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# Federal Register

Wednesday
September 2, 1998

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**Reader Aids**
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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 905

**[Docket No. FV98–905–3 FR]**

### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate from $0.0035 to $0.00385 per 4/5 bushel carton established for the Citrus Administrative Committee (Committee) under Marketing Order No. 905 for the 1998–99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of citrus grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** September 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Order No. 905, both as amended (7 CFR part 905), regulating the handling of Oranges, Grapefruit, Tangerines, and Tangelos grown in Florida, 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. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus beginning August 1, 1998, and continue until amended, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0035 to $0.00385 per 4/5 bushel carton handled.

The Florida citrus marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of oranges, grapefruit, tangerines, and tangelos grown in Florida. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 22, 1998, and unanimously recommended 1998–99 expenditures of $242,275 and an assessment rate of $0.00385 per 4/5 bushel carton of citrus. In comparison, last year's budgeted expenditures were $242,000. The assessment rate of $0.00385 is $0.00035 higher than the rate currently in effect. Shipments of fresh citrus for the 1997–98 season are expected to be less than the Committee's initial estimate of 65,000,000 cartons. Estimated shipments for 1998–99 are 61,500,000 cartons, or 3,500,000 million cartons less than the 1997–98 estimate. Due to the anticipated reduction in fresh shipments of Florida citrus to interstate and export markets, the Committee voted to increase the assessment rate to generate funds necessary to meet Committee operating expenditures, and maintain an adequate operating reserve.

The major expenditures recommended by the Committee for the 1998–99 year include $155,800 for salaries and benefits, $36,000 for Manifest Department-FDACS, $18,400 for insurance and bonds, and $12,325 for retirement plan. Budgeted expenses for these items in 1997–98 were

$141,450, $36,000, $16,500, and $11,200, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida citrus. As mentioned earlier, citrus shipments for 1998–99 are estimated at 61,500,000 cartons which should provide $236,775 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $109,371) will be kept within the maximum permitted by the order (approximately one-half of one fiscal period's expenses; § 905.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final 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 the 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 11,000 producers of citrus in the production area and approximately 109 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Florida citrus producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.0035 per 4/5 bushel carton to $0.00385 per 4/5 bushel carton handled. The Committee unanimously recommended 1998–99 expenditures of $242,275 and an assessment rate of $0.00385 per 4/5 bushel carton. The assessment rate of $0.00385 per 4/5 bushel carton is $0.00035 higher than the 1997–98 rate. The quantity of assessable citrus for the 1998–99 season is estimated at 61,500,000 cartons. Thus, the $0.00385 rate should provide $236,775 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to meet this year's expenses.

The Committee estimates a reduced amount of fresh shipments of Florida citrus for the 1998–99 season. They unanimously recommended 1998–99 expenditures of $242,275 which included increases in staff salaries and benefits, and equipment rental. Equipment rental is budgeted at $2,200 for 1998–99 and last year it was budgeted at $800. The major expenditures recommended by the Committee for the 1998–99 year include $155,800 for salaries and benefits, $36,000 for Manifest Department-FDACS, $18,400 for insurance and bonds, and $12,325 for retirement plan. Budgeted expenses for these items in 1997–98 were $141,450, $36,000, $16,500, and $11,200, respectively.

Due to the anticipated reduction of fresh shipments, the Committee voted to increase the assessment rate to generate the funds necessary to meet the Committee's operating expenses and maintain an adequate operating reserve. The Committee's authorized reserve (approximately one-half of one fiscal period's expenses) is currently $109,371. The revenue from assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

Prior to arriving at its 1998–99 budget of $242,275, the Committee considered information from various sources, such as the Committee's Budget Sub-Committee. Alternative expenditure levels were discussed. However, it was determined that the increases in salaries, benefits, and equipment were needed and justified. The assessment rate of $0.00385 per 4/5 bushel carton of assessable Florida citrus was then determined by dividing the total recommended budget by the quantity of assessable citrus, estimated at 61,500,000 4/5 bushel cartons for the 1998–99 fiscal period. This is approximately $5,500 below the anticipated expenses. Assessment income, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses, which the Committee determined to be acceptable.

There are several varieties of citrus regulated under the order. In the 1997–98 season, the f.o.b. price ranged from around $5.83 to $6.71 for oranges, from around $5.26 to $6.31 for grapefruit, and from around $7.17 to $20.39 for speciality citrus. Depending on the volume and variety produced by the individual grower, the price for Florida citrus during the 1998–99 season is expected to range between $5.26 and $20.39 per 4/5 bushel carton. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue could range between 0.02 and 0.07 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the Federal Register on July 16, 1998 (63 FR 38347). Copies of the proposed rule were also mailed or sent via facsimile to all citrus handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 17, 1998, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period began on August 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable citrus handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are already receiving 1998–99 crop citrus from growers; (4) handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) a 30-day comment period was provided and no comments were received.

### List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 905.235 is revised to read as follows:

### § 905.235 Assessment rate.

On and after August 1, 1998, an assessment rate of $0.00385 per 4/5 bushel carton is established for assessable Florida citrus covered under the order.

Dated: August 26, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–23515 Filed 9–1–98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 924

**[Docket No. FV98–924–1 FR]**

## Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) under Marketing Order No. 924 for the 1998–99 and subsequent fiscal periods from $0.75 to $1.00 per ton of fresh prunes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** September 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 924, both as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon 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. Under the marketing order now in effect, fresh prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh prunes beginning April 1, 1998, and continue until modified, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.75 to $1.00 per ton of fresh prunes handled.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members and three handler members, each of whom is familiar with the Committee's needs and with the

costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.75 per ton that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 3, 1998, and unanimously recommended 1998–99 expenditures of $7,003 and an assessment rate of $1.00 per ton of fresh prunes handled during the 1998–99 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $7,233. The assessment rate of $1.00 is $0.25 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $1.00 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $2,880 for manager salary, $1,000 for travel, $528 for rent and maintenance, and $475 for audit. Budgeted expenses for these items in 1997–98 were $2,880, $1,000, $440, and $465, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes. Fresh prune shipments for the year are estimated at 4,800 tons, which should provide $4,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $6,709) will be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final 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 the 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 350 producers of fresh prunes in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of fresh prune producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.75 to $1.00 per ton of fresh prunes handled. The Committee met on June 3, 1998, and unanimously recommended 1998–99 expenditures of $7,003 and an assessment rate of $1.00 per ton of fresh prunes handled. In comparison, last year's budgeted expenditures were $7,233. The assessment rate of $1.00 is $0.25 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $1.00 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $2,880 for manager salary, $1,000 for travel, $528 for rent and maintenance, and $475 for audit. Budgeted expenses for these items in 1997–98 were $2,880, $1,000, $440, and $465, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes. Fresh prune shipments for the year are estimated at 4,800 tons, which should provide $4,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The reserve is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between $200 and $500 per ton of fresh prunes handled. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue will range between 0.20 and 0.50 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the fresh prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that

duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 16, 1998 (63 FR 38349). The proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 17, 1998, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period began on April 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh prunes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided and no comments were received.

**List of Subjects in 7 CFR Part 924**

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 924 is amended as follows:

## PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

1. The authority citation for 7 CFR part 924 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 924.236 [Amended]**

2. Section 924.236 is amended by removing the words ''April 1, 1997,'' and adding in their place ''April 1, 1998,'' and by removing ''$0.75'' and adding in its place ''$1.00.''

Dated: August 26, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–23514 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 927

**[Docket No. FV98–927–1 FR]**

## Winter Pears Grown in Oregon and Washington; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1998–99 and subsequent fiscal periods from $0.44 to $0.49 per standard box of winter pears handled. The Committee is responsible for local administration of the marketing order which regulates the handling of winter pears grown in Oregon and Washington. Authorization to assess winter pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** September 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456 telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington 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. Under the marketing order now in effect, winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable winter pears beginning July 1, 1998, and continue until modified, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.44 to $0.49 per standard box of winter pears handled.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members and six handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected

persons had an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.44 per standard box that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 29, 1998, and unanimously recommended 1998–99 expenditures of $7,958,083 and an assessment rate of $0.49 per standard box of winter pears handled during the 1998–99 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $8,066,790. The assessment rate of $0.49 is $0.05 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $0.49 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $6,719,500 for paid advertising, $460,925 for contingencies (i.e., unforeseen expenses), $302,000 for improvement of winter pears, $182,785 for salaries, and $75,000 for market development. Budgeted expenses for these items in 1997–98 were $7,010,550, $268,632, $346,200, $161,549, and $75,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears. Winter pear shipments for the year are estimated at 15,100,000 standard boxes, which should provide $7,399,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $470,000) will be kept within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final 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 the 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 1,800 producers of winter pears in the production area and approximately 90 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of winter pear producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.44 to $0.49 per standard box of winter pears handled. The Committee met on May 29, 1998, and unanimously recommended 1998–99 expenditures of $7,958,083 and an assessment rate of $0.49 per standard box of winter pears handled during the 1998–99 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $8,066,790. The assessment rate of $0.49 is $0.05 more than the rate currently in effect. The Committee recommended an increased assessment rate because the current rate would not generate enough income to adequately administer the program. The Committee decided that an assessment rate of more than $0.49 would generate income in excess of that needed to adequately administer the program.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $6,719,500 for paid advertising, $460,925 for contingencies (i.e., unforeseen expenses), $302,000 for improvement of winter pears, $182,785 for salaries, and $75,000 for market development. Budgeted expenses for these items in 1997–98 were $7,010,550, $268,632, $346,200, $161,549, and $75,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears. Winter pear shipments for the year are estimated at 15,100,000 standard boxes, which should provide $7,399,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. This amount is within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between $6.18 and $10.78 per standard box of winter pears handled. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue will range between 5 and 8 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 21, 1998 (63 FR 39037). The proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 20, 1998, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period began on July 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable winter pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided and no comments were received.

**List of Subjects in 7 CFR Part 927**

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

## PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 927.236 [Amended]**

2. Section 927.236 is amended by removing the words ''July 1, 1997,'' and adding in their place the words ''July 1, 1998,'' and by removing ''$0.44'' and adding in its place ''$0.49.''

Dated: August 26, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–23512 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 953

**[Docket No. FV98–953–1 FIR]**

### Irish Potatoes Grown in Southeastern States; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate established for the Southeastern Potato Committee (Committee) under Marketing Order No. 953 for the 1998–99 and subsequent fiscal periods from $0.0075 to $0.01 per hundredweight of potatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jim Wendland, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: 202–720–2491, Fax: 202–205–6632; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–720–2491, Fax: 202–205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, also at the above address, telephone, and Fax.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina), hereinafter referred to as the ''order.'' The order is 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Virginia-North Carolina potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning June 1, 1998, and continuing until amended, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

This rule continues to increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0075 to $0.01 per hundredweight of potatoes handled.

The Southeastern Potato Marketing Order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Southeastern potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The

assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods the Committee recommended, and the Department approved, an assessment rate of $0.0075 per hundredweight of potatoes handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 16, 1998, and unanimously recommended 1998–99 expenditures of $12,000, the same as last year. The major expenditures include $7,700 for the manager's and secretarial salaries and $1,000 for travel expenses. These and all other expense items are budgeted at last year's amounts.

