (see 9903.201–6).

(e) *Data submission requirements:* The contractor shall submit a complete description of any change in cost accounting practice, including the relevant Disclosure Statement page revisions and amendments required to disclose the new practice (see 9903.202–3); any additional information which will help the cognizant Federal agency official make a determination of adequacy and compliance; and if applicable, data demonstrating that the change is:

(1) Obviously immaterial because the change in practice will not result in a greater or lesser allocation of cost to individual CAS-covered contracts affected by the change, i.e., after the change, the amounts of cost allocated to individual covered contracts will approximate the amounts that would have been allocated if the change were not made,

(2) Desirable and not detrimental to the interests of the Government, and/or

(3) One that warrants retroactive implementation.

**9903.405–3 Determinations, approvals and initiating the cost impact process.**

(a) *Adequacy and compliance determination.* Upon receipt of the contractor's notification, the cognizant Federal agency official, with the assistance of the auditor, shall review the planned cost accounting practice change concurrently for adequacy and compliance. If the cognizant Federal agency official identifies any area of inadequacy, a revised description of the new accounting practice shall be requested. Problems of adequacy should be resolved between the parties as soon as possible after the initial notification of the accounting change. If the cognizant Federal agency official determines that the disclosed practice is noncompliant with any Cost Accounting Standards, modifications or interpretations thereto, and the contractor implements the practice, the accounting change will be handled as a noncompliance under the provisions of 9903.406. Once the cognizant Federal agency official has determined that the accounting change is both adequate and compliant, the cognizant Federal agency official shall immediately notify the contractor.

(b) *Desirable change determinations.* When the contractor's notification includes a request that a planned voluntary change be deemed desirable and not detrimental, the cognizant Federal agency official should, in accordance with 9903.201–6, make a decision with regard to this finding promptly after the change is determined to be adequate and compliant. The cognizant Federal agency official shall notify the contractor in writing regarding the decision of desirability, and concurrently request the contractor to submit a GDM Settlement Proposal.

(c) *Approval of retroactive application date.* When a contractor notification pertains to a planned voluntary change with a retroactive applicability date, the cognizant Federal agency official should review the contractor's submitted rationale and promptly determine if the requested retroactive application date should be approved or rejected. The cognizant Federal agency official shall notify the contractor in writing regarding the decision made.

(d) *Obviously immaterial changes.* If the cognizant Federal agency official determines that the cost impact of a change in cost accounting practice is obviously immaterial based on data submitted by the contractor pursuant to 9903.405–2(e)(1), or otherwise decides that the cost impact is immaterial, the decision will be documented, the contractor will be so notified, and the cost impact process will be concluded.

(e) *Request for GDM settlement proposal.* After a determination of adequacy and compliance has been made, the cognizant Federal agency official will request a GDM Settlement Proposal, as described in 9904.405–4(a). The request should specify a date for submission of the GDM Settlement Proposal. The contractor shall submit the GDM Settlement Proposal on or before the date specified or other mutually agreeable date. The cognizant Federal agency official will use the contractor's GDM Settlement Proposal to resolve the cost impact of a change in cost accounting practice on existing CAS-covered contracts and subcontracts, without requiring a detailed cost impact proposal, provided the official determines that the GDM Settlement Proposal is adequately supported and contains sufficient data.

**9903.405–4 Contractor cost impact submissions.**

(a) *General Dollar Magnitude (GDM) settlement proposal.* (1) The purpose of the GDM Settlement Proposal is to provide information to the cognizant Federal agency official on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous accounting practice. It provides the contractor an opportunity to propose specific adjustments to settle the cost impact of changes in cost accounting practices. It also provides a sufficient number of individual contract and/or subcontract cost impact estimates to support the general dollar magnitude aggregate estimate by contract type and to assist the cognizant Federal agency official in determining whether any individual contract or subcontract price adjustments will be required. The GDM Settlement Proposal is used to determine if the change in cost accounting practice has resulted in material increased or decreased costs to existing contracts, and to attempt to

resolve the cost impact of the change in cost accounting practice without requiring a detailed cost impact settlement proposal as described in paragraph (b) of this subsection.

(2) The contractor, in the GDM Settlement Proposal, shall show a reasonable estimate of the aggregate impact of the change on CAS-covered contracts and subcontracts subject to adjustment, by contract type, from the applicability date of the change to completion of the contracts subject to adjustment. The individual contracts selected by the contractor for inclusion in the GDM Settlement Proposal shall be those contracts with the largest dollar impact. The contractor should submit specific adjustments to settle the cost impact of the cost accounting practice change(s). The proposed adjustment amounts shall be determined in accordance with the requirements of this subpart and may include proposed revisions to the profit, fee or incentive provisions of affected contracts.

(3) In computing the cost impact, the contractor shall use a consistent cost data baseline for the before and after change amounts. The cost impact data should generally be based on the latest forecasted direct and indirect cost data used for forward pricing purposes unless other data is considered preferable and agreed to by both the contractor and cognizant Federal agency official. In most cases, the after change cost data baseline should be used because this is the same cost data baseline that will be used to determine the revised forward pricing rates and current contract estimates-to-complete based on the new cost accounting practice.

(4) Any format which reasonably shows the aggregate impact by contract type and provides sufficient contract data to settle the cost impact is acceptable. In most situations, the grouping of the CAS covered contracts by contracts type within the GDM Settlement Proposal may be limited to the following contract types: firm fixed price (FFP); time and material (T&M); incentive-type (FPI/CPIF); and other cost reimbursement contracts (CPFF, CPAF, CR, etc). One acceptable GDM Settlement Proposal format is illustrated as follows:

SUMMARY—GDM SETTLEMENT PROPOSAL OF TOTAL COST IMPACT ON ALL COVERED CONTRACTS AWARDED PRIOR TO APPLICABILITY DATE

Required Changes, Voluntary Changes (1) , Desirable Changes (1)

| | Estimate to Complete (2) | | Difference cost impact | Proposed adjustment amounts |
|---|---|---|---|---|
| | Old practice (3) (A) | New practice (4) (B) | (A–B) | (5) |
| *AGGREGATE* | | | | |
| FFP | | | | |
| T&M | | | | |
| FPI/CPIF | | | | |
| OTHER | | | | |
| COST TYPE | | | | |
| TOTAL | | | | |
| *CONTRACTS* (6) | | | | |
| FFP | | | | |
| 1. | | | | |
| 2. | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |
| T&M | | | | |
| 1. | | | | |
| 2. | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |
| FPI/CPIF | | | | |
| 1. | | | | |
| 2. | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |
| OTHER COST TYPE | | | | |
| 1. | | | | |
| 2 | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |

Instructions:

1. Indicate whether the cognizant Federal agency official has made a finding that the change is desirable, and, if not, attach an explanation detailing the proposed action(s) that will be taken to preclude the payment of aggregate increased costs, if any, pursuant to 9903.405–5(d).

2. The estimates to complete must be based on the same contract scope of effort, to be performed from the applicability date of the change until contract completion.

3. Enter the total estimated cost to complete all of the CAS-covered contract backlog based on the existing cost accounting practice. This estimate should be based on the CAS-covered contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed.

4. Enter the total estimated cost to complete the CAS-covered contract backlog based on the new cost accounting practice. This estimate should also be based on the backlog contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed. However, that forecasted data must first be recast to reflect application of the new cost accounting practice, e.g., determine the effect on indirect cost pools and allocation bases, recalculate rate(s) and apply the new rate(s) to the recast allocation base(s), as appropriate.

5. The amounts in this column indicate the contractor's proposal to settle the cost impact. Enter the proposed adjustment amounts in the aggregate by contract type and for individual contracts listed, as well as for the ''All Other'' contract category. Proposed revisions to profit, fee, or incentive provisions may also be included. (Attach explanatory schedule.)

6. List each contract needed to resolve ''material'' amounts identified in the GDM estimate and, based on the individual contract cost impact computations, enter the indicated data and proposed adjustment amount.

(5) The illustrated GDM Settlement Proposal format is an example of one method and does not preclude the use of any other format or method that displays a reasonable estimate of the cost impact by contract type and provides sufficient contract data to settle the cost impact. The GDM Settlement Proposal shall be adequately supported. If a GDM Settlement Proposal is not adequately supported, or cannot be adequately supported by the contractor, the cognizant Federal agency official shall request a detailed cost impact proposal in accordance with paragraph (b) of this subsection.

(6) The cognizant Federal agency official should attempt to use the contractor's GDM Settlement Proposal to resolve the cost impact process to the maximum extent possible. If additional individual contract data is determined necessary to resolve the cost impact, the cognizant Federal agency official should request the contractor to submit a revised GDM Settlement Proposal that includes the specific additional data needed, e.g., contracts with a dollar impact exceeding a specific dollar amount. The contractor should then submit the revised GDM Settlement Proposal on or before the date specified by the cognizant Federal agency official or other mutually agreeable date.

(7) If the impact is immaterial in both the aggregate by contract type and for the individual contracts included in the GDM Settlement Proposal, the cost impact process may be concluded without any adjustments. If the cognizant Federal agency official determines that the cost impact either in the aggregate by contract type or on individual contracts is material, the procedures in 9903.405–5, Negotiation and Resolution of the Cost Impact, should be followed. The requirement for adjustments should be based on separate materiality thresholds for: individual contracts; the ''all other contracts'' amounts; and the aggregate by contract type. The threshold for individual contract price adjustments may be based on cost impact dollar thresholds, a percentage of the contract price, or a combination of the two criteria, e.g., contracts with cost impacts exceeding a certain dollar amount provided that the impact exceeds a certain percentage of the contract price. The ''all other contract'' amount is the difference between the aggregate amount by contract type and the net sum total of the impact of the submitted individual contracts by contract type. The materiality thresholds, as used in this paragraph, are the amounts below which no adjustments are required.

(8) Upon receipt, the cognizant Federal agency official should promptly evaluate the contractor's GDM Settlement Proposal and, if the cost impact is determined to be material, proceed to either negotiate and resolve the cost impact, request additional data or request a detailed cost impact proposal in a timely manner.

(b) *Detailed cost impact proposal.* (1) A detailed cost impact proposal is required when the GDM Settlement Proposal cannot be adequately supported or does not contain sufficient data to resolve a cost impact due to a change in cost accounting practices. It will be used by the cognizant Federal agency official in lieu of the GDM Settlement Proposal to determine the magnitude of the impact of the change on existing CAS-covered contracts and subcontracts subject to adjustment and to determine which, if any, should be adjusted for the impact of the change. The determination by the cognizant Federal agency official of the need for a detailed cost impact proposal is final and binding, and not subject to the Disputes clause of the contracts affected by the practice changes.

(2) The detailed cost impact proposal need not include every contract and subcontract subject to adjustment as a result of the change in cost accounting practices. It typically will include all contracts and subcontracts having an estimate-to-complete, based on the old accounting practice, exceeding a specified amount established by the cognizant Federal agency official. The specified individual contract impact amount should be high enough so that the detailed cost impact proposal does not contain an excessive number of contracts and subcontracts. However, it should contain a sufficient number so that it includes a reasonably high percentage of both the backlog of these contracts and the aggregate impact amount by contract type. The established individual contract estimate-to-complete amount should be specified in a formal written request by the cognizant Federal agency official for the data. The request should also specify that the proposal include an aggregate amount, and be grouped, by contract type.

(3) The contractor shall submit the detailed cost impact proposal on or before the date specified by the cognizant Federal agency official or other mutually agreeable date.

(4) After analysis of the cost impact proposal, with the assistance of the auditor, the cognizant Federal agency official shall promptly negotiate and resolve the cost impact.

**9903.405–5 Negotiation and resolution of the cost impact.**

(a) *General.* (1) The cognizant Federal agency official shall negotiate any required contract price or cost adjustments due to changes in cost accounting practices or noncompliances on behalf of all Government agencies. Negotiation of price and cost adjustments may be based on a GDM Settlement Proposal or a detailed cost impact proposal.

(2) The Cost Accounting Standards Board's rules, regulations and Standards do not in any way restrict the capacity of the contracting parties to select the method by which the cost impact attributable to a change in cost accounting practice is resolved. A cost impact may be resolved by modifying a single contract, several but not all contracts, or all contracts subject to adjustment, or any other suitable technique which resolves the cost impact in a way that approximates the amounts that would have resulted if individual contracts had been adjusted.

(b) *Offset process.* The offset process of combining cost increases with cost decreases may be used to reduce the number of individual contract price or cost adjustments required as a result of a change in cost accounting practice. In applying this process, the following rules of offset apply:

(1) Use of the offset process shall not result in aggregate cost to the Government which is materially different from that which would result if individual contract prices had actually been adjusted to reflect the aggregate impact of the practice change.