Regarding the assessment rate, after considering several options, the Committee concluded that the former rate of $0.0075 per hundredweight would not be adequate for the 1998–99 fiscal period for the following reasons. The Committee's operating reserve was only $5,000 and was expected to be quickly exhausted. The reserve was the lowest ever for any of the Committee's fiscal periods except one. Also, wet fields caused delayed plantings and unfavorable growing conditions, resulting in potato plant stands estimated to be 20 percent below normal. As a result of this and other factors, the Committee projected that during the industry's brief, predominately June and July, shipping and assessing period, its total potato volume to be handled would be down at least 100,000 hundredweight. Therefore, the Committee unanimously recommended an assessment rate of $0.01 per hundredweight, $0.0025 higher than the rate formerly in effect.

The assessment rate recommended by the Committee was based on projected fresh market shipments of 1,200,000 hundredweight (cwt) of Southeastern potatoes, which should provide $12,000 in assessment income. However, recent information indicates that these shipments will only be approximately 900,000 cwt, providing about $9,000 in assessments. But this income, along with funds from the Committee's authorized operating reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1997–98 fiscal period were estimated at only $5,000. Funds in the reserve are now expected to be about $2,000, well within the maximum permitted by the order of approximately one fiscal period's expenses (§ 953.35).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final 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 the 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 85 producers of Southeastern potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

This rule continues to increase the assessment rate established for the Southeastern Potato Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.0075 per hundredweight to $0.01 per hundredweight of potatoes handled. Both the $0.01 assessment rate and the 1998–89 budget of $12,000 were unanimously recommended by the Committee at its April 16, 1998, meeting. The assessment rate continued in effect by this action is $0.0025 higher than the 1997–98 rate. The Committee recommended an increased assessment rate to help offset the smaller projected crop of assessable Southeastern potatoes in 1998. Recent information indicates these shipments will only be approximately 900,000 hundredweight (cwt), about 400,000 cwt less than the 1997 crop, to provide about $9,000 in assessments. But this income, along with funds from the Committee's authorized operating reserve, will be adequate to meet the 1998–99 fiscal period's budgeted expenses. Funds in the reserve at the beginning of the 1997–98 fiscal period were approximately $5,000. Funds in the reserve are now expected to be only about $2,000, well within the maximum permitted by the order of approximately one fiscal period's expenses (§ 953.35). The Committee discussed leaving the assessment at the previous $0.0075 rate but determined that the significantly smaller crop would not generate enough income to meet budgeted expenses without exhausting the $5,000 operating reserve, and this was not acceptable.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include $7,700 for the manager's and secretarial salaries and $1,000 for travel expenses. These and all other expense items are budgeted at last year's amounts.

A review of historical information and recent preliminary information indicate that the grower price for the 1998–99 Southeastern potato crop could average approximately $7.00 to $8.00 per hundredweight. With fresh market shipments in 1998 of approximately 900,000 hundredweight, the estimated assessment revenue for the 1998–99 fiscal period ($9,000) as a percentage of the projected fresh market crop value ($7,200,000) could be 0.005 percent.

While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Southeastern potato industry and all interested persons were invited to attend the meeting and

participate in Committee deliberations on all issues. Like all Committee meetings, the April 16, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Southeastern potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on June 17, 1998, (63 FR 32966). Copies of that rule were also mailed or sent via facsimile to all Southeastern potato handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on July 17, 1998, and no comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

### List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

## PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Accordingly, the interim final rule amending 7 CFR part 953 which was published at 63 FR 32966 on June 17, 1998, is adopted as a final rule without change.

Dated: August 26, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit & Vegetable Programs.*

[FR Doc. 98–23516 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1160

**[DA–98–04]**

## Fluid Milk Promotion Order; Amendments to the Order

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends certain provisions of the Fluid Milk Promotion Order (Order). The amendments, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, modify the membership status and term of office of Board members. This rule also amends order language pertaining to committees and intellectual property rights (patents, copyrights, inventions, and publications). The amendments are necessary to maintain Board membership continuity and should allow the Board to operate in a more effective and efficient manner.

**EFFECTIVE DATE:** September 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** David R. Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2734 South Building, Washington, DC 20250–0233, (202) 720–6909, e-mail address David__Jamison@usda.gov.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 250 fluid milk processors subject to the provisions of the Order. Most of the parties subject to the Order are considered small entities.

The Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 USC 6401–6417). This rule will modify certain provisions of the Order concerning membership on the Board, the term of office for Board members, the establishment of working committees, and joint ownership of intellectual property rights. These amendments were requested by the Board. The Board believes that the amendments are necessary to maintain Board membership continuity and that the changes should allow the Board to operate in a more effective and efficient manner.

The amendments will allow a fluid milk processor to have two members on the Board. Currently, the Order provides that a fluid milk processor can be represented on the Board by not more than one member. This amendment should help maintain Board continuity and provide a consistent pool of processor representatives. The amendments also will allow Board members whose fluid milk processor company affiliation has changed to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. This amendment should help in the reduction of Board vacancies and foster continuity in Board activities and membership.

The rule also will allow Board members who fill vacancies with a term of 18 months or less to serve two consecutive full 3-year terms. Currently, the Order provides that except for the initial staggered appointments, Board members could only serve two consecutive terms. Greater continuity on the Board will result from this amendment.

The rule also will permit the Board to establish working committees of persons other than Board members; this change will assist the Board with activities through access to information, knowledge, and expertise that otherwise might not be available.

Finally, the amendments also will modify the intellectual property provisions of the Order to specifically provide for and allow joint ownership of intellectual property, i.e., patents, copyrights, inventions, and publications, that is developed using joint funds. This change recognizes that significant project funding may come from contracting parties other than the Board.

These amendments to Order provisions will not add any burden to regulated parties because they relate to provisions concerning membership on the Board, the establishment of working committees, and joint ownership for patents, copyrights, inventions, and publications. The amendments will not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with the rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.

*Prior document in this proceeding:* Invitation to Submit Comments on Proposed Amendments to the Order: Issued May 18, 1998; published May 22, 1998 (63 FR 28292).

**Executive Order 12866 and the Paperwork Reduction Act**

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 authorizes the Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to the 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 the law and request a modification of the Order or to be exempted from the Order. A person subject to an order 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 court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Order have been approved previously by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee background information sheets that were assigned OMB No. 0505–0001.

**Statement of Consideration**

This final rule amends certain provisions of the Order which relate to Board membership and term of office, establishment of working committees, and joint ownership for intellectual property.

The amendments allow a fluid milk processor to have two members on the Board. Currently, the Order provides that a fluid milk processor can be represented on the Board by not more than one member. The Board in its recommendation for rulemaking noted that it is more difficult to maintain the single member representation; that processors are larger in size and operate in several geographic areas; and that, to maintain continuity and provide a consistent pool of processor representatives, a change in Order provisions is needed to allow more than one representative on the Board.

The amendments also will allow Board members whose fluid milk processor company affiliation has changed to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided the eligibility requirements of the Order are still met. Currently, except in those instances where a Board member changes fluid milk processor affiliation and is eligible to serve on the Board in another capacity during the same term, a Board member whose processor affiliation has changed cannot continue to serve on the Board.

The amendments also will allow Board members who fill vacancies with a term of 18 months or less to serve two additional 3-year terms. Currently, the Order states that, except for the initial staggered Board appointments of 1-or 2-year terms, Board members may only serve two consecutive terms. Thus, any time served with the initial term is considered a complete term.

The amendments also permit the Board to establish working committees of persons other than Board members to assist the Board with activities. Currently, committees and subcommittees are selected from Board members. This change provides information, knowledge, and expertise that otherwise might not be available.

Finally, the amendments also will modify the section on patents, copyrights, inventions, and publications by allowing jointly developed intellectual property to be jointly owned. Currently, the Order does not specifically provide for such joint ownership.

Notice of proposed rulemaking was given to interested parties and they were afforded an opportunity to file written data, views, or arguments concerning this proposed rule. Seven comments were received, representing five proprietary handlers, one cooperative association, and the Board. Comments generally favored the proposed changes, though several comments voiced opposition to allowing two Board members from one fluid milk processor. Proposed changes and a summary of comments received on those proposed changes follow:

1. *Allow fluid milk processors to have two members on the National Fluid Milk Processor Promotion Board.* Three comments, from The Kroger Co. (Kroger), Super Store Industries (SSI), and the Board, were in support of the proposed language. These commenters contend that this amendment would better able the Board to formulate and initiate programs and more efficiently perform its duties and obligations, especially with structural changes that have and are anticipated to continue in the dairy industry.

Four comments, from Peeler Jersey Farms, Inc. (Peeler), The Stop and Shop Supermarket Company (Stop and Shop), Tillamook County Creamery Association, and Sunshine Dairy Foods Inc. (Sunshine), were in opposition to this proposed change. These commenters stated that adopting the proposed language (1) would further centralize power and control of assessments, perhaps skewing actions to favor multiple-representative processors; and (2) is unnecessary because an adequate number of fluid milk processors exists, as well as enough interest to staff a 20-member board on a six-year rotating basis. These commenters contended that the process could be dominated by fewer processors which might, in turn, discourage participation, input, and innovation from small processors.

The Order provides for a 20-member Board with 15 members representing geographic regions and five at-large members, at least three of whom are to be fluid milk processors and at least one member from the general public. To the extent practicable, members representing geographic regions should represent processing operations of differing sizes. This continuing provision recognizes the need for diversity of Board membership, both geographically and size-wise.

As the fluid processing sector has experienced changes and will continue to undergo consolidation of processors, it is appropriate to allow fluid processors to have two members on the Board. As the industry has consolidated to have processors that are larger in size and that operate in several geographic areas, the Board has experienced difficulty in maintaining full-Board strength with representation limited to one per processor. To maintain continuity, help in the reduction of Board vacancies, and provide a consistent pool of processor representatives, a change in the Order provisions is appropriate to allow two Board members from one processor.

The Order directs the Secretary to appoint Board members on the basis of

representation discussed above (20 members representing 15 geographic regions plus five at-large members). Through the appointment process, the Secretary has and will continue to maintain control over the Board's composition, including the number of multi-member processors.

2. *Allow Board members whose affiliation has changed to serve on the Board up to 60 days or until successor is approved, whichever is sooner.* Four comments, from Kroger, SSI, Stop and Shop, and Sunshine, were in support of the proposed language for reasons of Board continuity and full strength. One comment, from the Board, suggested extending the 60-day limitation to six months. The Board contended that the appointment process can take six or more months, and a six-month limitation on member carry-over would be more realistic than 60 days.

Vacancies of Board members whose terms have not expired may be filled either by the Secretary appointing qualified members from the most recent list of nominations for the specific region or by Board nominations. With these two alternatives, it is feasible that Board vacancies could be filled in 60 days or less. Extending the time limit serves little purpose in bringing on new Board members in a timely fashion, but allowing a two month ''grace period'' should foster better continuity in Board activities and membership than under current provisions.

3. *Allow Board members who fill vacancies with a term of 18 months or less to serve two consecutive full 3-year terms.* Five comments, from Kroger, SSI, Stop and Shop, Sunshine, and the Board, were in support of the proposed language. The comments stated that this change would contribute to greater continuity and orderly process for the Board.

This amendment is appropriate to implement as it will allow for greater continuity of membership.

4. *Allow Board to establish working committees of persons other than Board members to assist Board with activities by providing information, knowledge, and expertise that otherwise might not be available.* Five comments, from Kroger, SSI, Stop and Shop, Sunshine, and the Board, were in support of the proposed language. Knowledge and expertise from people other than Board members can be utilized more effectively with this change in the order provisions.

5. *Modify the intellectual property provisions of the Order to specifically provide for and allow joint ownership of intellectual property (patents, copyrights, inventories, publications) that is developed using joint funds.* Five comments, from Kroger, SSI, Stop and Shop, Sunshine, and the Board, were in support of the proposed language. The comments stated that this provision allows the Board greater flexibility concerning joint ownership of intellectual property. By amending this provision, this greater flexibility will be permitted.

In addition to opposing all proposed changes, Peeler proposed two additional amendments to the Order. Neither proposal is relevant to the other amendments being implemented in this action, and no opportunity has been provided for interested parties to comment on the two Peeler proposals. Therefore, the proposals are not addressed here.

It is appropriate to make this final rule effective one day after the date of publication in the **Federal Register**. Issuance of this rule is necessary to provide the Board flexibility to more effectively administer the Order with respect to membership status and term of office of Board members and to clarify Order provisions with respect to working committees and joint ownership of intellectual property. These proposed amendments should be effective before the Secretary of the United States Department of Agriculture makes appointments to fill positions on the Board. These positions should be filled as soon as possible. Thus, the rule will allow the Board to fill seats in a timely manner.

Therefore, good cause exists for making this rule effective less than 30 days from the date of publication in the **Federal Register**. The proposed amendments to the order are made final in this action.

**List of Subjects in 7 CFR Part 1160**

Fluid milk products, Milk, Promotion.

For the reasons set forth in the preamble, 7 CFR Part 1160 is amended as follows:

## PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401–6417.

2. In § 1160.200, paragraph (a) is revised to read as follows:

**§ 1160.200 Establishment and membership.**

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than two members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for a fluid milk processor or its successor fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period of up to 60 days following the disqualification or until the appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative.

* * * * *

3. In § 1160.201, paragraph (b) is revised to read as follows:

**§ 1160.201 Term of office.**

* * * * *

(b) No member shall serve more than two consecutive terms, except that any member who is appointed to serve for an initial term of one or two years shall be eligible to be reappointed for two three-year terms. Appointment to another position on the Board is considered a consecutive term. Should a non-board member be appointed to fill a vacancy on the Board with a term of 18 months or less remaining, the appointee shall be entitled to serve two consecutive 3-year terms following the term of the vacant position to which the person was appointed.

4. In § 1160.208, paragraph (g) is revised to read as follows:

**§ 1160.208 Powers of the Board.**

* * * * *

(g) To select committees and subcommittees, to adopt bylaws, and to adopt such rules for the conduct of its business as it may deem advisable; the Board may establish working committees of persons other than Board members;

* * * * *

5. In § 1160.505, the text is designated paragraph (a) and a new paragraph (b) is added to read as follows:

**§ 1160.505 Patents, copyrights, inventions and publications.**

* * * * *

(b) Should patents, copyrights, inventions, and publications be developed through the use of funds collected by the Board under this subpart, and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, and publications shall be determined by the agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention, and publication in a manner consistent with paragraph (a) of this section.

Dated: August 26, 1998.

**Michael V. Dunn,**

*Assistant Secretary, Marketing & Regulatory Programs.*

[FR Doc. 98–23517 Filed 9–1–98; 8:45 am]

**BILLING CODE 3410–02–P**

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Parts 121 and 125

## Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations pertaining to the Small Business Administration's (SBA) size and government contracting programs to incorporate the Very Small Business Set-Aside Pilot Program. It also defines what a ''very small business concern'' is for purposes of the SBA's small business set-aside program. Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103–403) authorized the SBA Administrator to establish and carry out a pilot program for very small business concerns. The Act defines a very small business concern as one that has 15 or fewer employees together with average annual receipts that do not exceed $1 million. The Act established September 30, 1998, as the expiration date for this pilot.

**DATES:** This rule is effective on September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Corinne Sisneros, Office of Government Contracting, at (202) 205–7624.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On January 21, 1997 (62 FR 2979), SBA published a proposed rule in the **Federal Register** to amend parts 121 and 125 of title 13 of the Code of Federal Regulations (CFR) in order to establish a pilot program for very small business (VSB) concerns. (*See* Pub. L. 103–403, Section 304.) The purpose of this pilot program is to improve access to Federal Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain procurements for competition among such VSB concerns. VSB concerns under this program that receive a VSB set-aside contract will also be eligible for loan application support and assistance under the prequalification component of the program. This pilot program will expire on September 30, 2000, unless further extended through legislation. *See* section 508 of Pub. L. 105–135, 111 Stat. 2606.

### II. Summary and Analysis of Comments and SBA's Response

SBA received 11 timely comments to the January 21, 1997, proposed rule. These comments addressed several issues, each of which is discussed below.

Several commenters sought clarification as to how requirements under this program would be identified. Some commenters also requested that SBA clarify what is meant by ''advertise'' and provide guidance on synopsis and information dissemination requirements. SBA has not made any changes to the final rule in response to these comments. Procedures are already in place to address these issues regarding other set asides, which would cover this program as well. In addition to using SBA's existing automated reference system, procuring activities can rely on SBA district office personnel and procurement center representatives (PCRs) to identify VSB concerns likely to compete on a requirement. A procuring activity may elect to issue a ''VSB sources sought'' notice in the Commerce Business Daily. However, this rule does not require display or synopsizing requirements in excess of those currently in the Federal Acquisition Regulation (FAR).

One commenter suggested establishing a web page, organized by region, of all VSBs and their applicable standard industrial classification (SIC) codes so that procurement offices could check to see if there were capable VSB vendors for a given requirement. A change to the proposed regulatory language is not needed to implement this recommendation. As such, SBA did not change the rule in response to this comment, but does plan to initiate a web site on the Government Contracting Home Page (www.sba.gov/GC) to list VSB concerns (and their applicable SIC codes) that are interested in participating in this pilot program. Buying activities will be able to review the SBA web site to search for compatible VSB concerns. Their efforts should not, however, be limited to the SBA web site. Procuring activities should also try to identify VSB sources through media pursuant to FAR 5.101 as well as their agency-specific regulations and polices.

One commenter requested clarification regarding the types of procurement requirements that will be available through and the procuring activities that will be involved in the VSB program. Under the proposed rule, only those VSB concerns whose headquarters are located within the geographical area serviced by a designated SBA district office where the procurement is offered would be eligible for award. Upon further deliberation, SBA has changed the application of the VSB program for service and construction procurements. Under the final rule, any procurement requirement between $2,500 and $50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies or manufactured items, a contracting officer must set aside any such requirement for VSBs if the buying activity is located within the geographical area served by a designated SBA district and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. SBA has made the distinction between service or construction requirements and requirements for supplies or manufactured items because of the size of VSB concerns and their limited ability to perform contracts outside of the geographic area where they are located. For a service or construction requirement, the place of performance is what is critical to a VSB, not the location of the buying activity. This is particularly true where more and more requirements are being procured on a consolidated basis by a number of buying activities, which are

geographically dispersed around the country. The VSB program is intended to give local smaller businesses a chance to perform local requirements. For a service or construction business, that means requirements that will be performed close to where the firm is located. Conversely, for a manufacturing firm or one that provides supply items, the place of ultimate delivery is not important. It is the location of the buying activity that matters to such a firm. Thus, SBA has adopted the proposed rule language, as clarified, in the final rule for requirements for supplies or manufactured items.

For purposes of the VSB program, SBA will treat the geographic areas served by the SBA Los Angeles and Santa Ana District Offices as one designated SBA district. As such, any VSB whose headquarters is located within the geographical area served by the Los Angeles or Santa Ana SBA District Offices will be eligible for a VSB set-aside that will be performed or in which the buying activity is located within the geographical area of either SBA district office.

One commenter also sought clarification on how SBA would achieve nationwide geographic coverage. SBA's plan to achieve nationwide geographical coverage by assigning this pilot program to widely dispersed district office pilot sites was already reflected in the proposed rule. Thus, SBA makes no changes to the rule in response to this comment.

One commenter asked what sort of data collection will take place under the VSB program. SBA will obtain a record of all contract awards under this program after advising the contracting agencies of the manner and frequency of such reporting. At a minimum, reports will include the date of solicitation, the date of an award, the contractor's name and address, the SIC code assigned to the procurement, and the dollar value of the award. Reporting requirements are necessary since the SBA must report to Congress on the results of the program. Without documentation of efforts and activity, SBA will be unable to comply with the law. However, the final rule makes no changes to reporting requirements because SBA presently collects this information.

Four commenters recommended that SBA provide guidance as to whether the procurement order of precedence would be changed for the purpose of the VSB program. The order of precedence was eliminated from the FAR in 1996. However, SBA proposed the VSB program as an extension of the small business set-aside program. Therefore, if a procurement requirement does not meet the criteria for a small business set-aside, it cannot be set aside for VSBs. If a contracting officer determines that there is a reasonable likelihood that two or more VSB concerns will make offers which are competitive as to price, quality, and delivery, the contracting officer must complete the requirement as a VSB set-aside. SBA intends that the procedures in FAR 19.502–2 (as made applicable to simplified acquisitions by FAR 13.105) should apply. Where there is not a reasonable likelihood that there are two or more VSBs who will make offers which are competitive as to price, quality, and delivery, the contracting officer must then consider an award as a regular small business set-aside. In situations where the contracting officer does not agree with the recommendations of SBA's PCR, the procedures at FAR 19.505 will apply. The final rule reflects these clarifications. SBA has also added clarifying language to ensure that contracting officers do not give a preference to the VSB program over SBA's 8(a) Business Development program for business concerns owned and controlled by socially and economically disadvantaged individuals.

The proposed rule limited the program to requirements of $50,000 or less that could be set aside for small business. Two commenters raised concerns that since the exception to the non-manufacturer rule applies only to procurements where the anticipated cost will not exceed $2,500 this could result in confusion to some buyers and vendors for processing requirements between $2,500 and $50,000. One commenter recommended an extension to $50,000 of the exception to the non-manufacturer rule for VSB set-aside requirements. SBA will not raise the exception threshold to the non-manufacturer rule. SBA believes that the non-manufacturer rule provides important protections to small businesses by limiting the instances in which the intent of a small business set-aside is subverted through a subcontract with a large business. Moreover, SBA disagrees that the $50,000 threshold to the VSB program will be confused with the $2,500 exception threshold to the non-manufacturer rule. The processing of VSB set-asides in the $2,500–$50,000 range will be no different than the processing of small business set-asides in that range being done presently.

Another commenter suggested raising the VSB set-aside limit from $50,000 to $100,000. SBA has elected to maintain the $50,000 threshold. Again, this is a pilot program. If experience shows that the dollar value of requirements reserved for VSBs should be raised, SBA will address that issue at that time.

Two commenters expressed concern that without reserving a class of procurements for the VSB program, SBA will be unable to require agencies to contract with VSB concerns. SBA has changed the regulatory language to reserve the class of requirements in the $2,500–$50,000 range for VSB concerns which meet the criteria of the requirement.

Two commenters were concerned about the effect the pilot program may have on the Small Business Competitiveness Demonstration Program (Demonstration Program). One of the two comments recommended that the SBA exclude agencies that are participating in the Demonstration Program from this pilot program since under the Demonstration Program set-asides for small business are prohibited in the four designated industry groups. SBA was also asked to consider the impact this program may have on emerging small businesses. The Demonstration Program makes requirements in four designated industry groups ineligible for small business set-asides. The VSB program applies to requirements that are eligible to be set-aside for small business. Thus, any requirement which cannot be set aside because it is excluded by the Demonstration Program is also ineligible for the VSB program. Therefore, SBA has not changed the rule in response to this comment.