(2) The offset process shall only be applied to contracts that are of the same contract type, e.g., FFP, T&M, incentive (FPI/CPIF) or other cost reimbursement contracts.

(3) The offset process should not be used to materially reduce the amount of the price adjustment to any one contract that exceeds the individual contract cost impact materiality threshold established

for individual contract price adjustments. It also should not be used to reduce the adjustment for these contracts to an amount below the established threshold. The offset process is used to determine the action required for contract adjustment purposes for the ''all other contract'' category.

(4) Within a segment, the effect of several changes may be combined in the offset consideration if the changes all take place at the same time. Such offsets may be used:

(i) Within the same contract to determine if the aggregate impact on the individual contract exceeds the materiality threshold;

(ii) On an overall basis to determine the aggregate ''all other contract'' amounts by contract type for all changes; or

(iii) If any action is required to preclude increased costs for concurrent voluntary changes.

(5) Offsets affecting incentive contracts may be applied, provided that the incentive provisions of these contracts are retained or not materially altered.

(6) To minimize action required to resolve cost impacts, cost increases at one segment of a company may be offset by decreases at another segment within the same contract types if the change causes costs to flow between segments either directly or via a higher organizational level such as a home office, or is made simultaneously at the direction of a higher organizational level such as a home office. For such changes, the cost impact settlement proposal should generally be submitted at the home office level so that the cognizant Federal agency official may determine the appropriate course of action.

(c) *Contract price and Cost adjustments.* (1) Once the GDM Settlement Proposal or detailed cost impact proposal has been analyzed, the cognizant Federal agency official shall determine, with the auditor's assistance, whether contract price or cost adjustments are warranted. Any adjustments should be limited to amounts that are material.

(2) If the accounting change produces a material cost increase or decrease in the aggregate by contract type, it may be necessary to adjust the prices of one or more contracts of each contract type affected by the change. The required adjustments to contract prices (including fixed-price contracts) may increase or decrease contract prices depending on whether estimated contract costs increase or decrease. For voluntary changes, the sum of the adjustments of all contract prices shall not result in net increased costs paid, in the aggregate, by the Government or net upward adjustments to contracts. Even if a change produces a zero aggregate impact on the costs of all affected contracts, it still may be necessary to adjust the prices of one or more contracts of each contract type. Such adjustments may be necessary to:

(i) Maintain consistency between the negotiated contract costs and the costs to be allocated to the contract using the new practice;

(ii) Preclude increased cost payments under affected flexibly priced contracts;

(iii) Preclude an enlargement of profit on affected firm-fixed price contracts beyond the level negotiated; or

(iv) Avoid distortions of incentive provisions and relationships between target costs, ceiling costs and actual costs on incentive type contracts.

(3) Whether the cognizant Federal agency official decides to resolve the cost impact by adjusting the price of one or more contracts of each contract type, or selects some other method for settlement in accordance with paragraph (a)(2) of this subsection, the negotiated net adjustment for each contract type should approximate the amounts that would result if the individual contract prices were adjusted to reflect the cost impact of the change in cost accounting practice.

(4) In determining whether contract price or cost adjustments are or are not required, the cognizant Federal agency official should analyze the contractor's cost impact submission to determine if the proposed adjustment amounts exceed the materiality thresholds established in accordance 9903.405–4(a)(7), and adjust individual contract prices accordingly.

(5) The cognizant Federal agency official, with the assistance of the auditor, should evaluate the aggregate amount by contract type, as well as the ''all other contracts'' amount, to determine if these amounts exceed the aggregate or ''all other contracts'' materiality thresholds established. If these amounts exceed the threshold, adjustments may be made by either adjusting contract prices or use of an alternate technique which accomplishes the same approximate result as if all individual contracts were adjusted. If these amounts do not exceed the established aggregate or ''all other contracts'' threshold, no adjustments are required, unless individual contracts exceed the established individual contract cost impact threshold or adjustments are otherwise considered necessary to achieve equity.

(6) Whenever contract price adjustments are anticipated, the cognizant Federal agency official should coordinate the Government cost impact resolution plan with affected Procurement Contracting Officers, Contracting Officers or other authorized officials performing in that capacity within each affected Federal agency.

(7) At the discretion of the cognizant Federal agency official, contract fee or profit may be adjusted when resolving the cost impact through contract price adjustments. Whether fee or profit is or is not considered, in addition to the cost impact, in making contract price adjustments, is a matter to be determined by the cognizant Federal agency official based on the circumstances surrounding the particular change in accounting practices, terms of the contract, and requirements of law.

(d) *Action to preclude increased costs paid for voluntary changes.* (1) In the absence of a finding pursuant to 9903.201–6 that a voluntary change is desirable, no agreement may be made with regard to a voluntary change in cost accounting practice that will result in the payment of increased costs by the United States. For these changes, the cognizant Federal agency official shall, in addition to the procedures specified in 9903.405–2 through 9903.405–5(c) which apply to all compliant accounting changes, take action to ensure that increased costs are not paid as a result of a change.

(2) To decide if action is required to preclude the payment of increased costs, the cognizant Federal agency official shall determine, with the assistance of the auditor, to what extent the United States would pay a higher level of costs, in the aggregate, once all potential contract price adjustments are considered. This occurs when the estimated aggregate higher allocation of costs to contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs to other contracts subject to adjustment.

(3) The cognizant Federal agency official may preclude the payment of increased costs resulting form voluntary changes by limiting any upward contract price adjustments to affected contracts to the amount of any downward contract price adjustments to other affected contracts, i.e., no net upward contract price adjustments. The Government may also preclude increased costs by not paying the estimated amount of increased costs to be allocated to affected flexibly-priced contracts that exceeds the estimated reduction of costs to be allocated to affected firm fixed-price contracts. The following illustrates the actions required so that increased costs are not paid by the Government.

VOLUNTARY CHANGE IN COST ACCOUNTING PRACTICE

| Cost shift by contract type | | Actions to be taken to preclude the payment of increased costs |
|---|---|---|
| Flexibly-priced | Firm fixed-price | |
| Higher (1) | Higher (1) | No upward price adjustments. Preclude payment of the higher level of costs on flexibly-priced contracts. |
| Lower (2) | Higher (1) | Limit FFP upward price adjustments to amount of flexibly-priced downward price adjustments. |
| Lower (2) | Lower (2) | Adjust FFP and flexibly-priced contract prices downward by the amount of the net downward price adjustment. |
| Higher (1) | Lower (2) | Limit upward adjustments on flexibly-priced to amount of downward adjustments on FFP. Preclude payment of any excess increased costs on flexibly-priced. |

Note:
(1) ''Higher'' indicates that a greater amount of cost will be allocated to the contracts than would have been allocated to them had the contractor not changed its cost accounting practices. This represents increased costs to flexibly priced contracts.
(2) ''Lower'' indicates that the costs to be allocated to the contracts are less than the amount that would have been allocated had the contractor not changed its cost accounting practices. This represents increased costs to firm fixed-price contracts.

(4) For individual CAS-covered firm fixed-price contracts, increased costs are precluded by adjusting the contract price downward by the amount of the estimated lower allocation of costs to the contracts as a result of a voluntary change in cost accounting practice.

(5) As stated in 9903.404, action to preclude or recover increased costs due to changes in cost accounting practices are required only if the amounts are material. If materiality dictates that action needs to be taken to preclude increased costs paid, in the aggregate, adjustments of contract prices or any other suitable technique which precludes payment of the increased costs may be used.

(6) For required or desirable changes, the sum of all adjustments to prices of affected contracts may result in an aggregate increase or decrease in CAS-covered contract prices because such changes are subject to equitable adjustments.

(e) Failure to agree. If the parties fail to agree on the price or cost adjustments, the cognizant Federal agency official may make unilateral adjustments, subject to appeal as provided in the Disputes clause of the affected contracts.

**9903.406 Noncompliances.**

**9903.406–1 General types of noncompliances.**

(a) A contractor's cost accounting practices may be in noncompliance with applicable Cost Accounting Standards, modifications or interpretations thereto, as a result of using a noncompliant cost accounting practice to estimate and negotiate costs on CAS-covered contracts, i.e., a cost estimating noncompliance; or by using a noncompliant cost accounting practice to accumulate and report costs on CAS-covered contracts, i.e., a cost accumulation noncompliance.

(b) Noncompliant cost accounting practices that result in material increased costs to the Government require correction and may result in contract price and/or cost adjustments as specified in 9903.406–3 and 9903.406–4. Noncompliant cost accounting practices that do not result in material increased cost to the Government should be considered a technical noncompliance and handled in accordance with 9903.406–5.

**9903.406–2 Noncompliance determinations and initiating the cost impact process.**

(a) When a Government representative finds a potential noncompliance, the representative should, after sufficient discussion with the contractor to ensure all relevant facts are known, immediately issue a report to the cognizant Federal agency official describing the cost accounting practice and the basis for the opinion of noncompliance. The representative's opinion on whether correction of the potential noncompliant practice would or would not have a material cost impact on existing or future CAS-covered contract costs, if known, should also be expressed in the report.

(b) The cognizant Federal agency official should make an initial finding of compliance or noncompliance and advise the cognizant auditor and contractor in a timely manner after the receipt of the audit report of potential noncompliance.

(c) If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and the cognizant auditor of the determination.

(d) If an initial finding of noncompliance is made, the cognizant Federal agency official should immediately notify the contractor in writing of the exact nature of the noncompliance. The contractor will either agree to the noncompliance determination, or disagree and submit reasons why the existing practices are considered to be compliant. The contractor shall respond by a date specified by the cognizant Federal agency official or other mutually agreeable date.

(e) If the contractor agrees with the initial finding of noncompliance, the contractor shall correct the noncompliance and submit a noncompliance cost impact submission as requested by the cognizant Federal agency official. The contractor's cost impact submission shall show the impact of the noncompliance on the affected CAS-covered contracts. It may be in a format that is similar to the GDM Settlement Proposal shown at 9903.405–4(a)(4), the detailed cost impact proposal specified at 9903.405–4(b) or other mutually agreeable format which will accomplish the objectives of 9903.406–3 (c) and (d) for a cost estimating noncompliance or of 9903.406–4 (c) and (d) for a cost accumulation noncompliance. The cognizant Federal agency official shall normally request a GDM Settlement Proposal and attempt to resolve the noncompliance without requiring a detailed cost impact proposal. The following illustration is one acceptable GDM Settlement Proposal format for a noncompliant action. This format is only one example of a noncompliance cost impact submission and does not preclude the use of any other mutually agreeable cost impact submission format. If a GDM Settlement Proposal is not adequately supported, or cannot be adequately supported by the contractor, the cognizant Federal agency official shall request a detailed cost impact proposal for the CAS-covered contracts materially affected by the noncompliance.

SUMMARY—GDM SETTLEMENT PROPOSAL OF TOTAL COST IMPACT ON ALL COVERED CONTRACTS AFFECTED BY A COST ESTIMATING NONCOMPLIANCE

| | Contract cost amount | | Difference cost impact | Proposed adjustment amounts |
|---|---|---|---|---|
| | Noncompliant practice (1) (A) | Compliant practice (2) (B) | (A–B) | (3) |
| AGGREGATE | | | | |
| FFP | | | | |
| T&M | | | | |
| FPI/CPIF | | | | |
| OTHER | | | | |
| COST TYPE | | | | |
| CONTRACT (4) | | | | |
| FFP | | | | |
| 1. | | | | |
| 2. | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |
| T&M | | | | |
| 1. | | | | |
| 2. | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |
| FPI/CPIF | | | | |
| 1. | | | | |
| 2. | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |
| ALL OTHER COST | | | | |
| 1. | | | | |
| 2. | | | | |
| ''ALL OTHER'' | | | | |
| TOTAL | | | | |

Instructions:

1. Insert the estimated cost amounts that resulted from the application of the noncompliant cost accounting practice and were included in the cost proposal(s) used to negotiate the contract price of affected contracts. If the proposed cost and negotiated contract cost were materially different, insert the negotiated contract cost amount that resulted from the application of the noncompliant cost accounting practice(s). Include the estimated cost amounts both in the aggregate and for individual contracts listed.

2. Insert the estimated cost amounts (reconstructed based on the same estimated cost levels to which the noncompliant practice was applied) to reflect the estimated costs that would have been proposed (or negotiated, if the estimated costs based on the noncompliant practice in 1 above are based on negotiated costs) if a compliant practice had been used.