The proposed rule stated that only VSBs whose headquarters are located within the geographical area served by a designated SBA district office where the procurement is offered are eligible for award of a contract under the pilot program. As noted above, the final rule distinguishes service and construction procurements from supply and manufactured item procurements. For service and construction procurements, only VSBs whose headquarters are located within the geographical area served by a designated SBA district office where the requirement will be performed are eligible for award. For supply and manufactured item procurements, only VSBs whose headquarters are located within the geographical area served by a designated SBA district office where the buying activity is located are eligible for award. One comment requested clarification as to who will be responsible for determining whether the VSB concern has its headquarters located within an appropriate designated SBA district. The determination will fall within the jurisdiction of the cognizant SBA Government Contracting Area Office

and will be included as part of any formal size determination (*see* 13 CFR §§ 121.1001–121.1009).

One commenter asked how businesses would be certified as VSB concerns. There is no ''certification'' process under the VSB program. As with other procurements requiring concerns to be small, concerns will represent themselves to be VSB concerns for any procurement reserved as a VSB set-aside. As with any other representation as to size, absent information to the contrary, a contracting officer may accept such a self-representation and award a contract. If the size of a concern representing itself to be a VSB is protested on a VSB set-aside, the contracting officer will forward the protest to SBA as he or she would any other size protest in accordance with 13 CFR part 121. SBA will determine whether the concern qualifies as a VSB by using the statutorily imposed 15-employee and $1 million in average annual receipts size standard. Because those regulations are already in place, no change to the proposed rule is required in response to this comment.

One commenter asked what value the proposed rule would add to SBA's commitment to serve small businesses. The program will improve access to Federal contract opportunities by reserving certain procurements for competition among VSB concerns. Businesses receiving awards will also be eligible for loan application support and assistance under the pre-qualification component of the program.

**Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C., Chapter 3501 et seq.)**

SBA certifies that this rule will not be a significant rule within the meaning of Executive Order 12866. The value of procurements awarded under the VSB program is expected to be less than $100 million since the program is being implemented as a pilot program in only 10 locations and is targeted to businesses that have historically experienced limited participation in the Federal market. This rule does not impose costs upon the businesses which might be affected by it. The rule should have no effect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside program, since it is administered within and is a component of the small business set-aside program. Therefore, it would not have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

As required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, SBA prepared a regulatory flexibility analysis of this rule. This analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration, and is available upon request.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule will not impose new reporting or record keeping requirements, other than those required of SBA.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

**List of Subjects**

*13 CFR Part 121*

Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

*13 CFR Part 125*

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

Accordingly, for the reasons set forth above, SBA hereby amends 13 CFR as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 is revised to read as follows:

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

2. Revise § 121.401 to read as follows:

**§ 121.401 What procurement programs are subject to size determinations?**

The requirements set forth in §§ 121.401 through 121.413 cover all procurement programs for which status as a small business is required, including the small business set-aside program, SBA's Certificate of Competency program, SBA's 8(a) Business Development program, the Small Business Subcontracting program authorized under section 8(d) of the Small Business Act, the Federal Small Disadvantaged Business (SDB) programs, the HUBZone program, and the Very Small Business (VSB) program.

3. Add § 121.413 to subpart A to read as follows:

**§ 121.413 What size must a concern be to be eligible for the Very Small Business program?**

A concern is a very small business (*see* § 125.7 of this chapter) if, together with its affiliates, it has no more than 15 employees and its average annual receipts do not exceed $1 million.

## PART 125—GOVERNMENT CONTRACTING PROGRAMS

4. The authority citation for 13 CFR Part 125 is revised to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9702; and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

5. Add § 125.7 to read as follows:

**§ 125.7 What is the Very Small Business program?**

(a) The Very Small Business (VSB) program is an extension of the small business set-aside program, administered by SBA as a pilot to increase opportunities for VSB concerns. Procurement requirements, including construction requirements, estimated to be between $2,500 and $50,000 must be reserved for eligible VSB concerns if the criteria in paragraph (c) of this section are met.

(b) *Definitions.* (1) The term *designated SBA district* means the geographic area served by any of the following SBA district offices:

(i) Albuquerque, NM, serving New Mexico;

(ii) Los Angeles, CA, serving the following counties in California: Los Angeles, Santa Barbara, and Ventura;

(iii) Boston, MA, serving Massachusetts;

(iv) Louisville, KY, serving Kentucky;

(v) Columbus, OH, serving the following counties in Ohio: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Coshocton, Crawford, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hancock, Hardin, Highland, Hocking, Holmes, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Wyandot;

(vi) New Orleans, LA, serving Louisiana;

(vii) Detroit, MI, serving Michigan;

(viii) Philadelphia, PA, serving the State of Delaware and the following

counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntington, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York;

(ix) El Paso, TX, serving the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell; and

(x) Santa Ana, CA, serving the following counties in California: Orange, Riverside, and San Bernadino.

(2) The term *very small business* or *VSB* means a concern whose headquarters is located within the geographic area served by a designated SBA district and, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed $1 million. The terms *concerns*, *affiliates*, *average annual receipts*, and *employees* have the meaning given to them in §§ 121.105, 121.103, 121.104, and 121.106, respectively, of this chapter.

(c)(1) A contracting officer must set aside for VSB concerns each procurement that has an anticipated dollar value between $2,500 and $50,000 if:

(i) In the case of a procurement for manufactured or supply items:

(A) The buying activity is located within the geographical area served by a designated SBA district, and

(B) There is a reasonable expectation of obtaining offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district that are competitive in terms of market prices, quality and delivery; or

(ii) In the case of a procurement for other than manufactured or supply items:

(A) The requirement will be performed within the geographical area served by a designated SBA district, and

(B) There is a reasonable expectation of obtaining offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district that are competitive in terms of market prices, quality and delivery.

(2) The geographic areas served by the SBA Los Angeles and Santa Ana District Offices will be treated as one designated SBA district for the purposes of this section.

(3) If the contracting officer determines that there is not a reasonable expectation of receiving at least two responsible offers from VSB concerns headquartered within the geographic area served by the applicable designated SBA district, he or she must include in the contract file the reason(s) for this determination, and solicit the procurement pursuant to the provisions of 48 CFR 19.502–2. SBA may appeal such determination using the same procedure described in 48 CFR 19.505.

(4) If the contracting officer receives only one acceptable offer from a responsible VSB concern in response to a VSB set-aside, the contracting officer will make an award to that firm. If the contracting officer receives no acceptable offers from responsible VSB concerns, he or she will withdraw the procurement and, if still valid, must resolicit it pursuant to the provisions of 48 CFR 19.502–2.

(d) Where a procurement is set aside for VSB concerns, only those VSB concerns whose headquarters are located within the geographic area served by the applicable designated SBA district are eligible to submits offers in response to the solicitation.

(e) Nothing in this section shall be construed to alter in any way the procedures by which procuring activities award contracts under the SBA's 8(a) Business Development program (*see* 13 CFR part 124).

(f) This pilot program terminates on September 30, 2000. Any award under this program must be made on or before this date.

Dated: July 28, 1998.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98–23656 Filed 9–1–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 123

## Disaster Loan Program

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** Under this final rule SBA amends its regulations to conform the eligibility criteria for disaster loans to those applicable in SBA's business loan program. Under the final rule, a business can not obtain a physical disaster loan if it is engaged in any illegal activity; if it is a government owned entity (other than one owned or controlled by a Native American tribe); or if it engages in products or services of a prurient sexual nature. Under the final rule, a business is not eligible for an economic injury disaster loan if more than one-third of its revenues are from legal gambling operations or from packaging SBA loans; if it is principally engaged in teaching or indoctrinating religion; or is primarily engaged in political or lobbying activities.

**DATES:** This rule is effective September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, 202–205–6734.

**SUPPLEMENTARY INFORMATION:** On April 23, 1998, SBA published a notice of proposed rulemaking (63 FR 20140) to amend section 123.201 of its regulations so that an applicant would not be eligible for a physical disaster business loan if it is engaged in any illegal activity; if it is a government owned entity (other than a business owned or controlled by a Native American tribe); or if the business (1) presents live performances of a prurient sexual nature, or (2) derives directly or indirectly more than *de minimis* gross revenue from activities of a prurient sexual nature. The proposed rule was intended to codify SBA's existing policy of using the same ineligibility criteria for SBA's disaster and business loan programs. Thus, a business that would not be eligible to receive an SBA guaranteed business loan because it met these criteria, would also not be eligible to obtain a physical disaster loan.

SBA also proposed to amend section 123.301 of its regulations so that a business would not be eligible for an economic injury disaster loan if it: (1) derived more than one-third of its gross annual revenue from legal gambling activities; (2) earned more than one-third of its gross annual revenue from packaging SBA loans; (3) was principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or (4) primarily engaged in political or lobbying activities. These proposed changes were intended to codify SBA's existing policy of using the same ineligibility criteria for its economic injury disaster and business loan program. Thus, if a business is not eligible, because of these criteria, for an SBA guaranteed loan under the business loan program, it would not be eligible for an economic injury disaster loan.

SBA received one comment. The commenter was concerned that if the proposed economic injury amendments were finalized, SBA would not be able to assist non-profit entities which provide community services and derive more than one third of their revenue from legal gambling activities. Under SBA's rules, non-profit entities presently do not qualify for economic

injury loans, so the proposed amendment would not change their eligibility. Accordingly, the final rule is identical to the proposed rule.

In this final rule, SBA also corrects a typographical error in section 123.202(a) by substituting ''lesser'' for ''greater'' in the first sentence which now reads: ''Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the lesser of the uncompensated physical loss and economic injury or $1.5 million.'' This ensures that an applicant receives disaster assistance for an uncompensated loss or injury without obtaining excessive SBA assistance at lower than market rates.

**Compliance with Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601,** et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch 35)

SBA certifies that this final rule does not constitute a significant rule within the meaning of Executive Order 12866 and does not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. *et seq.* It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. This final rule codifies current SBA practices and will not affect additional businesses or impose any costs.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch 35, SBA certifies that this final rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this final rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012 and 59.008)

**List of Subjects in 13 CFR Part 123**

Disaster assistance, Loan programs-business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 123, chapter I, title 13, Code of Federal Regulations, as follows:

## PART 123—DISASTER LOAN ASSISTANCE

1. The authority citation for part 123 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Add new paragraphs (d), (e), and (f) to § 123.201 to read as follows:

**§ 123.201 When am I not eligible to apply for a physical disaster business loan?**

* * * * *

(d) You are not eligible if your business is engaged in any illegal activity.

(e) You are not eligible if you are a government owned entity (except for a business owned or controlled by a Native American tribe).

(f) You are not eligible if your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

**§ 123.202 [Amended]**

3. Amend § 123.202(a) by removing the word ''greater'' and adding, in its place, the word ''lesser'' in the first sentence.

4. Amend § 123.301 as follows:

a. Remove ''gambling'' and ''loan packaging'' in paragraph (a);

b. Remove ''or'' at the end of paragraph (c);

(c) Remove the period and insert ''; or'' at the end of paragraph (d); and

(d) Add new paragraphs (e), (f), (g), and (h) to read as follows:

**§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?**

* * * * *

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

(f) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(g) Principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(h) Primarily engaged in political or lobbying activities.

Dated: July 20, 1998.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98–23657 Filed 9–1–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 123

## Disaster Loan Program

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) adopts as a final rule, without change, the provisions of an interim final rule amending its disaster loan rules. This final rule continues to ensure that when a legal business entity is engaged in both agricultural enterprises and non-agricultural business ventures, SBA can provide physical disaster business loans to the non-agricultural portion which has been damaged by floods and other catastrophes.

**DATES:** This rule is effective September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Associate Administrator for Disaster Assistance, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Section 2(e) of the Small Business Act (15 USC S 631(e)) (''Act'') states that the policy of the Congress is that the Government aid and assist ''victims'' of floods and other catastrophes. Section 2(g) of the Act provides that in its administration of the disaster loan program, pursuant to section 7(b) of the Act, SBA shall provide, ''to the maximum extent possible,'' assistance and counseling to disaster ''victims.'' In administering the disaster loan program, SBA is precluded, by section 7(b) of the Act, from assisting agricultural enterprises. As defined in section 18(b)(1) of the Act, an ''agricultural enterprise'' is a business engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

SBA previously provided physical disaster business loan assistance only to business entities which were adversely affected by floods and other catastrophes when the primary activity of the business entity was non-agricultural. Thus, if a person or a single business entity operated both

agricultural and non-agricultural enterprises, SBA would not assist any part of the business entity that suffered damage if the primary activity of the total entity was agricultural.

SBA reconsidered the statutory language above and re-evaluated its position with respect to the ''primary activity rule'' which it administratively applied. The Act requires SBA to assist ''victims'' of floods and other catastrophes, without regard to the primary activity of a total business entity. If the victim of a flood or other catastrophe is a non-agricultural business venture, SBA should assist that victim regardless of whether such business is a part of a larger business entity whose primary activity is agricultural. Thus, if the total business operation is comprised of a retail store and a ranch, and the retail store is destroyed by a flood, SBA should offer physical disaster assistance to the retail store even if the ranching operation generated more revenue.

Accordingly, SBA promulgates this final rule to continue to permit SBA to provide physical disaster business loan assistance to a non-agricultural business venture within the total business entity if the non-agricultural business has been damaged by a flood or other catastrophe, regardless of the primary activity of the total business entity. The rule also makes clear that the business entity can be a sole proprietorship, corporation, limited liability company, or partnership.

**Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (15 U.S.C. S601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

SBA certifies that this rule is not a significant rule within the meaning of Executive Order 12866; it is not likely to have annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. SBA also certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. S601 *et seq.* This rule makes eligible for physical disaster loans only nonagricultural businesses that are part of a business entity that is primarily agricultural and, therefore, does not meet the substantial number of small businesses criterion anticipated by the Regulatory Flexibility Act.

For purposes of the Paperwork Reduction Act (44 U.S.C. Ch 35), SBA certifies that this final rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with standards set forth in Section 2 of that Order.

An interim final rule was published in the **Federal Register** on July 1, 1997 (62 FR 35337). An open comment period was provided for interested persons to respond to the interim final rule. Since the date of publication of the interim final rule, no comments were received. Accordingly, the interim final rule is adopted without change as final.

**List of Subjects in 13 CFR Part 123**

Disaster assistance, Loan programs-business, Small businesses.

Accordingly, the interim final rule amending 13 CFR part 123 which was published at 62 FR 35337 on July 1, 1997, is adopted as a final rule without change.

Dated: July 8, 1998.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98–23658 Filed 9–1–98; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–SW–10–AD; Amendment 39–10727; AD 98–18–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, 269D, and TH–55A Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, 269D, and TH–55A helicopters, that requires a visual inspection of the bond line between the main rotor blade abrasion strip (abrasion strip) and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the abrasion strip for evidence of debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade. This amendment is prompted by four reports that indicate that debonding and corrosion have occurred on certain blades where the abrasion strip attaches to the blade skin. The actions specified by this AD are intended to prevent loss of the abrasion strip from the blade and subsequent loss of control of the helicopter.

**EFFECTIVE DATE:** October 7, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, Engine and Propeller Directorate, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200, telephone (516) 256–7532, fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, 269D, and TH–55A series helicopters was published in the **Federal Register** on October 30, 1996 (61 FR 55937). That action proposed to require, for each blade, a visual inspection of the bond line between the abrasion strip and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the abrasion strip for evidence of debonding or hidden corrosion voids; and removal of any blade with a defective abrasion strip and replacement with an airworthy blade. If any deterioration of the abrasion strip adhesive bead was discovered, restoration of the bead in accordance with the applicable maintenance manual was proposed. If an abrasion strip void was found or suspected, removing and replacing the blade with an airworthy blade was also proposed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that Model 269C–1 helicopters should be included in the Applicability section of the AD, because this model, which was recently type certificated, could be retro-fitted with any of the affected blades listed in the proposed AD. The FAA concurs,

and future rulemaking action will address this issue.

The same commenter states that a terminating action should be added to the AD. The commenter states that if any of the affected blades are subject to an abrasion strip repair, those blades should no longer be subject to the repetitive inspections listed in the AD. The FAA concurs, and a paragraph will be added to the AD to state that, for an affected blade, blade abrasion strip repair is considered a terminating action for the requirements of this AD. A requirement was added to identify repaired blades.

Another commenter states that the abrasion strip inspections called out in the proposed AD are inadequate to detect defective abrasion strips. The FAA does not concur; the specified inspections are adequate to detect defective abrasion strips and these inspections will remain in the AD.

The commenter also states that current abrasion strip materials and abrasion strip bonding methods are inadequate to assure long-term durability. The FAA does not concur; when performed correctly the current abrasion strip materials and abrasion strip bonding methods are adequate and demonstrate an acceptable service life.

Finally, the commenter would like the FAA to re-evaluate current regulations pertaining to abrasion strip technology and revise the regulations to include minimum performance criteria for adhesively bonded abrasion strip assemblies. The FAA does not concur; current regulations have demonstrated an acceptable level of safety for abrasion strip bonding.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously, as well as with other non-substantive changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 100 helicopters of U.S. registry will be affected by this AD, that it will take approximately one-third of a work hour per helicopter to conduct the initial inspections; approximately one-third of a work hour to conduct the repetitive inspections; approximately 11 work hours to remove and reinstall a blade; and approximately 32 work hours to repair the blade; and that the average labor rate is $60 per work hour. Required parts (replacement abrasion strips) will cost approximately $57 per main rotor abrasion strip (each helicopter has three main rotor blades). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $135,850 per year for the first year and $133,850 for each year thereafter, assuming one-sixth of the affected blades in the fleet are removed, repaired, and reinstalled each year, and that all affected helicopters are subjected to one repetitive inspection each year.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**AD 98–18–11 Schweizer Aircraft Corporation and Hughes Helicopters, INC.:** Amendment 39–10727. Docket No. 96–SW–10–AD.

*Applicability:* Model 269A, 269A–1, 269B, and TH–55A helicopters with main rotor blades, part number (P/N) 269A1190–1, serial numbers (S/N) S0001 through S0012 installed; and Model 269C and 269D helicopters with main rotor blades, P/N 269A1185–1, S/N S222, S312, S313, S325 through S327, S339, S341, S343, S346, S347, S349 through S367, S369 through S377, S379 through S391, S393 through S395, S397, S399, S401 through S417, S419 through S424, S426 through S449, S451 through S507, S509 through S513, S516 through S527, S529 through S540, S542, S544 through S560, S562 through S584, S586 through S595, S597 though S611, S620 through S623, S625, S628, S633, S641 through S644, S646, S653, S658, S664, S665, and S667, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair (except for the repair of the abrasion strip) remove any helicopter from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of the abrasion strip from a main rotor blade (blade) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), or within 90 calendar days after the effective date of this AD, whichever is earlier, or prior to installing an affected replacement blade, and thereafter at intervals not to exceed 50 hours TIS from the date of the last inspection or replacement installation:

(1) Visually inspect the adhesive bead around the perimeter of each abrasion strip for erosion, cracks, or blisters.

(2) Visually inspect the bond line between each abrasion strip and each blade skin for voids, separation, or lifting of the abrasion strip.

(3) Inspect each abrasion strip for debonding or hidden corrosion voids using a tap (ring) test as described in the applicable maintenance manual.

(b) If any deterioration of an abrasion strip adhesive bead is discovered, prior to further flight, restore the bead in accordance with the applicable maintenance manual.

(c) If abrasion strip debonding, separation, or a hidden corrosion void is found or suspected, prior to further flight, remove the blade with the defective abrasion strip and replace it with an airworthy blade.

(d) Repair of an affected blade's abrasion strip is considered a terminating action for the requirements of this AD. Identify the repaired blade with a white dot added adjacent to the blade S/N.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished, provided the abrasion strip has not started to separate or debond from the main rotor blade.

(g) This amendment becomes effective on October 7, 1998.

Issued in Fort Worth, Texas, on August 21, 1998.

**Larry M. Kelly,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 98–23600 Filed 9–1–98; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–242–AD; Amendment 39–10730; AD 98–18–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757–200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This action requires a one-time detailed visual inspection to detect damage or chafing of certain electrical wire bundles, and to verify adequate clearance exists between the wire bundles and adjacent disconnect bracket; and repair, if necessary. This amendment is prompted by a report indicating that damaged wires caused an electrical short in the electrical panel, which resulted in a shower of sparks from the overhead panel. The actions specified in this AD are intended to prevent failure of essential electrical systems and a potential fire hazard for passengers and crewmembers, due to damage or chafing of electrical wire bundles.

**DATES:** Effective September 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before November 2, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Ave, SW., Renton, Washington 98055–4056.

**FOR FURTHER INFORMATION CONTACT:** Forrest Keller, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2790; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received a report indicating that damaged wires caused an electrical short in the P11 electrical panel on a Boeing Model 757–200 series airplane after takeoff, which resulted in a shower of sparks from the overhead panel. Subsequently, several erroneous flight deck indications appeared with the display of multiple caution messages by the engine indication and crew alerting system (EICAS). Investigation of the looms behind the P11 electrical panel revealed that certain wires were routed over the top of the disconnect bracket close to the bracket-bonding stud, which caused the wires to chafe through and resulted in an electrical short in the panel. In a fleetwide inspection of 13 other Boeing Model 757–200 series airplanes, damaged wires on three additional airplanes were detected. This condition, if not corrected, could result in failure of essential electrical systems and a potential fire hazard for passengers and crewmembers, due to damage or chafing of electrical wire bundles.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of essential electrical systems and a potential fire hazard for passengers and crewmembers, due to damage or chafing of electrical wire bundles. This AD requires a one-time detailed visual inspection to detect damage or chafing of certain electrical wire bundles, and to verify adequate clearance exists between the wire bundles and adjacent disconnect bracket; and repair, if necessary. Accomplishment of the actions described previously is intended to adequately address the identified unsafe condition.

### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–242–AD.'' The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**98–18–14 Boeing:** Amendment 39–10730. Docket 98–NM–242–AD.

*Applicability:* Model 757–200 series airplanes, certificated in any category; excluding the following line numbers:

| | | | | | |
|---|---|---|---|---|---|
| 2 | 75 | 221 | 127 | 130 | 162 |
| 180 | 209 | 212 | 219 | 388 | 526 |

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of essential electrical systems and a potential fire hazard for passengers and crewmembers due to damage or chafing of electrical wire bundles, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time detailed visual inspection to detect damage or chafing of the electrical wire bundles having part numbers W2016–0001–12 and W2016–0002–16, and adjacent wiring; and to verify adequate clearance exists between the wire bundles and adjacent disconnect bracket. Pay particular attention to the area located on the looms behind the P11 panel near the AP0011 disconnect bracket.

(1) If no damage or chafing is detected, and adequate clearance exists, no further action is required by this AD.

(2) If damage or chafing is detected, and adequate clearance exists, prior to further flight, repair the wire bundles in accordance with Section 20–10–13 of the Boeing Standard Wiring Practices Manual.

(3) If no damage or chafing is detected and inadequate clearance exists, prior to further flight, modify the wire bundles to achieve adequate clearance, in accordance with Section 20–10–11 and 20–10–12 of the Boeing Standard Wiring Practices Manual.

(4) If damage or chafing is detected and inadequate clearance exists, prior to further flight, repair the wire bundles in accordance with Section 20–10–13 of the Boeing Standard Wiring Practices Manual; and modify the wire bundles in accordance with Section 20–10–11 and 20–10–12 of the Boeing Standard Wiring Practices Manual.