3. Show amounts proposed for adjustment in order to settle the cost estimating noncompliance. The proposed adjustment amounts should include both adjusted costs and appropriate adjustments for profit, fee, or the contracts' incentive provisions.

4. List all contracts that were materially overstated or understated as a result of using the cost estimating noncompliant practice based on the use of a materiality threshold, i.e. all contracts that have contract prices overstated or understated by an amount in excess of a specified threshold.

5. Submit a separate schedule that shows the amount of aggregate increased cost actually paid by the United States due to the contract prices that were established based on the noncompliant practice; and, the contractor's proposed amounts, including applicable interest, to be paid or otherwise credited to the United States in settlement of the increased cost payments received by the contractor.

(f) If the contractor disagrees with the initial noncompliance finding, the contractor shall provide the cognizant Federal agency official with reasons why it disagrees with the initial finding. The cognizant Federal agency official shall evaluate the reasons why the contractor considers the existing practice to be compliant and again make a determination of compliance or noncompliance, and notify the contractor and auditor in writing. If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and auditor.

(g) Once the cognizant Federal agency official reaches a final position that a noncompliance exists, the official shall issue a final determination to inform the contractor of the Government's position and that failure to agree will constitute a dispute under the Disputes clause of the contract. A final determination of noncompliance should also include a request for corrective action and a noncompliance cost impact submission showing the impact of the noncompliance on CAS-covered contracts and subcontracts. If the contractor agrees with the noncompliance determination, the procedures in paragraph (e) of this subsection shall be followed.

(h) If the cognizant Federal agency official issues an initial determination of noncompliance on a revised accounting practice, and ultimately determines that the practice is compliant, the revised cost accounting practice should be handled in accordance with the procedures established in 9903.405.

**9903.406–3 Cost estimating noncompliance.**

(a) After a final determination of a cost estimating noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice. If the contractor believes the cost impact of the noncompliance is not material (i.e., a technical noncompliance, see 9903.406–5), the contractor shall submit data demonstrating the immateriality. If the cognizant Federal agency official agrees that the noncompliance does not result in a material impact on CAS-covered contracts, the procedures in 9903.406–5

shall be followed. Otherwise, paragraphs (b) through (g) of this subsection shall be followed.

(b) If the noncompliance occurs because the cost accounting practice used for estimating purposes is different than the disclosed and established cost accounting practice used for cost accumulation purposes, and the cognizant Federal agency official has found the cost accumulation practice to be compliant, the contractor shall first correct the noncompliance by replacing the noncompliant practice used to estimate costs with the compliant cost accounting practice used to accumulate and report actual contract costs. Where a previously submitted contract cost proposal based on the noncompliant cost estimating practice has not yet been negotiated, the contractor shall also take action to ensure that any subsequent contract cost negotiations of such proposals will be based on cost estimates that reflect the corrected and compliant cost accounting practice.

(c) Once the cognizant Federal agency official determines that the contractor's cost accounting practices used to estimate and accumulate costs will henceforth be consistent and compliant, the cognizant Federal agency official shall request the contractor to submit a noncompliance cost impact submission (see 9903.406–2(e)), for CAS-covered contracts that were negotiated based on the noncompliant practice. The cost impact submission will show the estimated contract cost amounts that were predicated upon the application of the noncompliant cost accounting practice, by contract type, and the estimated contract cost amounts that would have resulted had the compliant practice been used. The cognizant Federal agency official may establish contract thresholds so that any contracts with an immaterial cost impact may be omitted from the cost impact submission. The cost impact submission shall be in sufficient detail for the cognizant Federal agency official to determine whether:

(1) Any individual contracts are significantly overstated or understated as a result of the estimating noncompliance;

(2) The affected CAS-covered contract prices, by contract type, are, in the aggregate materially overstated; and

(3) Any net increased costs were paid under CAS-covered contracts as a result of the noncompliant practice, and if so, the period of overpayment.

(d) The cognizant Federal agency official should use the materiality guidelines established in 9903.305 and 9903.404 to determine whether any individual contract price adjustments, or adjustments for the net overstatement or understatement of contract amounts by contract type, due to use of the noncompliant practice are warranted. Adjustments should be limited to amounts that are material. In no case shall the Government recover costs greater than the increased costs, in the aggregate, on the relevant contracts. While individual contract prices may be increased as well as decreased to resolve an estimating noncompliance, the aggregate value of all contracts affected by the estimating noncompliance shall not be increased. The following schedule illustrates how to determine the contract price adjustments to be required.

REQUIRING CONTRACT PRICE ADJUSTMENTS FOR AN ESTIMATING NONCOMPLIANCE

| Change in contract cost estimate by contract type if a compliant practice had been used | | Actions to be taken |
|---|---|---|
| Flexibly-priced | Firm fixed-priced | |
| Higher (1) | Higher (1) | No contract price adjustments are required since there are no increased costs to the Government and upward price adjustments, in the aggregate, are not permitted. |
| Lower (2) | Higher (1) | Adjust flexibly priced contract prices down to recover increased cost to Government. Limit FFP upward price adjustments to amount of flexibly-priced downward price adjustments. |
| Lower (2) | Lower (2) | Adjust FFP and flexibly-priced contract prices downward by the amount of the increased cost to the Government. |
| Higher (1) | Lower (2) | Adjust FFP prices downward to recover the increased cost to the Government. Limit upward adjustments on flexibly-priced to amount of downward adjustments on FFP. |

Notes:
(1) ''Higher'' indicates the estimated costs submitted in the contract cost proposal would have been higher, if the contractor had used a compliant cost accounting practice to estimate the proposed contract costs.
(2) ''Lower'' indicates that the estimated costs submitted in the contract cost proposal would have been lower, if the contractor had used a compliant practice to estimate the proposed contract costs. This represents increased costs to the Government.

(e) If any aggregate increased costs were paid as a result of the overstatement of contract prices due to the noncompliant practice, the cognizant Federal agency official should take action to recover any material increased costs paid. The cognizant Federal agency official should also recover interest on these increased cost payments at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time payment by the United States was made to the time the increased cost payment is recovered.

(f) Negotiation and resolution of the cost impact should be accomplished in accordance with 9903.405–5(a).

(g) If the same noncompliant cost accounting practice was used to estimate and accumulate contract costs, the cognizant Federal agency official with the auditor's assistance, will evaluate the revised cost accounting practices for compliance with applicable Cost Accounting Standards, modifications or interpretations thereto. Corrective action and resolution of the noncompliant practice involves two distinct actions, one to resolve the cost estimating noncompliance in accordance with this subsection 9903.406–3 and one to resolve the cost accumulation noncompliance in accordance with 9903.406–4.

**§ 9903.406–4 Cost accumulation noncompliance.**

(a) After a final determination of a cost accumulation noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice. If the contractor

believes the cost impact of the noncompliance is not material (i.e., a technical noncompliance, see 9903.406–5), the contractor shall submit data demonstrating the immateriality. If the cognizant Federal agency official agrees the noncompliance does not result in a material impact on Government contracts, the procedures in 9903.406–5 shall be followed. Otherwise, paragraphs (b) through (f) of this subsection shall be followed.

(b) If the noncompliance results from a failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or failure to follow a disclosed or established practice consistently for cost accumulation purposes, the procedures established in this subsection should be used to resolve the impact due to the cost accumulation noncompliance. If the noncompliance results from a failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, and requires a change in a disclosed or established cost accounting practice that was used for estimating and cost accumulation, two distinct actions are required, one to resolve the cost estimating noncompliance in accordance with 9903.406–3 and one to resolve the cost accumulation noncompliance in accordance with this 9903.406–4.

(c) Once the corrective action has been implemented, and the cognizant Federal agency official has determined that the accounting change, if any, meets the test of adequacy and compliance, the cognizant Federal agency official will request the contractor to submit a noncompliance cost impact submission (see 9903.406–2(e)). The submission shall identify the cost impact on CAS-covered contracts and any increased costs paid as a result of the cost accumulation noncompliance. Although overpayments due to cost accumulation noncompliances are generally recovered when the actual costs are adjusted to reflect a compliant practice (except for closed contracts), the cost impact submission must show the total overpayments made by the United States during the period of noncompliance, so that the proper interest amount can be calculated and recovered as required by paragraph (e) of this subsection.

(d) The level of detail to be submitted with a cost impact submission for a cost accumulation noncompliance will vary with the circumstances. Normally, the cost impact submission will identify the aggregate costs by contract type that were accumulated under the noncompliant cost accounting practice and the costs that would have been accumulated if the compliant cost accounting practice had been applied from the time the noncompliant practice was first applied until the date the noncompliant practice was replaced with a compliant practice. The cost impact submission for a cost accumulation noncompliance is primarily used by the cognizant Federal agency official to determine if, and to what extent, increased costs were paid in the aggregate on covered contracts during the period of noncompliance. The level of detail required to adequately support this determination should be based on discussions between the contractor and the cognizant Federal agency official, with assistance from the auditor, and included in the cognizant Federal agency's official request for the cost impact submission.

(e) Interest applicable to the increased costs paid to the contractor as a result of the noncompliance shall be computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payments by the United States were made to the time the increased cost payments are recovered. If the increased costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the increased costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred.

(f) Negotiation and resolution of the cost impact should be accomplished in accordance with 9903.405–5(a).

### § 9903.406–5 Technical noncompliances.

(a) If a noncompliance cost impact is not material in the aggregate, the cognizant Federal agency official shall notify the contractor in writing that:

(1) The practice is noncompliant via a final determination of noncompliance;

(2) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved; and,

(3) Corrective action should be taken.

(b) If the noncompliant practice is not corrected, the cognizant Federal agency official will inform the contractor that a technical noncompliance exists and that if the noncompliant practice subsequently results in materially increased costs to the Government, action will be taken to recover the increased costs plus applicable interest.

(c) The contractor shall notify the cognizant Federal agency official within 60 days of when the technical noncompliance becomes material.

### § 9903.407 Illustrations.

The following illustrations are not meant to cover all possible situations, but rather to provide some guidelines in applying the procedures specified in 9903.405 and 9903.406. The illustrations are meant to be considered only as examples. In actual cases, the individual circumstances need to be reviewed and considered to ensure equity for both parties.

### § 9903.407–1 Change in cost accounting practice—Illustrations.

(a) *Notification.* (1) The contractor provides notification of a change in cost accounting practices in April with a proposed retroactive applicability date of the beginning of the current year. In accordance with 9903.405–2(c), the contractor states that the reason for the beginning of the current year applicability date is to facilitate indirect cost allocations by use of one set of indirect cost rates for all work performed in the current year. The cognizant Federal agency official approves of the proposed applicability date (see 9903.405–3(c)). After determination of adequacy and compliance, the cognizant Federal agency official requests a GDM Settlement Proposal for contracts negotiated based on the previous accounting practice, including those negotiated after the applicability date of the change.

(2) The contractor provides notification of a voluntary change in cost accounting practices in June with a planned retroactive applicability date of the beginning of the current year. The cognizant Federal agency official finds that the rationale for the retroactive applicability date does not justify retroactive implementation (see 9903.405–3(c)). The contractor is informed that for cost accumulation purposes the new practice can be applied no earlier than 60 days after the contractor's notification of the accounting change, and that a retroactive applicability date will result in a noncompliance with disclosed practices and disallowance of any resulting increased costs. The contractor notifies the cognizant Federal agency official that, to avoid a noncompliance condition, it will change the applicability date to the beginning of its next cost accounting period.

(b) *GDM Settlement Proposal.* (1) In accordance with 9903.405–3(e), the cognizant Federal agency official

requests a GDM Settlement Proposal by contract type, which would include the impact on a sufficient number of contracts of each contract type to negotiate the impact of a change in cost accounting practice. The contractor supports the GDM Settlement Proposal by using a contract cost profile which shows the percentage of the three year forward pricing rate base data which consists of existing CAS-covered contracts subject to adjustment, and the percentage of the CAS-covered contracts subject to adjustment for each contract type. No contracts other than some of the individual contracts submitted with the GDM Settlement Proposal extend out beyond the three year period. The cognizant Federal agency official, with the assistance of the auditor and using the GDM Settlement Proposal individual contract data, determines that the general dollar magnitude estimate developed by the contractor reasonably approximates the aggregate impact, by contract type, of the accounting change on contracts subject to adjustment, i.e., contracts negotiated based on the previous practice. Pursuant to 9903.405–4(a)(6), the Government and contractor resolve the impact without a detailed cost impact proposal.

(2) The contractor reports a change in accounting practice which changes a direct cost element to an indirect expense. The cognizant Federal agency official, with the assistance of the auditor, determines that the GDM Settlement Proposal data submitted by the contractor does not adequately support the aggregate cost impact, by contract type, of the change in accounting practice. Therefore, in accordance with 9903.405–4(b)(1) and (2), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts, by contract type, to resolve the cost impact.

(3) The contractor submits a GDM Settlement Proposal which includes several contracts of each contract type showing the cost impact of the change in accounting practice. The impact is developed by computing the difference in the estimate-to-complete on these contracts using the old and new accounting practices. The cost impact settlement proposal includes all contracts that have a cost impact in excess of $1,000,000. The cognizant Federal agency official determines that the cost impact on each submitted contract was accurately computed. In accordance with 9903.405–4(a)(6), the cognizant Federal agency official decides that, based on the circumstances, contracts having an impact in excess of $500,000 are significant enough to require adjustment. The cognizant Federal agency official requests the contractor to submit a revised GDM Settlement Proposal that includes contracts having an impact in excess of $500,000 so that the cost impact can be resolved without a detailed cost impact proposal. The cost impact is ultimately negotiated based on the contractor's revised GDM Settlement Proposal.

(4) The same situation described in paragraph (c)(1) of this subsection occurs except that the aggregate impact by contract type in the GDM Settlement Proposal cannot be reconciled with the aggregate net impact of the individual contracts by contract type submitted with the proposal. In accordance with 9903.405–4(a)(5), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts by contract type to resolve the cost impact.

(5) After reviewing the GDM Settlement Proposal for a change in a cost allocation practice, the cognizant Federal agency official decides in accordance with 9903.405–4(a)(7) that, due to materiality, no additional data is needed and no contract price or cost adjustments are warranted.

(c) Detailed cost impact proposal. (1) In accordance with 9903.405–4(b)(2), the cognizant Federal agency official submits a written request for a detailed cost impact proposal to include all contracts with an estimate-to-complete based on the old practice in excess of $5,000,000 summarized by contract type. After evaluation of the detailed cost impact proposal, the cognizant Federal agency official determines whether contract price and/or cost adjustments are required in accordance with 9903.405–5(c).

(2) [Reserved]

(d) Offset process. (1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that one firm fixed-price contract is the only contract that exceeds the threshold established for contract price adjustment purposes. The impact on that contract is a reduced allocation of $1,000,000, requiring a downward adjustment to the contract price. When the cognizant Federal agency official applies the offset process to all other firm fixed-price contracts subject to adjustment by combining the increases and decreases, the result is a higher allocation in the aggregate amount of $400,000 on all other firm fixed-price contracts. Although no individual contracts making up this aggregate amount exceed the established threshold, the cognizant Federal agency official decides, in accordance with 9903.405–5(c)(5), that to achieve equity, an upward adjustment in the amount of $400,000 is warranted. Rather than offset this amount against the one contract exceeding the individual contract cost impact threshold, the cognizant Federal agency official, in accordance with 9903.405–5(b)(3), selects two high dollar firm fixed-price contracts for upward adjustment, in addition to the $1,000,000 dollar downward adjustment to the contract exceeding the threshold.

(2) The same situation exists as described in paragraph (d)(1) of this subsection except that the cost impact on the one individual firm fixed-price contract has a cost impact showing a reduced allocation of $10,000,000 which significantly exceeds the individual contract threshold established. The cognizant Federal agency official decides to offset the $400,000 impact on the ''all other'' contracts against the impact on the contract exceeding the threshold and makes a downward adjustment of $9,600,000 thereby reducing the number of contracts requiring adjustment, while still following the guidelines of 9903.405–5(b)(3).

(3) The contractor makes simultaneous accounting practice changes at three of its business units at the direction of the next higher tier home office. The cognizant Federal agency official at the home office segment decides to handle this change as a voluntary change which cannot result in increased costs paid by the United States. Business Unit A has a cost impact on contracts subject to adjustment which results in a higher level of costs on flexibly-priced contracts of $1,000,000 in excess of the lower level of costs on firm fixed-price contracts. The impact on flexibly-priced contracts at Business Unit B and Business Unit C is a combined lesser allocation of costs of $1,200,000 in excess of the higher level of costs on firm-fixed price contracts, resulting in net decreased costs on Government flexibly-priced contracts at the three business units. To demonstrate that the accounting change did not result in aggregate increased costs to the Government, the contractor submits a consolidated GDM Settlement Proposal for the three business units at the home office level. As a result of considering the aggregate impact at the three business units at the home office level, the cognizant Federal agency official, in accordance with 9903.405–5(b)(6), takes no action to preclude the increased costs on flexibly-priced contracts at Business Unit A. Individual contracts at each business unit that had cost impacts

exceeding established thresholds were adjusted upward or downward, as appropriate, for the amount of the cost impact in accordance with 9903.405–5(c)(2).

(4) After determining the individual contracts subject to adjustment where the cost impact exceeded the established threshold for a change in an actuarial cost method for computing pension costs, the contractor computes an aggregate impact for ''all other contracts'' amounting to $1,000,000 of lesser allocation of costs for flexibly-priced contracts and $1,200,000 of lesser allocation of costs on firm-fixed price contracts. The cognizant Federal agency official considers these amounts significant enough to warrant an adjustment. Since the impact on the flexibly-priced contracts represents decreased costs to the Government and the impact on the firm fixed-price contract represents increased costs to the Government, the contractor asks the cognizant Federal agency official to offset the increases and decreases and make a downward adjustment on the fixed-price contracts for only $200,000. The cognizant Federal agency official determines that by doing this, the cost to the Government of a lesser pension cost paid of $1,200,000 would be materially different than if the individual contracts making up these aggregate amounts had been individually adjusted downward resulting in a lesser cost paid of $2,200,000. To achieve the desired result, the cognizant Federal agency official, in accordance with 9903.405–5(b)(1) and (2), selects a number of high dollar contracts and adjusts flexibly-priced contracts downward by $1,000,000 and firm fixed-price contracts downward by $1,200,000. In accordance with 9903.405–5(a)(2), an alternative technique, in lieu of adjusting contact prices, which achieves the same result of lesser cost paid of $2,200,000 could also have been used for the aggregate ''all other contract'' cost impact adjustment.

(e) Contract price and cost adjustments. (1) After considering the materiality criteria in 9903.305, the cognizant Federal agency official decides that only contracts that have an impact that exceeds both $500,000 and .5% of the contract value will be subject to adjustment based on the impact of the accounting change. Of the individual contracts submitted with the GDM Settlement Proposal, only nine contracts exceed this threshold. The aggregate impact of all other contracts by contract type is considered insignificant. In accordance with 9903.405–5(c)(4), the cognizant Federal agency official resolves the cost impact by adjusting only those contracts that exceed the individual contract cost impact threshold, and making no other adjustments, without the need for a detailed cost impact proposal.

(2) The same situation described in paragraph (e)(1) of this subsection occurs except that the aggregate amount for all other contracts not exceeding the established individual contract cost impact threshold is considered significant enough by the Government to warrant adjustment. The Government had established $500,000 as the ''all other contract'' threshold. The cognizant Federal agency official selects two of the largest contracts that do not exceed the threshold, for each contract type, for adjustment in the amount of the aggregate ''all other contract'' impact. In order to avoid additional contract price adjustment action, the contractor, in accordance with 9903.405–5(a)(2), proposes an alternative adjustment technique to resolve the aggregate ''all other contract'' impact amount. The cognizant Federal agency official determines that the proposed alternative adjustment technique accomplishes the same approximate result as adjusting the two selected contracts. The cognizant Federal agency official, in accordance with 9903.405–5(c)(3), agrees to use the alternative technique, in addition to adjusting the individual contracts that exceed the threshold, to resolve the impact of the change in cost accounting practice.

(f) *Increased cost.* (1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that only two firm fixed-price contracts exceed the threshold for contract price adjustment purposes. All other amounts related to the cost impact are considered immaterial. The change is a voluntary change, i.e., the no increased cost limitation applies. The impact on the two contracts are a lower allocation of costs in the amount of $1,000,000 for contract A and a higher allocation of costs of $2,000,000 for contract B. In order to preclude increased costs paid by the United States as a result of the change, the cognizant Federal agency official, in accordance with 9903.405–5(d)(3), adjusts Contract A downward by $1,000,000, and limits the upward adjustment on Contract B to $1,000,000. This action adjusts the contracts to reflect the impact of the change to the maximum extent possible, while precluding a higher level of costs being paid by the United States.

(2) The same situation described in paragraph (f)(1) of this subsection occurs except that contract B is a CPFF contract. In accordance with 9903.405–5(d)(3), the cognizant Federal agency official adjusts the firm fixed-price contract downward by $1,000,000, and the estimated contract cost ceiling on the CPFF contract upward by $1,000,000. In accordance with 9903.405–5(d)(1), action must be taken to preclude the additional $1,000,000 of increased cost on the CPFF contract. An appropriate adjustment technique is used to preclude the payment of the increased costs in accordance with 9903.405–5(d)(3).

(3) After analyzing the contractor's GDM Settlement Proposal for a voluntary change, the cognizant Federal agency official determines that five contracts exceed the threshold established for contract price adjustment purposes. The impact on all other contracts, both individually and in the aggregate, is considered insignificant. The five contracts requiring adjustment are 3 firm fixed-price contracts and 2 CPFF contracts. The total impact on the 3 firm fixed-price contracts is a lower allocation of costs amounting to $3,000,000. The total impact on the 2 CPFF contracts is a higher allocation of costs of $2,000,000. The cognizant Federal agency official adjusts the contracts upward and downward for the amount of the impacts. In accordance with 9903.405–5(d) (1) and (2), no further action is needed to preclude increased costs paid, since the impact to the Government after contract price adjustments are made is a lesser cost paid in the amount of $1,000,000.

(g) *GDM Settlement Proposal based on contractor cost model and profile.* (1) The contractor has developed a cost model and profile which is used for the GDM Settlement Proposal. The cost model and profile data are updated whenever circumstances change and dictate revision to the data.

(2) For a voluntary accounting change, the contractor's cost model and profile is based on same three year forecast of direct and indirect cost data that supports the contractor's forward pricing rates used to estimate indirect costs in price proposals. The profile shows that 80% of the forecasted allocation base amounts in year 1 are comprised of existing covered contracts subject to adjustment, 50% of the amounts in year 2 are comprised of existing covered contracts subject to adjustment, and 20% of the amounts in year 3 are comprised of existing covered contracts subject to adjustment. Of the amounts applicable to CAS-covered contracts subject to adjustment, the contractor's cost model and profile

shows the following breakdown by contract type:

| | In percent | | |
|---|---|---|---|
| | Year 1 | Year 2 | Year 3 |
| Direct labor base: | | | |
| CPFF ..... | 30 | 25 | 20 |
| CPIF/FPI .. | 20 | 21 | 22 |
| FFP ..... | 50 | 54 | 58 |
| Total cost input base: | | | |
| CPFF ..... | 25 | 22 | 21 |
| CPIF/FPI .. | 15 | 16 | 17 |
| FFP ..... | 60 | 62 | 62 |

(3) The voluntary accounting change, which the cognizant Federal agency official has determined to be adequate and compliant, results in a transfer of a $5 million activity from the G&A pool to the overhead pool. The cognizant Federal agency official has determined that only individual contracts that have a cost impact in excess of $100,000 will be considered for adjustment, provided that the impact exceeds .5% of the contract value. The cognizant Federal agency official has also determined that $500,000 will be the adjustment threshold for the ''all other contracts'' amounts by contract type. To support the GDM Settlement Proposal, the contractor includes three (3) contracts having the largest estimate-to-complete, by contract type. Based on the cost model and profile the contractor computes the following general dollar magnitude impact by contract type:

| | Year 1 | Year 2 | Year 3 | Aggregate impact* |
|---|---|---|---|---|
| CPFF | $242 | $77 | $(4) | $315 |
| CPIF/FPI | 225 | 110 | 43 | 378 |
| FFP | (310) | (189) | (18) | (517) |

*Dollars in thousands.
( ) Denotes lesser allocation of costs.

(4) The aggregate impact amounts show a higher allocation of $693,000 on flexibly-priced contracts and a lesser allocation of $517,000 on firm fixed-price contracts. Only one contract of each contract type submitted with the GDM Settlement Proposal exceeds the threshold established. K1 is a CPFF contract with an impact of a higher allocation of $200,000. K2 is a CPIF contract having an impact of a higher allocation of $300,000. And K3 is an FFP contract having an impact of a lesser allocation of $400,000. After deducting the impact of the three contracts exceeding the threshold, the ''all other contracts'' amounts are a higher allocation of $115,000 for CPFF contracts, a higher allocation of $78,000 for incentive type contracts, and a lesser allocation of $117,000 for FFP contracts.