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

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

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

(d) This amendment becomes effective on September 17, 1998.

Issued in Renton, Washington, on August 27, 1998.

**Vi L. Lipski, Acting Manager,**

*Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98–23620 Filed 9–1–98; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Airspace Docket No. 94–ASO–9]**

**RIN 2120–AA66**

## Expansion of Restricted Area R–6002, Poinsett-Sumter, SC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action raises the upper limit of Restricted Area R–6002 from the current 13,000 feet mean sea level (MSL), up to and including Flight Level (FL) 230. The expanded restricted airspace is redesignated as three subdivisions: R–6002A, R–6002B, and R–6002C to facilitate real-time use of the airspace. The purpose of this amendment is to provide airspace for high-angle bomb delivery training at the Poinsett Range. In addition, the name of the using agency is changed to reflect the current organizational title.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 23, 1994, the FAA proposed an amendment to part 73 of 14 CFR part 73 (59 FR 60339) to raise the upper limit of Restricted Area R–6002, Poinsett-Sumter, SC, from 13,000 feet MSL up to FL 230, and to reconfigure the airspace in three subareas as follows: R–6002A from the surface to but not including 13,000 feet MSL, R–6002B from 13,000 feet MSL to but not including FL 180, and R–6002C from FL

180 to FL 230. Additionally, the FAA proposed to change the name of the using agency, for the restricted areas, from ''Commander, Shaw AFB, SC,'' to ''U.S. Air Force, 20 Fighter Wing (FW), Shaw AFB, SC.''

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments to the FAA. In response to this NPRM, the FAA received two comments, one from the Air Transport Association of America and one from USAir (now US Airways). An analysis of the comments received, along with the FAA's response, are detailed below:

**Analysis of Comments**

Those commenters responding to the notice expressed concern that the expansion of R–6002 would adversely impact air carrier operations between Charlotte Douglas International Airport, NC, and destinations in Florida. To address these concerns, the U.S. Air Force and the Jacksonville Air Route Traffic Control Center (ARTCC) reached an agreement on the use of the Poinsett Range which requires the application of real-time scheduling and activation/deactivation procedures and limits activation periods to avoid air carrier peak hours. In addition, the controlling agency may deny usage of the airspace, if required, due to peak traffic flow, severe weather, or other factors. The FAA believes that this agreement satisfactorily addresses the commenters' concerns.

**The Rule**

This amendment to 14 CFR part 73 (part 73) raises the upper altitude limit of the Poinsett Range from the current 13,000 feet MSL to FL 230, and changes the name of the using agency to reflect the current organizational title. The present lateral boundaries of the restricted area are not changed by this action. This action redesignates the current restricted area, R–6002, as R–6002A, extending from the surface to but not including 13,000 feet MSL. In addition, two new subareas are designated directly above R–6002A, as follows: R–6002B from 13,000 feet MSL to but not including FL 180; and R–6002C from FL 180 to FL 230. This configuration allows for the real-time utilization of airspace with the ''B'' and ''C'' subareas being activated when needed for high-angle weapons delivery training. The U.S. Air Force requested the higher vertical limits for R–6002 in order to conduct high altitude/high-angle bomb delivery training. Lessons learned during the Desert Storm Operation dictated that these tactics be added to mission training profiles. The current 13,000 feet MSL ceiling does not provide sufficient vertical airspace to permit accomplishment of this essential training. This amendment also changes the name of the using agency for the restricted areas from ''Commander, Shaw AFB, SC,'' to ''U.S. Air Force, 20th FW, Shaw AFB, SC,'' to reflect the current title of the using agency. The coordinates for this airspace docket are based on North American Datum 83.

Section 73.60 of part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

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

**Environmental Review**

In February 1994, the U.S. Air Force issued a final environmental assessment (EA) for the Proposed Expansion of Poinsett Weapons Range, Sumter County, SC. In June 1998, the U.S. Air Force submitted a Final Supplement to the EA to the FAA. In July 1998, the FAA completed a reevaluation of the EA. The FAA determined that the airspace action evaluated in the EA is the same as that described in this final rule and that the EA, with the Final Supplement to the EA, adequately assesses and discloses the environmental impacts of the proposed action. The FAA concluded that the EA is valid and determined a Finding of No Significant Impact (FONSI) for the proposed action. This proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act (NEPA), as amended. This action would not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of the NEPA. To obtain a copy of the FAA FONSI, refer to the section titled **FOR FURTHER INFORMATION CONTACT,** above.

This decision to approve the proposed special use airspace action constitutes an order of the Administrator issued pursuant to 49 U.S.C. 40103(b) and is reviewable before the United States courts of appeals in accordance with the provisions of 49 U.S.C. 46110 (formerly 1006 of the Federal Aviation Act of 1958, as amended). This order constitutes final agency action under 49 U.S.C. 46110. Any party having a substantial interest may appeal this order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 (sixty) days after issuance of this order.

**List of Subjects in 14 CFR Part 73**

Airspace, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

## PART 73—SPECIAL USE AIRSPACE

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

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

**§ 73.60 [Amended]**

2. § 73.60 is amended as follows:

* * * * *

**R–6002 Poinsett-Sumter, SC [Remove]**

**R–6002A Poinsett-Sumter, SC [New]**

*Boundaries.* Beginning at lat. 33°54′25″N., long. 80°24′11″W.; to lat. 33°46′26″N., long. 80°23′11″W.; to lat. 33°44′28″N., long. 80°31′41″W.; to lat. 33°50′14″N., long. 80°31′02″W.; to lat. 33°53′38″N., long. 80°31′02″W.; to the point of beginning.

*Designated altitudes.* Surface to but not including 13,000 feet MSL.

*Time of designation.* 0600–2400 local time Monday–Friday; 0800–1600 local time Saturday; other times by NOTAM at least 8 hours in advance.

*Controlling agency.* FAA, Jacksonville ARTCC.

*Using agency.* U.S. Air Force, 20 FW, Shaw AFB, SC.

**R–6002B, Poinsett-Sumter, SC [New]**

*Boundaries.* Beginning at lat. 33°54′25″N., long. 80°24′11″W.; to lat. 33°46′26″N., long. 80°23′11″W.; to lat. 33°44′28″N., long. 80°31′41″W.; to lat. 33°50′14″N., long. 80°31′02″W.; to lat. 33°53′38″N., long. 80°31′02″W.; to the point of beginning.

*Designated altitudes.* 13,000 feet MSL to but not including FL 180.

*Time of designation.* 0600–2400 local time Monday–Friday; 0800–1600 local time Saturday; other times by NOTAM at least 8 hours in advance.

*Controlling agency.* FAA, Jacksonville ARTCC.
*Using agency.* U.S. Air Force, 20 FW, Shaw AFB, SC.

**R–6002C, Poinsett-Sumter, SC [New]**

*Boundaries.* Beginning at lat. 33°54′25″N., long. 80°24′11″W.; to lat. 33°46′26″N., long. 80°23′11″W.; to lat. 33°44′28″N., long. 80°31′41″W.; to lat. 33°50′14″N., long. 80°31′02″W.; to lat. 33°53′38″N., long. 80°31′02″W; to the point of beginning.
*Designated altitudes.* FL 180 to FL 230.
*Time of designation.* 0600–2400 local time Monday–Friday; 0800–1600 local time Saturday; other times by NOTAM at least 8 hours in advance.
*Controlling agency.* FAA, Jacksonville ARTCC.
*Using agency.* U.S. Air Force, 20 FW, Shaw AFB, SC.

* * * * *

Issued in Washington, DC, on August 26, 1998.

**Timothy Fleming,**

*Acting Program Director for Air Traffic Airspace Management.*

[FR Doc. 98–23629 Filed 9–1–98; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 95

**[Docket No. 29322; Amdt. No. 411]**

## IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

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

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace Systems are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on August 28, 1998.

**Richard O. Gordon,**

*Acting Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC:

1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 411 Effective Date, October 8, 1998]

| From | To | MEA |
|---|---|---|
| **§ 95.1001 Direct Routes—§ 95.626 Blue Federal Airway 26 is Amended To Read in Part** | | |
| Yukon River, AK NDB<br>*10900–MOCA<br>#MEA is established with a gap in navigation signal coverage. | Barter Island, AK NDB | #*12000 |
| **§ 95.6006 VOR Federal Airway 6 is Amended To Read in Part** | | |
| Grand Island, NE VORTAC | Touhy, NE FIX | *4000 |

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 411 Effective Date, October 8, 1998]

| From | To | MEA |
|---|---|---|
| *3100–MOCA | | |
| **§ 95.6008 VOR Federal Airway 8 is Amended To Read in Part** | | |
| Grand Island, NE VORTAC | Touhy, NE FIX | *4000 |
| *3100–MOCA | | |
| **§ 95.6053 VOR Federal Airway 53 is Amended To Read in Part** | | |
| Louisville, KY VORTAC | Heals, IN FIX | 3000 |
| Heals, IN FIX | *Strep, IN FIX | **3000 |
| *4500–MRA | | |
| **2300–MOCA | | |
| Strep, IN FIX | House, IN FIX | *3000 |
| *2400–MOCA | | |
| **§ 95.6094 VOR Federal Airway 94 is Amended To Read in Part** | | |
| Valer, TN FIX | Teach, TN FIX | *4000 |
| *2500–MOCA | | |
| **§ 95.6119 VOR Federal Airway 119 is Amended To Read in Part** | | |
| Clarion, PA VOR/DME | Bradford, PA VOR/DME | 4200 |
| **§ 95.6184 VOR Federal Airway 184 is Amended To Read in Part** | | |
| Harrisburg, PA VORTAC | Delro, PA FIX | 3000 |
| Delro, PA FIX | Modena, PA VORTAC | 5000 |
| **§ 95.6203 VOR Federal Airway 203 is Amended To Read in Part** | | |
| Albany, NY VORTAC | Otole, NY FIX | *6000 |
| *2000–MOCA | | |
| Otole, NY FIX | Dinny, NY FIX | *10000 |
| *6100–MOCA | | |
| Dinny, NY FIX | Saranac Lake, NY VOR/DME | 6500 |
| Saranac Lake, NY VOR/DME | Massena, NY VORTAC | *7000 |
| *4400–MOCA | | |
| **§ 95.6369 VOR Federal Airway 369 is Amended To Read in Part** | | |
| Groesbeck, TX VOR/DME | Maverick, TX VOR/DME | 3400 |
| MAA–17500 | | |
| **§ 95.6428 VOR Federal Airway 428 is Amended To Read in Part** | | |
| Corta, NY FIX | Georgetown, NY VORTAC | *5000 |
| *3600–MOCA | | |
| Georgetown, NY VORTAC | Eaten, NY FIX | 4000 |
| **§ 95.6465 VOR Federal Airway 465 is Amended by Adding** | | |
| Billings, MT VORTAC | Miles City, MT VORTAC | 6000 |
| **§ 95.6474 VOR Federal Airway 474 is Amended To Read in Part** | | |
| Noeno, PA FIX | Delro, PA FIX | 3000 |
| Delro, PA FIX | Modena, PA VORTAC | 5000 |
| **§ 95.6506 VOR Federal Airway 505 is Amended To Read in Part** | | |
| Freed, MN FIX | *Almay, MN FIX | **4600 |
| *5000–MRA | | |
| **2600–MOCA | | |
| Almay, MN FIX | Prags, MN FIX | *5000 |
| *2500–MOCA | | |

| From | To | MEA | MAA |
|---|---|---|---|
| **§ 95.7146 Jet Route No. 146 is Amended To Read in Part** | | | |
| Allentown, PA VORTAC<br>#COP OVERLIES FJC VORTAC | Kennedy, NY VOR/DME | #18000 | 45000 |
| Airway segment | | Changeover points | |
| | To | Distance | From |
| **§ 95.8003 VOR Federal Airways Changeover Points V–119 is Amended To Delete** | | | |
| Clarion, PA VOR/DME<br>#BFD R–232 UNUSEABLE. USE CIP R–050 | Bradford, PA VOR/DME | #40 | Clarion |
| **V–428 is Amended To Read in Part** | | | |
| Ithaca, NY VOR/DME | Georgetown, NY VORTAC | 20 | Ithaca. |
| **§ 95.8005 Jet routes Changeover Points J–42 is Amended To Read in Part** | | | |
| Memphis, TN VORTAC | Nashville, TN | 119 | Memphis. |

[FR Doc. 98–23663 Filed 9–1–98; 8:45 am]
**BILLING CODE 4910–13–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Clenbuterol; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration is correcting a final rule that appeared in the **Federal Register** of August 4, 1998 (63 FR 41419). The document amended the animal drug regulations to reflect approval of a new animal drug application filed by Boehringer Ingelheim Animal Health, Inc. The document published with an incorrect address. This document corrects that error.