(5) Since the ''all other contracts'' amounts are less than the threshold for each contract type, the cognizant Federal agency official requires no adjustments for these amounts. The cognizant Federal agency official adjusts the FFP contract downward by $400,000 to preclude the increased costs on this contract. Because this is a voluntary change with no increased costs to be paid by the Government, the upward adjustments to the flexibly-priced contracts must be limited to $400,000. The cognizant Federal official decides to adjust the target cost on the CPIF contract upward by $300,000, with an appropriate upward adjustment of the target fee, in order to avoid distortions of contract incentive provisions based on the estimated higher allocation of costs (see 9903.405–5(b)(5)). The cognizant Federal agency official then limits the upward adjustment to the CPFF contract to $100,000. Additional action must then be taken to preclude the additional $100,000 of costs on the CPFF contract in accordance with 9903.405–5(d)(3).

**9903.407–2 Noncompliance illustrations.**

(a) *Estimating noncompliance.* (1) The cognizant Federal agency official determines that a cost accounting practice that the contractor has used for estimating and negotiating costs on CAS-covered contracts is noncompliant with an applicable Cost Accounting Standard. The practice is also different than the compliant, disclosed and established practice used for cost accumulation purposes. Therefore, the impact of the noncompliance only affects negotiated contract amounts under which the contractor used the noncompliant practice to estimate contract costs and any outstanding cost proposals not yet negotiated. The cognizant Federal agency official directs the contractor to change its estimating practices so that costs will be estimated, accumulated and reported consistently based on the contractor's established cost accounting practices and not use as a basis for the negotiation of contract prices any previously submitted contract cost estimates which were predicated on the noncompliant cost accounting practice. The cognizant Federal agency official then proceeds to request a cost impact submission for the impact of the noncompliant practice on covered contracts, as well as the amount of the increased costs paid as a result of the noncompliance. In accordance with 9903.406–3(d), the cognizant Federal agency official determines that the impact on contracts less than $10,000,000 would be immaterial, and limits the cost impact submission to contracts of $10,000,000 or more in amount. The contractor's cost impact submission shows that the contract amounts are overstated (in the aggregate) by a significant amount due to use of the noncompliant practice. The contracts are adjusted downward in the aggregate to reflect use of the compliant practice. Of the total amount of the overstatement in contract prices, the cognizant Federal agency official determines that 50 percent had been paid as of the date of the adjustment of the contract values. The cognizant Federal agency official, with the assistance of the auditor, computes and recovers interest applicable to the increased costs paid, for the period from date of payment to date of recovery of the increased costs paid.

(2) The cognizant Federal agency official determines that the cost accounting practice used by the contractor to estimate costs is noncompliant and different than the contractor's compliant, disclosed and established cost accounting practice. An analysis of the noncompliance cost impact submission developed by the contractor shows that, except for two large fixed-price contracts, the effect on negotiated contract values is immaterial. The cognizant Federal agency official determines that the impact on the two large fixed-price contracts is material enough to warrant an adjustment to reflect the application of the compliant disclosed practice. Since the amount of the understatement of the one contract

exceeds the amount of the overstatement of the other contract, the cognizant Federal agency official, in accordance with 9903.406–3(c)(2), limits the upward adjustment of the understated contract to the amount of the downward adjustment of the overstated contract. The cognizant Federal agency official further determines that the noncompliant practice did not result in increased cost paid by the United States. Therefore, no action was required to recover increased cost paid and applicable interest.

(b) *Cost accumulation noncompliance.* (1) The cognizant Federal agency official makes a final determination that the contractor is using an accounting practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. The cognizant Federal agency official further determines that the cost accounting practices used for cost estimating purposes are compliant. The noncompliant practice relates to the accumulation of actual indirect expenses. The contractor implements the same compliant practice used to estimate costs for cost accumulation and reporting purposes. The change to the compliant method for cost accumulation and reporting purposes results in automatic adjustment of actual costs and recovery of all increased cost paid due to the noncompliance. The contractor submits a noncompliance cost impact submission showing the amount of the increased cost paid during the period of noncompliance by using a method that does not require submission of individual contract data. The cognizant Federal agency official, with the assistance of the auditor, determines that the cost impact submission reasonably reflects the extent of the increased costs paid. It is also determined that the increased costs were paid evenly over the period of the noncompliance and the interest on the increased costs paid is computed using the midpoint of the noncompliance as a baseline. Since the increased costs have already been recovered through the adjustment of actual costs, the Government takes action only to recover the applicable interest by requesting a payment for the amount of the interest from the contractor.

(2) The cognizant Federal agency official determines that the contractor has accumulated costs based on a cost accounting practice that is not compliant with 9904.402 and is not consistent with its disclosed and established practice for its CAS-covered contracts. Since the noncompliance involves accounting for direct costs as indirect costs on some but not all of its CAS-covered contracts, the cognizant Federal agency official determines that individual contract data is required in order to compute the extent of increased costs paid, if any, as a result of the noncompliance. In accordance with 9903.406–4(d), the cognizant Federal agency official, with the assistance of the auditor, determines and discusses with the contractor the level of detail needed to compute the impact on costs paid as a result of the noncompliance. The cognizant Federal agency official submits a written request to the contractor for a noncompliance cost impact submission that specifies the level of detail required. After analyzing the cost impact submission, the cognizant Federal agency official determines that the amount of the increased costs paid is immaterial and does not warrant action to recover the increased costs, plus applicable interest. The cognizant Federal agency official takes action in accordance with 9903.406–5, Technical Noncompliance.

(3) The cognizant Federal agency official determines that the contractor is using a practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. The cognizant Federal agency official further determines that the noncompliant practice was also used for estimating purposes. In order to determine the extent of increased costs, if any, due to both overstated contract prices and billings of costs accumulated on CAS-covered contracts, the official, in accordance with 9903.406–4(b), requests two separate cost impact proposals to cover increased costs. The cost impact submission for the overstated contract prices will be in accordance with the cost impact proposal described in 9903.406–3, and the cost impact proposal for the overbilled accumulated costs will be as described in 9903.406–4.

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Part IV

# Environmental Protection Agency

**40 CFR Part 268**

**Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 268**

**[EPA # –530–Z–96–P33F–FFFFF; FRL–5857–7]**

## Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Under the Land Disposal Restrictions (LDR) program of the Resource Conservation and Recovery Act (RCRA), EPA is extending the current national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088) for three (3) months. Thus, K088 wastes may be land disposed without being treated to meet LDR treatment standards until October 8, 1997, three months from the current treatment standard effective date of July 8, 1997. EPA is taking this action because it now appears that sufficient treatment capacity exists which is capable of achieving the treatment standards promulgated by EPA on March 8, 1996, the process provides substantial treatment of spent potliners and minimizes the threats posed by land disposal of these wastes, and the treatment and disposal capacity provided for the waste will be protective of human health and the environment because it will occur at subtitle C units. EPA is extending the national capacity variance for a further three months in order to provide time for generators to make contractual and other logistical arrangements relating to utilization of the treatment capacity.

**DATES:** This rule is effective July 7, 1997.

**ADDRESSES:** Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The Docket Identification Number is F–96–P33F–FFFFF. The RCRA Docket is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific information, contact the Waste Treatment Branch (5302W), Office of Solid Waste (OSW), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460; phone (703) 308–8434. For information on the capacity analyses, call Pan Lee or Bill Kline at (703) 308–8440. For information on the regulatory impact analyses, contact Paul Borst at (703) 308–0481. For other questions, call John Austin at (703) 308–0436 or Mary Cunningham at (703) 308–8453.

**SUPPLEMENTARY INFORMATION:**

### Availability of rule on Internet

This Federal Register notice is available on the Internet System through the EPA Public Web Page at: http://www.epa.gov/EPA-WASTE/. For the text of the notice, choose: Year/Month/Day.

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## I. Background

Land disposal of hazardous wastes without prior treatment is largely prohibited by law. RCRA sections 3004(d), (e) and (g). The prohibition on land disposal is normally to take effect immediately on promulgation, but may be extended if EPA finds that adequate alternative treatment, recovery or disposal capacity which protects human health and the environment will not be available. RCRA section 3004(h)(2). In that event, the prohibition is to take effect on the earliest date on which such adequate capacity exists, and in no event be extended nationally for more than two years from the promulgation date. *Id*.

### *A. The Existing Treatment Standard and National Capacity Variance for Spent Potliners*

On April 8, 1996, EPA promulgated a prohibition on land disposing spent potliners from primary aluminum production (Hazardous Waste K088) unless the waste satisfied the treatment standards for K088 established by EPA as part of the same rulemaking. (61 FR 15566, April 8, 1996). Spent potliners are a highly toxic hazardous waste, whose hazardous constituents include cyanide (present in concentrations between 0.1 and 1 percent, which are quite high for such a toxic constituent), toxic metals, and polycyclic aromatic hydrocarbons (PAHs). See the Final BDAT Background Document for Spent Potliners from Primary Aluminum Reduction—K088, February 29, 1995. These wastes also contain high concentrations of fluoride. See generally *id*. at 61 FR 15584–15585. Previous improper management of spent potliners has resulted in widespread groundwater contamination with cyanide and fluoride, and was an important factor in EPA's decision to list these materials as hazardous wastes. See 53 FR 35412, September 13, 1988. The treatment standards for K088 wastes require substantial reductions in the total concentration of organic hazardous constituents and cyanide, and substantial reductions in the leachability of toxic metals and fluoride. See 61 FR 15626. The reduction in leachability is measured by application of the Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311. *Id*.

These treatment standards are based upon performance of combustion technology plus stabilization treatment of combustion residues. *Id*. at 15584. The treatment standard for fluoride is based upon the performance demonstrated by the treatment process developed by Reynolds Metals Company (Reynolds) during studies conducted as part of their application for delisting [1] treated K088. See 61 FR 15585. Although treatment standards were based upon these technologies, any treatment technology (other than impermissible dilution) may be used to achieve these established numerical

[1] EPA granted a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.32 —i.e., a delisting—for certain solid wastes derived from the treatment of K088 at Reynolds Metals Company, Gum Springs, Arkansas (56 FR 67197, December 30, 1991). The delisting is based on treating the same parameters covered by the LDR treatment standard, and compliance is measured by TCLP analyses for toxic metals, PAHs, cyanide, and fluoride. However, as explained later in this Notice, the delisting was incorrect and will be withdrawn.

standards. Data in the administrative record indicate that these treatment standards are achievable by a number of different technologies. See the Final BDAT Background Document for Spent Potliners from Primary Aluminum Reduction—K088, February 29, 1995, available in the docket.

Notwithstanding that a number of different treatment technologies can achieve the treatment standard, in fact, virtually all existing treatment capacity is provided by a single operation, the Reynolds treatment facility located in Gum Springs, Arkansas. See 61 FR 15589; see also Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III (February 1996, Volume I, pages 4–4 to 4–11). The Reynolds' process entails the crushing and sizing of spent potliner materials, the addition of roughly equal portions of limestone and brown sand as flux, and the feeding of the combined mixture to a rotary kiln for thermal destruction of cyanide and PAHs. Spent potliners (SPL) are generated in large volumes ranging from 100,000 to 125,000 tons annually.[2] Of the approximate 140,000 tons of treatment capacity EPA estimated was available, 120,000 tons are provided by Reynolds.[3]

For the purposes of comparing required treatment capacity to available capacity, EPA combined all the data available and presented in the updated Capacity Background Document[4] to estimate that approximately 90,000 tons per year of K088 is expected to require treatment. As noted above and in the Background Document, Reynolds provides sufficient treatment volume to accommodate this volume of waste.[5]

## II. Subsequent Events

Because there is adequate volume of treatment capacity, the issue becomes one of the environmental adequacy, specifically whether treatment satisfies the requirements of section 3004(m) which says that treatment is to be sufficient to minimize threats to human health and the environment posed by land disposal of the waste, and section 3004 (h)(2) which says that to be adequate treatment and disposal capacity must be protective of human health and the environment.