**EFFECTIVE DATE:** September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 98–20699, appearing on page 41419, in the **Federal Register** of August 4, 1998, the following correction is made: On page 41419, in the first column, in the second paragraph under **SUPPLEMENTARY INFORMATION**, beginning in the ninth line, ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'' is corrected to read ''5630 Fishers Lane, rm. 1061, Rockville, MD 20852''.

Dated: August 26, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–23582 Filed 9–1–98; 8:45 am]
**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Ampicillin Trihydrate For Sterile Suspension; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 4, 1998 (63 FR 41419). The document amended the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by G. C. Hanford Manufacturing Co. The document published with an incorrect address. This document corrects that error.

**EFFECTIVE DATE:** September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 98–20698, appearing on page 41419, in the **Federal Register** of August 4, 1998, the following correction is made: On page 41420, in the first column, in the first complete paragraph, beginning in the ninth line, ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'' is corrected to read ''5630 Fishers Lane, rm. 1061, Rockville, MD 20852''.

Dated: August 26, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–23583 Filed 9–1–98; 8:45 am]
**BILLING CODE 4160–01–F**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP San Francisco Bay; 98–021]**

**RIN 2115–AA97**

### Safety Zone; Suisun Bay, Sacramento River, San Joaquin River, San Francisco, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in parts of Suisun Bay, the Sacramento River, and the San Joaquin River, during a powerboat race on September 13, 1998. The safety zone will encompass all waters within the area bounded by the line segments drawn as follows: commencing at a point located at latitude 38°02′55″ N, longitude 121°53′30″ W; thence to 38°03′50″ N, 121°51′15″ W; thence to 38°01′40″ N, 121°49′55″ W; thence to 38°01′38″ N, 121°50′40″ W; thence to 38°01′48″ N, 121°51′08″ W; thence to 38°01′54″ N, 121°52′07″ W; thence to 38°02′15″ N, 121°52′55″ W; thence returning to the point of origin.

This safety zone is necessary to provide for the safety of participants,

spectators, and property during the event. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit this safety zone by contacting Vessel Traffic Service on Channel 14 VHF–FM.

**DATES:** This safety zone will be in effect on September 13, 1998 from 11:30 a.m. until 3 p.m. (PDT). If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to mariners.

**ADDRESSES:** Documents pertaining to this regulation are available for inspection and copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501–5100.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Safety Office San Francisco Bay; (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

In accordance with 5 U.S.C. 553, a Notice of Proposed Rule (NPRM) was not published for this temporary regulation and good cause exists for making it effective prior to, or less than 30 days after, **Federal Register** publication. The precise location of the event necessitating the promulgation of this safety zone, and other logistical details surrounding the event, were not finalized until a date fewer than 30 days prior to the event date. Publication of an NPRM and delay of its effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete, jeopardizing the safety of the lives and property of event participants and spectators.

**Discussion of Regulation**

The Pacific Offshore Powerboat Racing Association has been granted a permit by Commander, Coast Guard Group San Francisco to sponsor a powerboat race on the navigable waters of Suisun Bay, and the Sacramento and San Joaquin Rivers. The contestants will take multiple laps of the planned course of the race. From the starting point near the western end of Suisun Bay in the vicinity of Buoy #28, contestants will travel at high speed in a clock-wise direction around Winter Island and Browns Island and then return to the vicinity of Buoy #28. This safety zone is necessary to protect participants, spectators, and property from hazards associated with this race. Entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit the regulated area by contacting the Vessel Traffic Service on Channel 14 VHF–FM. For purposes of this temporary regulation, ''commercial vessels'' are defined as all vessels other than those used and registered/documented exclusively for recreational purposes.

**Regualtory Evaluation**

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Due to the short duration and limited geographic scope of the safety zone, and because commercial traffic will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

**Collection of Information**

This regulation contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq).

**Federalism**

The Coast Guard has analyzed this temporary regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. An environmental analysis checklist has been completed and a Marine Event permit has been issued.

**Unfunded Mandates**

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

**List of Subjects in 33 CFR Part 165**

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

**Regulation**

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

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

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

2. A new section 165.T11–089 is added to read as follows:

### § 165.T11–089 Safety Zone: Suisun Bay, Sacramento River, San Joaquin River, San Francisco, CA

(a) *Location.* The following area constitutes a safety zone in the navigable waters of the United States within Suisun Bay and the Sacramento and San Joaquin Rivers: all waters within the area bounded by the line segments drawn as follows: commencing at a point located at latitude 38°02′55″N, longitude 121°53′30″W; thence to 38°03′50″N, 121°51′15″W; thence to 38°01′40″N, 121°49′55″W; thence to 38°01′38″N, 121°50′40″; thence to 38°01′48″N, 121°51′08″W; thence to 38°01′54″N, 121°52′07″; thence to 38°02′15″N, 121°52′55″W; thence returning to the point of origin. All coordinates referred use Datum: NAD 83.

(b) *Effective Dates.* This safety zone becomes effective at 11:30 a.m. (PDT) and terminates at 3 p.m. (PDT) on September 13, 1998. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, or a designated representative thereof. Commercial vessels may request authorization to transit the safety zone by contacting Vessel Traffic Service on Channel 14 VHF–FM.

Dated: August 24, 1998.

**R.C. Lorigan,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay.*

[FR Doc. 98–23444 Filed 9–1–98; 8:45 am]

**BILLING CODE 4910–15–M**

## POSTAL SERVICE

## 39 CFR Part 241

## Expansion, Relocation, Construction of New Post Offices

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes procedures by which the Postal Service notifies local citizens and public officials of facility projects, and solicits and considers the community's input before making a final decision to expand an existing facility, relocate to a new building, or start new construction. The purpose of the rule is to build into the facility project planning process specific opportunities and adequate time for the community to be an active participant in the decision making process and to have its views heard and considered.

**DATE:** Effective October 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** John Sorenson, U.S. Postal Service, Facilities, 4301 Wilson Boulevard, Suite 300, Arlington, VA 22203–1861. Phone (703) 526–2782.

**SUPPLEMENTARY INFORMATION:** On May 7, 1998, the Postal Service published an interim rule (63 FR 25166) that added a new section 241.4 to 39 CFR Part 241 to require that local citizens and public officials be notified and invited to comment at critical stages of the planning to enlarge, relocate, or construct a postal customer service facility. In addition, the interim rule required postal officials to take into account community input, including alternative recommendations. Although the interim rule took effect immediately, the Postal Service established a 30-day comment period and invited comments from interested persons and organizations. Nine responses were received.

The respondents generally supported the intent of the interim rule—involvement of local communities in facility decisions by the Postal Service—but differed as to whether and how the rule would accomplish that intent. Following is a summary of the comments received, in order of the specific sections of the interim rule to which they relate.

### General Comments and Application; 241.4(a)

One respondent's letter noted that ''the changes proposed fail to provide assurance that citizens and postal customers will have any voice at all in the decisions impacting their communities.'' A state agency is concerned that the rule does not suggest any significant changes in USPS policies and urges a greater emphasis on a clear protocol for dialog between the Postal Service and the public. Another state agency opposes the rule generally as not giving full consideration of alternatives or of community preferences as a top priority. On the other hand, another state agency approved of the interim rule's clear statement of priorities for facilities projects, which establish the right context for public participation and the consideration of alternatives.

We disagree with the respondents who doubt that the interim rule sets out effective means to ensure community participation in facility project decisions. The final rule published today, like the interim rule, states the Postal Service's priorities for facility projects: the first consideration is expansion of the present facility; next is relocation to another building; and last is new construction. The rule requires and sets time tables for pre-decisional in-person discussion and formal written notices to elected local officials of the affected community. It also requires press releases to the local media and posting in the local post office, as well as an opportunity for a minimum of one public hearing or meeting (and more as needed), followed by a comment period for receipt and consideration of additional comments before a decision is made to expand, relocate, or construct a post office.

The question of whether the interim rule is a statement of existing policies was mentioned by several respondents. The interim rule, and this final rule, clarify, expand, and formalize, through the Federal Regulation process, the opportunities for public participation in facility project decisions that are already embodied in postal policy.

The views, ideas, and proposals of local citizens and postal customers are an important part of the process of making facility project decisions. However, many other factors must also be considered. Among them are whether an expiring lease can be renegotiated at a reasonable rent, and operational requirements including access to transportation, local population growth, and the availability of buildings that are safe and environmentally healthful for both customers and employees. The Postal Service agrees that the community's voice must be heard and its views considered in facility projects that affect them; however, the final decision remains the responsibility of the Postal Service.

One state governmental office expressed concern that the interim rule does not address the consolidation or closing (i.e., the ''discontinuance'') of post offices. In fact, this facility project rule is independent of the criteria and requirements for closing or consolidating post offices. It is not intended to broaden, reduce, or otherwise modify the scope of the rules related to the discontinuance of post offices—prescribed by U.S.C. 404(b) and 39 CFR 241.3. Those requirements and criteria are unchanged by this rule and will continue in full effect.

There may be instances where the facility project rule issued today governs a project that is also covered by the discontinuance rules. For example, if two post offices are both housed in substandard buildings in a rural area that has experienced significant population loss, the Postal Service may consider consolidating the post offices and relocating all operations to a single new building convenient to both affected areas. In that situation, the Postal Service would comply both with the discontinuance rules at 39 CFR 243.1 with respect to the closing/consolidation decision and with this facility project rule with respect to the decisions about selecting or building a new facility. Where the rules prescribe different notice requirements or comment or waiting periods for a particular action, the longer one, resulting in greater public participation, would be used. Similarly, as discussed below, the requirements of section 106 of the National Historic Preservation Act (NHPA) would also continue to be applicable independently of this facility

project rule. Accordingly, no change is required in the language of the rule in order to preserve the applicability of the consolidation/closing requirements.

**Exemption From Rule for Temporary or Emergency Use; 241.4(a)(1)**

Most of the respondents recommended that the exemption from public notification and participation when a project is ''to meet an emergency requirement or is for temporary use'' should be modified to define ''emergency'' and to impose time limits for both emergency and temporary use. The Postal Service agrees with this recommendation and has therefore defined ''emergency'' in the final rule to include such situations as earthquakes, flood, fire, or any other acts of God, and also the possible inability to renegotiate a renewal of an expiring lease that could necessitate the relocation of a post office. Also included within ''emergency'' would be acts of violence against people or a building. ''Temporary'' space is typically used for special events such as state or county fairs where the Postal Service might set up a retail office. It also includes space used during a holiday season, such as Christmas, for overflow business that cannot safely and efficiently be handled at an existing post office.