Events occurring after promulgation of the K088 treatment standards have raised questions about each of these issues. Reynolds appears able to treat spent potliners to meet the promulgated treatment standards.[6] However, as set out in the January 14 notice, the leachate being generated from actual disposal of the treatment residues is more hazardous than initially anticipated. In hindsight, it is now apparent that spent potliners are themselves highly alkaline, and contain cyanide, arsenic, and fluoride—constituents which are most soluble under alkaline pH. Reynolds in fact disposed of most of the treatment residues from its process in a dedicated monofill (a landfill receiving only these treatment residues) where pH is alkaline (the pH of the treatment residue is essentially unbuffered by anything in the landfill), and the concentrations of these constituents were high. As measured in September 1996, total cyanide concentrations in the leachate were 46.5 mg/L (the treatment standards for K088 wastewaters specify a concentration of 1.2 mg/L); arsenic concentrations are at 6.55 mg/L (treatment standard 1.2 mg/L); and fluoride concentrations are at 2228 mg/L (treatment standard 35 mg/L). (Gum Springs Leachate Analytical Results, Reynolds Metals Co., Sept. 26, 1996).[7] Other residues were used as fill material in unlined pits at a Hurricane Creek, Arkansas mining site, and as a test all-weather road surface at the mining site (62 FR 1992, January 14, 1997). The levels of hazardous constituents and fluoride in the leachate and runoff from this site were less than those from the landfill, undoubtedly because the prevailing pH is acidic rather than basic, but still were high enough to warrant regulatory concern.

As set out in the January 14 notice, EPA had failed to take into account the effect of alkaline disposal conditions on potliners and potliner treatment residues when promulgating either the treatment standard for K088 wastes or the delisting for the treatment residues from Reynolds' process. EPA's immediate response, set out in the January notice, was to extend the national capacity variance for six months for two reasons: (1) because of the delisting, the disposal capacity provided by Reynolds was not protective since the wastes could be disposed essentially anywhere under federal law, and (2) because there was a possibility that the treatment process might actually be increasing the hazards posed by land disposal of the waste by increasing hazardous constituent and fluoride mobility. See 62 FR 1994. Because EPA had some expectation that short-term treatment process changes could resolve some of these problems, EPA extended the national capacity variance until July 8, 1997 (62 FR 1992).

Following this extension, Reynolds initiated various full scale tests in an attempt to find a process change that would result in improved destruction of cyanide, and greater immobilization of arsenic and fluoride. On April 9, 1997, Reynolds presented to EPA representatives a confidential summary of the research and development testing performed pursuant to improving the Gum Springs' treatment residue. (See April 4, 1997 letter to William Gallager, EPA Region 6 from Patrick Grover, Reynolds Metals Company.) These results indicate that EPA's prior judgement that the process could be modified relatively quickly by substitution of different sand and other means of pH control (62 FR 1995), has proven to be overly optimistic. Reynolds is continuing to consider options that they believe may both increase the thoroughness of combustion of the cyanide, and reduce leachabilty of any remaining cyanide in the residue, as well as further reducing the mobility of the fluoride and arsenic. Also, Reynolds is continuing to try to isolate and remove additional sources of arsenic in the process, and is considering ways to lower the pH of the residue, which may further reduce leachabilty of the constituents of concern. After further discussions with Reynolds and re-analysis of data from the existing Reynolds' process,[8] EPA too is reconsidering the potential causes of the unexpectedly high levels of hazardous constituents. As discussed below, however, recent developments have satisfied the Agency's immediate concern that safe capacity be provided.

[2] Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III (February 1996, Volume I, pages 4–5 to 4–8). Because SPL are not generated continuously, and because the rate of generation fluctuates according to the amount of aluminum produced, it is not possible to estimate this figure with more accuracy.

[3] Id., pages 4–9 to 4–10.

[4] Background Document (pages 6—12) for Capacity Analysis Update for Land Disposal Restrictions—Phase III: Spent Aluminum Potliner (Final Rule), December 1996 (part of the docket files for Emergency Extension of the K088 Capacity Variance; Final Rule; 62 FR 1992, January 14, 1997). The capacity analysis in this document reflects generation data and other information submitted after the publication date (April 8, 1996) for the LDR Phase III Final Rule.

[5] Id., pages 12–16.

[6] Commenters have questioned this, and EPA responds to those comments below.

[7] EPA was not aware of these data until the Fall of 1996, and, in particular was not aware of these data during the rulemaking proceeding leading to establishing the K088 treatment standard. EPA notes further that the leachate from the landfill is being intercepted and collected by Reynolds, and so is not contaminating the environment at the treatment site. However, EPA also notes that there is no interception of leachate at the Hurricane Creek Mine Site and that Reynolds has agreed to cease disposal at the mine site effective June 1, 1997.

[8] See Discussions on TCLP Results and Monofill Leachate Quality, Reynolds, May 29, 1997.

## III. EPA's Decision With Respect to Extending the National Capacity Variance

The situation EPA is evaluating is thus one where a waste is being treated to meet the promulgated treatment standard, but actual performance of the treatment technology is less than predicted for some of the waste's constituents, and current disposal conditions appear to EPA to be unprotective of human health and the environment because of the existing delisting, which allows unregulated disposal of a waste which generates a hazardous leachate. EPA addresses first issues related to extent of treatment, and then the resolution of issues relating to disposal conditions.

### *A. The Reynolds Process Provides Substantial Treatment*

RCRA section 3004 (m) requires that treatment ''substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' EPA believes that treatment is normally adequate to meet these requirements where treatment results in substantial reduction of toxics and/or substantial reduction of their mobility. See 62 FR 1994, January 14, 1997 and sources there cited.

The Agency's review of the Reynolds' process shows that polycyclic aromatic hydrocarbons are destroyed virtually completely [9], and cyanide is destroyed to a significant, but lesser degree.[10] These are the most significant hazardous constituents in the waste, based on concentration, potential mobility and toxicity. However, the current treatment process does not neutralize the alkalinity of the spent potliner or of the resulting residual, provides limited treatment of fluoride, and results in an increase in the concentration of leachable arsenic in the residual. [11] Despite these mixed results, EPA still concludes that on the whole, the process does provide substantial treatment. The Reynolds' process destroys PAH constituents virtually 100% through combustion. Further, cyanide is destroyed to a significant extent by this same combustion process. Total levels of cyanide appear to be reduced by the Reynolds' process by an average of over 90% from the untreated levels. High concentrations of cyanide was a major reason that K088 was listed as a hazardous waste (53 FR 35412, September 13, 1988), and destruction of cyanide is therefore a key consideration in whether a K088 process is providing substantial treatment. The leachability of fluoride, on the other hand, is not being significantly altered the Reynolds' process. The addition of lime and sand in the Reynolds' process is meant in part to help reduce the leachability of the very high amounts of fluoride found in untreated K088. It appears the Reynolds' process does provide some reduction (perhaps 25%) in the initial leachability of fluoride. However, while treatment of fluoride is an important indicator in a K088 treatment process, fluoride is not a highly toxic constituent (it is not included in Part 261, Appendix VIII). The Agency views the PAH and cyanide reductions as more important. Likewise, the Reynolds' process appears to actually increase the amounts of leachable arsenic as compared to untreated K088. This is not an encouraging result, but the explanation is apparently that given the destruction of organic components of the K088, perhaps combined with arsenic levels in sand that is used as a fluxing agent in the process, some elevation of arsenic continues to occur.

Commenters have argued, however, that Reynolds' process isn't providing substantial treatment because levels of hazardous constituents and fluoride in actual leachate exceed the K088 standards for wastewaters. [12] EPA notes first that this information does not alter the fact that the process significantly reduces total concentrations of hazardous constituents. Second, EPA would not normally consider data reflecting actual disposal as invalidating a treatment process unless the results are directly at odds with the basic premise of the land disposal restrictions program: that treatment reduces the risks posed by disposing of hazardous wastes without treatment. EPA believes that the destruction of organic constituents and cyanide reduces threats posed by land disposal of the K088 wastes. In this regard, the Agency notes that it found in the January notice that the Reynolds' process might actually pose greater risks than disposal of untreated wastes in subtitle C facilities (62 FR 1993). This finding was based in part on the fact that the delisting allowed Reynolds to dispose of the waste in units controlled less stringently than under federal standards. (62 FR 1992 and 1995). However, EPA also thought that the monofill leachate quality might be worse than that generated from subtitle C landfills managing untreated potliners. EPA now withdraws that finding. It is the Agency's current assessment that Reynolds' treatment (albeit imperfect) does reduce the overall toxicity associated with the waste. As a result, the disposal of the treated residue in a tightly controlled Subtitle C landfill is preferable to the disposal of untreated wastes. We base this finding on the determination that the total mass of the available cyanide and PAHs has been reduced.[13] EPA also concludes that the concentration observed in Reynolds' monofill leachate are in part the result of the high mass to leachate ratio that results from partial cover of the unit, resulting in a lower volume but less dilute leachate than results from other subtitle C landfills.[14]

The only alternative to Reynolds' treatment, at present, is no treatment at all.[15] The whole premise of the law is not to land dispose untreated hazardous wastes, and to require expeditiously that existing treatment processes providing substantial treatment be utilized. See citations at 61 FR 55724 (Oct. 28, 1996). EPA finds that the combustion process followed by limited stabilization appears to be adequate for the Agency to conclude that Reynolds provides substantial treatment which reduces the threats posed by land disposal of untreated spent potliners.[16]

[9] 56 FR 33004–5, July 18, 1991.

[10] See Reynolds' Special Laboratory Report (P33F–S0020.A).

[11] Data set F; letter from Pat Grover, Reynolds Metals Company to James R. Berlow, EPA; June 5, 1997.

[12] Commenters also suggested that these data show lack of compliance with the actual treatment standard. This is incorrect, since the treatment standard is measured not on actual leachate analysis, but on either a total waste concentration basis, or based on leachate generated using the TCLP. Although it is now apparent that the TCLP is not a good model for disposal conditions to which K088 would be subject, the treatment standard still requires use of the TCLP and any results so obtained that do not exceed the treatment standard are in compliance.

[13] See Agency's calculation of treatment effectiveness from Reynolds' 12/8/96 Special Laboratory Report.

[14] See Discussion on TCLP Results and Monofill Leachate Quality, Reynolds, May 29, 1997.

[15] The Agency anticipates that a number of producers will pursue the construction of alternative treatment facilities. In fact, the Agency is currently evaluating two proposals for recycling facilities that would employ vitrification processes that produce a glass product and recover fluoride compounds. One of these recycling facilities would use a process similar that currently in use at the Ormet Corporation, Hannibal, Ohio. The Agency expects to provide guidance on the regulatory status of these proposed recycling facilities shortly.

[16] Commenters suggested that threats might not be minimized by the Reynolds' process, within the meaning of RCRA section 3004 (m). EPA disagrees. As explained above, the treatment process provides treatment which reflects the best commercially available treatment. The D.C. Circuit has sustained the use of technology-based treatment standards as a reasonable means of implementing the minimize threat requirement. *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 345 (D.C. Cir. 1989). In

Commenters also questioned whether Reynolds is even achieving current treatment standards, focusing on cyanide results in particular. If the commenters were correct that the only available treatment process consistently is unable to meet a treatment standard, then EPA would likely find that insufficient treatment capacity exists. However, data provided by Reynolds appears to show compliance with the total and amenable cyanide LDR standards (see June 17, 1997 fax from Pat Grover to John Austin, U.S. EPA). The Agency believes this data does show compliance in all but limited instances. The commenter's argument is premised on the notion that addition of fluxing and stabilizing agents to the treatment process increases waste volume three-fold, so that treatment analytical results should be multiplied by three to reflect the amount of dilution occurring. This is not correct. Although certain types of dilution—generally, dilution that does not reduce the toxicity or mobility of hazardous constituents—is an impermissible means of achieving a treatment standard, dilution which is a necessary part of a treatment process is normally permissible. See 51 FR at 40592 (Nov. 7, 1986). Thus, addition of treatment reagents which produce physical and chemical changes in the waste and which are a normal part of the process of treating a waste are typically permissible. *Id.* This is what occurs in the Reynolds' process, where fluxing agents are a usual part of the process, and function to aid the passage of the residue through the kiln and the fusion of the reagents. Thus, EPA believes that the Reynolds' process does consistently achieve the current treatment standards.

*B. Reynolds Will Provide Safe Disposal Capacity*

The above discussion of the Reynolds' process focused on the destruction of organic constituents and cyanide, and the limited stabilization of fluoride, leading to the conclusion that from an engineering perspective, substantial treatment is occurring which reduces the threats posed by land disposal of the hazardous wastes. However, as explained above, EPA, in determining when a prohibition on land disposal takes effect, must consider whether the treatment and disposal capacity being offered ''protects human health and the environment.'' RCRA section 3004(h)(2). EPA's assessment has been that Reynolds' disposal of the delisted waste in non-subtitle C units failed to adequately protect human health and the environment, and that the delisting allows unsafe disposal practices to continue. As long as the treated residual retains its current delisted status such practices could continue.

However, Reynolds has very recently agreed to give up the delisting and to manage the waste—that is, the residue from its treatment process—subject to full subtitle C controls, including disposal in a landfill satisfying minimum technology design criteria (i.e. double liners and leachate collection system). Based on this new development, it now appears that the residues will in fact be managed safely (indeed, must be managed safely under the federal standards), so that protective disposal capacity exists.

Today's decision is premised on the understanding that EPA will issue to Reynolds Metals Company an administrative order specifying Subtitle C management for their residues and the monitoring of Reynolds' compliance with applicable LDR treatment standards, no later than September 5, 1997. This order would serve as an interim bridge until the administrative process of withdrawing the delisting (which entails amending a final rule) is completed. The order will require Reynolds to conduct daily sampling of key constituents for at least the first 30 days of the order to document further that LDR treatment standards are being met. Reynolds will operate under a Federal administrative order until EPA action formally amends the Code of Federal Regulations to repeal the subject delisting, and then they will operate as an interim status facility pending application for and receipt of a permit. If for some reason an administrative order is not in place by September 5, 1997, EPA could extend the deadline up to April 8, 1998.

EPA also notes that the finding that the Reynolds process provides substantial treatment of the spent potliner, sufficient to justify the technology's use to satisfy the requirements of the Land Disposal Restrictions program, is not at odds with the finding that the treatment residue is still a hazardous waste. There is no inherent conflict between a finding that a waste has been treated substantially enough to satisfy LDR requirements and that the treatment residue nevertheless remains a hazardous waste. This in fact is the normal case (few residues from treating listed wastes have been delisted even after being treated to satisfy LDR requirements), and is directly contemplated in RCRA section 3004(m)(2), which states that after treatment which minimizes threats the treated waste may be disposed in a subtitle C facility (i.e. the treatment residue remains a hazardous waste). In this particular case, EPA has found that most cyanides in the initial potliner are destroyed by Reynolds' thermal treatment process, and that polycyclic aromatic hydrocarbons are essentially fully destroyed. Other constituents' mobility is reduced. Thus, substantial treatment has reduced (but not eliminated) the hazardous properties of the waste, so that the resulting treatment residue remains hazardous.

*C. Agency's Conclusion Is That Protective Capacity is Presently Available*

Based on all of the above discussion, the Agency's conclusion is that there is adequate treatment capacity for spent potliners at this time, because the Reynolds process meets LDR treatment standards and because ultimate disposal of the treatment residues is protective of human health and the environment. (RCRA section 3004(h)(2)). The Reynolds' process provides virtually all available treatment capacity (See 62 FR 1995). However, given that generators need some time to make arrangements with Reynolds, which in some cases involves cross-country shipment, the Agency is extending the national capacity variance by three months until October 8, 1997. EPA is selecting that length of extension because it is the Agency's judgment (based on current facts, and the pattern of previous discussions on the issue) that this is a sufficient amount of time to make necessary logistical arrangements.

## IV. Disposal of Potliners During National Capacity Variance Period

Section 3004 (h) (4) states that during periods of national capacity variances (and case-by-case extensions), hazardous wastes subject to those extensions that are disposed in landfills (and surface impoundments) may only be so disposed if the landfill (or impoundment) is in compliance with the minimum technology requirements of section 3004 (o). EPA has interpreted this language as requiring the individual unit receiving the waste to be in compliance with those so-called minimum technology standards, an interpretation sustained in *Mobil Oil* v. *EPA*, 871 F. 2d 149 (D.C. Cir. 1989). In addition, EPA has indicated that this requirement only applies to wastes that are still hazardous when disposed (55 F R 22659–22660, June 1, 1990).

any event, EPA has said many times, and the legislative history confirms, that the ''minimize threat'' statutory language is susceptible to a number of interpretations, and was not intended to mean that treatment must remove every conceivable threat posed by disposal of a hazardous waste. See 61 FR at 55724 and sources there cited.

Accordingly, this means that during the extended period of the national capacity extension, generators other than Reynolds will dispose of K088 wastes in landfill units that satisfy the minimum technology requirements of section 3004(o). While Reynolds' treatment residue is not subject to these requirements at this time because it has been delisted, a process will soon be initated to reclassify it as a hazardous waste. Should the national capacity extension still be in effect when Reynolds treatment residue is reclassified as hazardous, such residues would also be required to be disposed in landfill units satisfying minimum technology requirements (assuming that landfill disposal is utilized) during the extension period.

## V. Use Constituting Disposal Issues

Although not directly related to the LDR capacity determination being promulgated today, EPA is also taking this opportunity to address concerns that have been raised regarding the use of Reynold's residue in a manner constituting disposal.

In a separate action, EPA is intending to propose to withdraw the existing delisting for the residues from Reynold's treatment process. EPA remains concerned, however, that even if the residues are a listed hazardous waste, Reynolds may be able under current regulations to use those residues in uses constituting disposal if they can demonstrate that such uses are ''legitimate'' product uses under 40 CFR 266.20(b) .

EPA is concerned about possible environmental impacts such uses might have because of the concerns EPA has about the leachate generated from the treated potliner and data from road test beds Reynolds constructed using the residues. (See 62 FR 1993; January 14, 1997.)

EPA understands that Reynolds has since ceased such uses under the terms of a compliance order from the State of Arkansas.

EPA remains concerned about this possibility and intends to monitor the situation. If the Agency determines at some point in the future that such uses are taking place or are being pursued, and if we determine such uses may pose health or environmental concerns, EPA may consider amendments to Section 266.20(b) to further restrict such uses. See, e.g., 62 FR 26061; May 12, 1997. At that time, EPA may decide on whether to prohibit uses of the Reynolds residue.

## VI. Regulatory Requirements

### *A. Regulatory Impact Analysis Pursuant to Executive Order 12866*

Executive Order No. 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that ''is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

The Agency considers today's final rule to be nonsignificant as defined by the Executive Order and therefore not subject to the requirement that a regulatory impact analysis has to be prepared. Today's rule delays for three months the imposition of treatment standards for spent aluminum potliners that were estimated previously by EPA to cost between $11.9 million and $47.3 million (61 FR 15566 and 15591, April 8, 1996). Thus, today's rule results in net savings over this period of time and prevents any potential hardship that would otherwise result from the lack of available treatment capacity for spent aluminum potliners.

### *B. Paperwork Reduction Act*

This rule does not contain any new information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Since there are no new information collection requirements being promulgated today, an Information Collection Request has not been prepared.

### *C. Unfunded Mandates Reform Act and Regulatory Flexibility Act*

In addition, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act.

### *D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## VII. Immediate Effective Date

EPA has determined to make today's action effective immediately. The Agency believes that there is good cause to do so, within the meaning of 5 U.S.C. 553 (b) (B). The current capacity extension ends on July 8, and EPA does not believe it is physically possible for generators to begin shipping wastes to Reynolds on that date (nor is the Agency willing to speculate as to existence or non-existence of generator storage capacity). The reason the Agency is issuing this notice so close to the deadline is because the whole situation involving this capacity extension is complicated (involving decisions relating to both treatment performance and reclassification of the existing delisting), and, accordingly, the Agency continued considering new information until just before it was issued. During this time, the Agency carried on technical and other discussions with all interested persons. EPA believes that this process was reasonable, and that putting out a separate proposal during this period when the Agency's analysis of the existing information was changing based on changing facts would not have significantly benefitted either the Agency or interested persons, and could have interfered with the on-going dialogue by diverting resources from them. EPA has endeavored to obtain as much public comment on the issues as possible and to avoid issuing a decision until carrying on as extensive a dialogue as possible with concerned parties. Thus, EPA has held a number of meetings with both Reynolds and affected primary aluminum generators (noted in the record for this action), solicited and accepted written submissions from these entities (again part of the administrative record), and made each sides' submissions available to the other for response (which have been forthcoming in abundance). The

Agency has also had contacts (albeit more limited) with representatives of the hazardous waste treatment industry and the environmental community. This process extended until June 30. Actual notice and opportunity for comment of course satisfies all procedural requirements of the Administrative Procedure Act (as to parties receiving such notice). 5 U.S.C. 553 (b).

In addition, EPA believes that the January 14 notice served as a type of proposal that EPA would consider and grant a further extension if there were not significant changes in the disposal and treatment occurring at Reynolds' Arkansas facility, and at least some of the comments the Agency has received since January reflect that view.

For all of these reasons, EPA finds that this rule extending the current national capacity extension until October 8, 1997 may be made effective immediately.

**List of Subjects in 40 CFR Part 268**

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: July 7, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.39 is amended by revising paragraph (c) to read as follows:

**§ 268.39 Waste specific prohibitions—spent aluminum potliners; reactive; and carbamate wastes.**

* * * * *

(c) On October 8, 1997, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste number K088 are prohibited from land disposal. In addition, soil and debris contaminated with this waste are prohibited from land disposal.

* * * * *

[FR Doc. 97–18410 Filed 7–11–97; 8:45 am]

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federal register

Monday
July 14, 1997

Part V

# Department of Agriculture

## Food and Consumer Service

**Child Nutrition Programs: Child and Adult Care Food Program—National Average Payment Rates; Day Care Home Food Service Payment Rates Etc., and National School Lunch, Special Milk, and School Breakfast Programs; Reimbursement Rates; Notices**

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

### Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1997–June 30, 1998

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers; the food service payment rates for meals served in day care homes; and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

**EFFECTIVE DATE:** July 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, Alexandria, Virginia 22302, (703) 305–2620.

**SUPPLEMENTARY INFORMATION:** This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

#### Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR Part 226).

#### Background

Pursuant to Sections 4, 11 and 17 of the National School Lunch Act (NSLA) (42 U.S.C. §§ 1753, 1759a and 1766), Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. § 1773) and Sections 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1997 through June 30, 1998.

As provided for under the NSLA and the Child Nutrition Act of 1966, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 11, 1996 at 61 FR 36545 (for the period July 1, 1996–June 30, 1997).

Section 704(b)of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104–193, enacted August 22, 1996, amends § 11a(3)(B) of the National School Lunch Act (42 U.S.C. § 1759a(a)(3)(B) and changes the method for computing the annual adjustments to the national average payment rates for meals and supplements served to *non-needy* children in day care centers. Effective July 1, 1997, the annual adjustments to the payment rates for *paid* meals and *paid* supplements, will be rounded down to the nearest whole cent. The annual adjustments to the payments for free and reduced price meals and to the payments for free and reduced price supplements were unchanged by Pub.L. 104–193 and continue to be rounded up or down to the nearest one-fourth cent.

Section 708(e)(1) of Pub.L. 104–193, also amended section 17(f)(3)(A) of the NSLA to establish two ''tiers'' of day care homes and reimbursement rates. Pursuant to these amendments, tier I homes are those that are located in low-income areas or those in which the provider's household income is at or below 185 percent of the Federal income poverty guidelines. Tier II homes are those which do not meet the location or provider income criteria for a tier I home. However, tier II homes may receive the tier I rates for meals served to identified income-eligible children (i.e. children from households with incomes at or below 185 percent of the Federal income poverty guidelines).

Pub. L. 104–193 further specified in section 17 (f)(3)(A)(ii) (III) and (IV) the reimbursement factors for meals served in tier I day care homes as the factors in effect on July 1, 1996, with adjustments made to the factors on July 1, 1997, and each July 1 thereafter. Pub. L. 104–193 further provided in section 17(f)(3)(A)(ii)(IV) and (iii)(I)(bb) (42 U.S.C. § 1766(f)(3)(A)(ii)(IV) and (iii)(I)(bb)) of the NSLA that the factors paid to tier I and tier II homes be rounded down to the nearest whole cent, instead of rounding the factors up or down to the nearest quarter-cent increment as previously required. Subsequent adjustments must be based on the unrounded rate from the preceding school year. In addition, annual adjustments, which were previously based on changes in the Consumer Price Index for food away from home, must now be made based on the Consumer Price Index for food at home.

Please note that, reimbursement rates for tier II family day care homes are set forth in section 17(f)(3)(A)(iii)(I)(aa) of the NSLA (42 U.S.C. §§ 1766(f)(3)(A)(iii)(I)(aa), as amended by section 708(e)(1) of P.L. 104–193. After these reimbursement rates were adjusted and rounded down to the nearest whole cent as required under the law, an additional six cents was added to the breakfast rate as required by section 4(b)(3) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(3)). The Child Nutrition Act requires that all reimbursement rates for breakfasts served under the School Breakfast Program and the CACFP be adjusted upward by six cents. As background, this addition was first made in 1986, under Pub. L. 99–500, the School Lunch and Child Nutrition Amendments of 1986, which added three cents to adjusted breakfast rates to assist States in improving the nutritional quality of the breakfasts and this adjustment was raised from three cents to six cents in 1989 under Pub. L. 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, for the same reason.

The payment rates for the period July 1, 1997–June 30, 1998 are:

### All States Except Alaska and Hawaii

| Meals Served in Centers—Per Meal Rates *in Dollars or Fractions thereof*: | |
|---|---|
| Breakfasts: | |
| Paid | .20 |
| Free | 1.0450 |
| Reduced | .7450 |
| Lunches and Suppers: [1] | |
| Paid | .18 |

**All States Except Alaska and Hawaii**—Continued

| | |
|---|---|
| Free | 1.8900 |
| Reduced | 1.4900 |
| Supplements: | |
| Paid | .04 |
| Free | .5175 |
| Reduced | .2600 |

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

| | Tier I | Tier II |
|---|---|---|
| Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof*: | | |
| Breakfasts | .88 | .33 |
| Lunches and Suppers | 1.62 | .98 |
| Supplements | .48 | .13 |
| Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars*: | | |
| Initial 50 day care homes | 75 | |
| Next 150 day care homes | 57 | |
| Next 800 day care homes | 45 | |
| Additional day care homes | 39 | |

Pursuant to Section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

## Alaska

| | |
|---|---|
| Meals Served in Centers—Per Meal Rates *in Dollars or Fractions thereof*: | |
| Breakfasts: | |
| Paid | .29 |
| Free | 1.6575 |
| Reduced | 1.3575 |
| Lunches and Suppers: [1] | |
| Paid | .29 |
| Free | 3.06 |
| Reduced | 2.66 |
| Supplements: | |
| Paid | .07 |
| Free | .8400 |
| Reduced | .4200 |

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

| | Tier I | Tier II |
|---|---|---|
| Meals Served in Day Care Homes—Per Meal Rates *in Dollars or Fractions thereof*: | | |
| Breakfasts | 1.40 | .51 |
| Lunches and Suppers | 2.63 | 1.58 |
| Supplements | .78 | .21 |
| Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars*: | | |
| Initial 50 day care homes | 121 | |
| Next 150 day care homes | 92 | |
| Next 800 day care homes | 72 | |
| Additional day care homes | 64 | |

The new payment rates for Hawaii are as follows:

## Hawaii

| | |
|---|---|
| Meals Served in Centers—Per Meal Rates *in Dollars or Fractions thereof*: | |
| Breakfasts: | |
| Paid | .22 |
| Free | 1.2125 |
| Reduced | .9125 |
| Lunches and Suppers: [1] | |
| Paid | .21 |
| Free | 2.21 |
| Reduced | 1.81 |
| Supplements: | |
| Paid | .05 |
| Free | .6075 |
| Reduced | .3025 |

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

| | |
|---|---|
| Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof*: | |
| Breakfasts | 1.02 / .38 |
| Lunches and Suppers | 1.90 / 1.14 |
| Supplements | .56 / .15 |
| Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars: | |
| Initial 50 day care homes | 88 |
| Next 150 day care homes | 67 |
| Next 800 day care homes | 52 |
| Additional day care homes | 46 |

The changes in the national average payment rates for centers reflect a 2.83 percent increase during the 12-month period May 1996 to May 1997 (from 152.0 in May 1996 to 156.3 in May 1997) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The changes in the food service payment rates for day care homes reflect a 3.21 percent increase during the 12-month period May 1996 to May 1997 (from 152.6 in May 1996 to 157.5 in May 1997) in the food at home series of the Consumer Price Index for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.23 percent increase during the 12-month period May 1996 to May 1997 (from 156.6 in May 1996 to 160.1 in May 1997) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

**Authority:** Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 9, 1997.

**William Ludwig,**

*Administrator.*

[FR Doc. 97–18521 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

### National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the annual adjustments to: (1) the ''national average payments,'' the amount of money the Federal Government provides States for lunches, meal supplements and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the ''maximum reimbursement rates,'' the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School

Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. Pursuant to Pub. L. 104–193, this Notice also implements a change in the methodology for computing the annual adjustments to the ''national average payments'' for meals and supplements served to nonneedy children. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 1997 through June 30, 1998.

**EFFECTIVE DATE:** July 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FCS, USDA, Alexandria, Virginia 22302, (703) 305–2620.

**SUPPLEMENTARY INFORMATION:** This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. §§ 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to review by the Office of Management and Budget.

This action has been determined to be exempt under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

## Background

*Special Milk Program for Children*—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products (Code 0231), published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1997 to June 30, 1998, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 12.50 cents. This reflects an increase of 1.19 percent in the Producer Price Index for Fluid Milk Products (Code 0231) from May 1996 to May 1997 (from a level of 133.8 in May 1996 to 135.4 in May 1997).

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

*National School Lunch and School Breakfast Programs*—Pursuant to Sections 11 and 17A of the National School Lunch Act, (42 U.S.C. 1759a and 1766a), and Section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for meals and supplements served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1997 through June 30, 1998 reflect a 2.83 percent increase in the Price Index during the 12-month period May 1996 to May 1997 (from a level of 152.00 in May 1996 to 156.3 in May 1997).

Section 704(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, enacted August 22, 1996, amends § 11(a)(3)(B) of the National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) and changes the method for computing the annual adjustments to the national average payment rates for meals and supplements served to nonneedy children. Effective July 1, 1997, the annual adjustments to the payment rates for *paid* meals under Section 4 of the National School Lunch Act (42 U.S.C. 1753), and *paid* supplements under Section 17(c) of the National School Lunch Act (42 U.S.C. 1766(c)), authorized under Section 11(a)(3)(B) of the National School Lunch Act, will be rounded down to the nearest whole cent. The annual adjustments to the Section 4 payments for free and reduced price meals and to the Section 17(c) payments for free and reduced price supplements, were unchanged by Pub. L. 104–193 and are rounded up or down to the nearest one-fourth cent.

*Lunch Payment Levels*—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The National School Lunch Act provides two different Section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these Section 4 payments, Section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The Section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under Sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757, 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

## Meal Supplement Payments in Afterschool Care Programs

Section 17A of the National School Lunch Act (42 U.S.C. 1766a) authorizes elementary and secondary schools to be reimbursed for meal supplements as part of the National School Lunch Program if they meet the following requirements: (1) operate school lunch programs under the National School Lunch Act; (2) sponsor afterschool care programs; and (3) were participating in the Child and Adult Care Food Program as of May 15, 1989. The reimbursement rates for supplements served in Afterschool Care Programs under the National School Lunch Program are the same as the rates for supplements served in centers under the Child and Adult Care Food Program.

*Breakfast Payment Factors*—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in ''severe

need'' because they serve a high percentage of needy children.

*Revised Payments*

The following specific Section 4, Section 11 and Section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the after-school supplement rates and breakfast rates are in effect from July 1, 1997 through June 30, 1998. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

*National School Lunch Program Payments*

*Section 4 National Average Payment Factors*—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 1995–96, the payments for meals served are: *Contiguous States*—paid rate: 18 cents; free and reduced price rate: 18.25 cents; maximum rate: 26 cents; *Alaska*—paid rate: 29 cents; free and reduced price rate: 29.50 cents; maximum rate: 40 cents; *Hawaii*—paid rate: 21 cents; free and reduced price rate: 21.25 cents; maximum rate: 30 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 1995–96, payments are: *Contiguous States*—paid rate: 20 cents; free and reduced price rate: 20.25 cents; maximum rate: 26 cents; *Alaska*—paid rate: 31 cents; free and reduced price rate: 31.50 cents; maximum rate: 40 cents; *Hawaii*—paid rate: 23 cents; free and reduced price rate: 23.25 cents; maximum rate: 30 cents.

*Section 11 National Average Payment Factors—Contiguous States*—free lunch: 170.75 cents; reduced price lunch: 130.75 cents; *Alaska*—free lunch: 276.50 cents; reduced price lunch: 236.50 cents; *Hawaii*—free lunch: 199.75 cents; reduced price lunch: 159.75 cents.

*Meal Supplements in Afterschool Care Programs*—The payments are: *Contiguous States*—free supplement: 51.75 cents; reduced price supplement: 26.00 cents; paid supplement: 4 cents; *Alaska*—free supplement: 84.00 cents; reduced price supplement: 42.00 cents; paid supplement: 7 cents; *Hawaii*—free supplement: 60.75 cents; reduced price supplement: 30.25 cents; paid supplement: 5 cents.

*School Breakfast Program Payments*

For schools ''not in severe need'' the payments are: *Contiguous States*—free breakfast: 104.50 cents; reduced price breakfast: 74.50 cents; paid breakfast: 20 cents; *Alaska*—free breakfast: 165.75 cents; reduced price breakfast: 135.75 cents; paid breakfast: 29 cents; *Hawaii*—free breakfast: 121.25 cents; reduced price breakfast: 91.25 cents; paid breakfast: 22 cents.

For schools in ''severe need'' the payments are: *Contiguous States*—free breakfast: 124.50 cents; reduced price breakfast: 94.50 cents; paid breakfast: 20 cents; *Alaska*—free breakfast: 197.75 cents; reduced price breakfast: 167.75 cents; paid breakfast: 29 cents; *Hawaii*—free breakfast: 144.50 cents; reduced price breakfast: 114.50 cents; paid breakfast: 22 cents.

*Payment Chart*

The following chart illustrates: the lunch National Average Payment Factors with the Sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the reimbursement rates for meal supplements served in afterschool care programs; the breakfast National Average Payment Factors including ''severe need'' schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

BILLING CODE 3410–30–P

## SCHOOL PROGRAMS
## MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
### Expressed in Dollars or Fractions Thereof
### Effective from July 1, 1997 - June 30, 1998

| NATIONAL SCHOOL LUNCH PROGRAM * | | LESS THAN 60% | 60% OR MORE | MAXIMUM RATE |
|---|---|---|---|---|
| CONTIGUOUS STATES | PAID | $ .18 | $ .20 | $ .26 |
| | REDUCED PRICE | 1.4900 | 1.5100 | 1.6600 |
| | FREE | 1.8900 | 1.9100 | 2.0600 |
| ALASKA | PAID | $ .29 | $ .31 | $ .40 |
| | REDUCED PRICE | 2.6600 | 2.6800 | 2.9250 |
| | FREE | 3.0600 | 3.0800 | 3.3250 |
| HAWAII | PAID | $ .21 | $ .23 | $ .30 |
| | REDUCED PRICE | 1.8100 | 1.8300 | 2.0075 |
| | FREE | 2.2100 | 2.2300 | 2.4075 |

| SCHOOL BREAKFAST PROGRAM | | NON-SEVERE NEED | SEVERE NEED |
|---|---|---|---|
| CONTIGUOUS STATES | PAID | $ .20 | $ .20 |
| | REDUCED PRICE | .7450 | .9450 |
| | FREE | 1.0450 | 1.2450 |
| ALASKA | PAID | $ .29 | $ .29 |
| | REDUCED PRICE | 1.3575 | 1.6775 |
| | FREE | 1.6575 | 1.9775 |
| HAWAII | PAID | $ .22 | $ .22 |
| | REDUCED PRICE | .9125 | 1.1450 |
| | FREE | 1.2125 | 1.4450 |

| SPECIAL MILK PROGRAM | ALL MILK | PAID MILK | FREE MILK |
|---|---|---|---|
| PRICING PROGRAMS WITHOUT FREE OPTION | $ .1250 | N/A | N/A |
| PRICING PROGRAMS WITH FREE OPTION | N/A | $ .1250 | Average cost 1/2 pint milk |
| NONPRICING PROGRAMS | $ .1250 | N/A | N/A |

| SUPPLEMENTS SERVED IN AFTERSCHOOL CARE PROGRAMS | | |
|---|---|---|
| CONTIGUOUS STATES | PAID | $ .04 |
| | REDUCED PRICE | .2600 |
| | FREE | .5175 |
| ALASKA | PAID | $ .07 |
| | REDUCED PRICE | .4200 |
| | FREE | .8400 |
| HAWAII | PAID | $ .05 |
| | REDUCED PRICE | .3025 |
| | FREE | .6075 |

* Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds.

**Authority:** Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 9, 1997.

**William E. Ludwig,**

*Administrator.*

[FR Doc. 97–18522 Filed 7–11–97; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

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