We agree that time limitations, whether for emergency or temporary space are important, but are more difficult to define in a way that allows the reasonable flexibility needed in a nationwide organization that serves the public under a wide range of conditions. An example of the need for flexibility is when a fire forces the relocation of postal operations from one building to another on a temporary basis, but matters of liability and damages require months or even years to resolve. Another is when an earthquake or flood devastates an entire region and there is no realistic way to predict accurately when the area's governmental infrastructure will return to normalcy so that a postal relocation project can be shepherded through its system. We believe that the need for reasonable time limits on the use of temporary and emergency space without public involvement in the decision process, and the need for reasonable operational flexibility can both be met. Accordingly, we have modified this section to include a time limitation of 180 days for emergency and temporary space, with additional authorizations in 180-day increments to be made only with specific approval by the office of Facilities at Postal Service Headquarters.

**Exception for Repairs and Alterations; 241.4(a)(2)**

Several respondents expressed concern about exempting from this rule facility projects that are limited to repair and alterations, which include painting, replacement or upgrade of a structural or functional element of a building, or landscaping. The rule expressly puts no limit on the amount of repair, replacement, or painting work that would be exempted from this rule.

Comments about this section were of two kinds. One is the recommendation that the Postal Service be required to comply with all local zoning, land use, and building codes. The other is a concern that, because the instant rule does not cover maintenance, repair, and alterations projects, those projects would not be subject to NHPA procedures that would otherwise apply. Several respondents also raised these concerns separately from the exception for repairs and alterations.

**Public Meetings or Hearings; 241.4(c)(1) and (c)(4)**

Almost all of the respondents recommended that the public meeting required by sections 241.4 (c)(1)(iii) and (c)(4)(ii) be mandatory, and they objected to leaving the door open to any exception. There may be exceptional circumstances, however, that prevent postal representatives from attending or conducting a public meeting or hearing on the planned project within a reasonable time. In that event, and subject in each instance to the specific approval of the Vice President, Facilities, the Postal Service would distribute a notification card to all affected customers, seeking their comment or other feedback. An example of exceptional circumstances warranting this means of soliciting community input would be a project in an area quite distant from the seat of local government or any forum where a postal-conducted meeting could be held. Therefore, no change was made to this provision other than to reserve approval for such action to the Vice President, Facilities.

Three respondents objected to the statement in the interim rule that if an expansion project was impracticable, that fact would be disclosed at the meeting and noted in the project file. In some cases, the Postal Service may have been notified that a leased post office will no longer be available at the conclusion of a lease term; or the landlord is demanding rent far above its fair value. In other cases, a landlord may refuse to make much needed repairs or properly to maintain the building. In still other situations, a post office may be bounded by public sidewalks and streets, and it is obvious that expansion is not possible. Nevertheless, the respondents pointed out the exchange of needs and information at the public meeting could disclose alternatives that were not previously apparent or available to the Postal Service. Having experienced in at least a few instances the expansion of options as a consequence of public meetings and other public participation, the Postal Service has revised section 241.4(c)(4)(ii) of the final rule to incorporate the recommendation.

**Posting of Notices in Affected Post Offices; 241.4(c)(4)**

One respondent recommended that the same notice of a facility project that is given to local officials be posted in the lobby of the affected post office. In many post offices, that is already a standard practice. Accordingly, the recommendation is expanded and incorporated in the final rule to require the posting of the letter to local officials or the media release or, space permitting, both. If not already contained in the notice, when a meeting or hearing date is known, that information will be added to the posting.

**Time for Review of Community Input; 241.4(c)(5) and (c)(6)**

In different ways, most respondents felt that the interim rule allowed little or no time after a public meeting before a project decision could be made, thus precluding feedback from the community. They recommended both a waiting period, and an appeals process after the community is notified of decisions. Three respondents made a similar recommendation, suggesting the appeals process employed for a post office discontinuance.

We agree that community participation in the facility project process could be improved with longer waiting periods between, for example, a public meeting and the next decision. We also agree that some avenue of appeal is an appropriate safeguard of the process. However, the appeal route used for a post office discontinuance, as proposed, would stifle rather than open the facility project process. Accordingly, we have carefully reviewed the entire process for community input, and in the final rule extended some of the comment periods and added an avenue of appeal to the Vice President, Facilities. We have also added a requirement that postal representatives will advise of appeal rights during the public meeting or hearing.

**National Historic Preservation Act Concerns; 241.4(d)(1)**

Several respondents addressed the relationship between the interim rule relating to repair and maintenance projects and the relationship with the NHPA compliance process.

Three preservation groups were concerned that the language of the interim rule meant that the Postal Service intended not to comply with section 106 of the NHPA or that its compliance would be limited to the selection of a new building after a decision to move from an existing post office had been made. In addition, most of the respondents expressed concern that the protections offered in section 241.4(d)(1) were ''gutted'' by section 241.4(a)(2) which exempts repairs and alterations from the rule. Nothing in the interim rule or this final rule is meant to avoid or diminish the Postal Service's compliance with historic preservation policies. To the contrary, section 106 of the NHPA, and the applicable Executive Orders addressing downtown areas and historic buildings were mentioned in the interim rule specifically to emphasize that commitment.

If any project, including repair, maintenance, alteration, expansion, relocation, or new construction, will have an adverse effect under provisions of the NHPA or executive orders, the Postal Service will continue to consider and mitigate such effects independently from this rule. Accordingly, in order to prevent any misunderstanding, we have revised section 241.4(d).

**Recommendations of Sites for New Facilities; 241.4.(e)**

Two respondents noted a lack of clarity about who may propose recommended sites, and urged that members of the public be permitted to do so. One of the two respondents further suggested that an owner of property not being given further consideration should be notified, in some manner, in addition to local official notification. For projects that are relocations or new construction, for example, it has been standard procedure to advertise in local newspapers for land or buildings, and to post a notice in the local post office. In addition, individual contacts are normally made with community officials or members of the community who may be aware of sites that are not on the market but might be made available for a postal project. It is the property owners themselves (or their agents) who propose their sites. This is generally done in response to an advertisement describing specific postal requirements, including the preferred area for the new facility. The notice and public meeting provisions of this final rule may provide additional opportunity for property owners to indicate their interest in a sale or lease to the Postal Service. It is also standard postal practice to notify property owners if their property is not being considered.

**Zoning and Other Local Codes; 241.4(f)**

The Postal Service is a long-term member of nearly every community and wants to be a good neighbor and supporter of the community's values. People view their post office as much more than a place to send and receive mail. A community's post office is a vital part of its infrastructure; a place to greet old friends, make new ones, and exchange information. Post offices support the commercial activities of a town and are relied upon by many businesses to ship and receive goods, and to communicate with customers. With more than 35,000 leased and owned postal facilities, the Postal Service takes seriously its commitment to be a good neighbor and a vital part of every community.

The facility project rule published today also contains the Postal Service's policy of complying with local zoning and land use ordinances and building codes in new construction, repairs, upgrades, and alterations to its facilities, when it can do so consistent with dynamic service needs and unique postal requirements. We believe our record of compliance is a good one. However, to make it mandatory—and thereby abandon standardized, national service mandates and the need to accommodate postal needs—would impose an unreasonable burden on the conduct of a basic service of the national government. It would severely hamper the Postal Service's ability to provide adequate facilities to serve all communities in the country, and it could result in a great departure from the mandate to provide the nation ''basic and fundamental service'' that is ''prompt, reliable and efficient.'' 39 U.S.C. 101(a). It could result, moreover, in anomalies such as sprinkler systems that would damage or destroy mail, or handicapped accessibility for Inspection Service lookout galleries. Delivering mail is an important federal function. Like other federal entities, the Postal Service should not be in a position where the fundamental quality, consistency, and efficiency of its services can be compromised by various and oftentimes conflicting local requirements.

**Summary**

Adding new facilities and upgrading or replacing existing ones is a continuing activity that is influenced by population growth and shifts, the increasing automation of mail processing, aging and deteriorating building stock, and changing environmental and energy conservation requirements. In order to fulfill its role as a member of virtually every U.S. community—yet also provide a standardized platform of economical and universal mail service for the entire country—the Postal Service believes that to the maximum extent possible it should undertake its most visibly significant projects—to expand, relocate, or build a new facility—in partnership with the local community.

These community relations procedures are being published to help assure that communities and local public officials, as well as postal employees, will have the most up-to-date policy for projects that involve expansion, relocation, or new construction of a postal customer service facility, and to help assure that such projects are handled in accordance with the revised procedures.

**List of Subjects in 39 CFR Part 241**

Organization and functions (Government agencies).

Accordingly, the Postal Service adopts the following amendment to 39 CFR Part 241.

## PART 241—[AMENDED]

1. The authority citation for 39 CFR part 241 continues to read as follows:

**Authority:** 39 U.S.C. 401.

2. Effective October 5, 1998, 39 CFR part 241 is amended by revising § 241.4, to read as follows:

### § 241.4 Expansion, relocation, and construction of post offices.

(a) *Application.* (1) This section applies when the USPS contemplates any one of the following projects with respect to a customer service facility: expansion, relocation to another existing building, or new construction, except when the project is to meet an emergency requirement or for temporary use. Emergency situations include, but are not limited to, earthquakes, floods, fire, lease terminations, safety factors, environmental causes, or any other actions that would force an immediate relocation from an existing facility. Temporary relocation of space is used for, but not limited to, holidays, special events, or for overflow business. Use of emergency and temporary space will be limited to 180 days in duration. Any

additional incremental time periods of up to 180 days each must be approved by the Vice President, Facilities.

(2) This section does not apply when the project under consideration is limited to repair and alterations, such as——

(i) Painting;

(ii) Repairs;

(iii) Replacement or upgrade of structural or functional elements of a postal building or of its equipment;

(iv) Paving, striping, or other repair of parking areas;

(v) Landscaping.

(b) *Purpose.* The purpose of the procedures required by this section is to assure increased opportunities for members of the communities who may be affected by certain USPS facility projects, along with local officials, to convey their views concerning the contemplated project and have them considered prior to any final decision to expand, relocate to another existing building, or construct a new building that is owned or leased.

(c) *Expansion, relocation, new construction.* When a need is identified that will require the expansion, relocation, or new construction of a customer service facility, postal representatives responsible for the project will take the following steps in accordance with the time schedule shown:

(1) Personally visit one or more of the highest ranking local public officials (generally individuals holding elective office). During the visit, the postal representatives will—

(i) Identify the need and fully describe the project that is under consideration to meet it, explain the process by which the Postal Service will solicit and consider input from the affected community, and solicit a working partnership with the community officials for the success of the project.

(ii) Emphasize that in meeting a need for increased space, the first priority is to expand the existing facility; the second priority is to find an existing building in the same area as the current facility; and the third option is to build on a new site; all within the downtown area, if possible.

(iii) Ask that a Postal Service presentation of the project be placed on the regular agenda of a public meeting or hearing. If no such meeting is planned within the next 60 days or the agenda of a planned meeting cannot accommodate the project, the USPS will schedule its own public hearing concerning the project, and will advertise the meeting or hearing in a local general circulation newspaper.

(iv) Give the local officials a letter describing the intended project.

(2) Notify the lessor of the affected facility of the project, in writing.

(3) Send an initial news release to local communications media.

(4)(i) Post in the public lobby of the affected post offices a copy of the letter given to local officials, or the news release, or, space permitting, both. If such information is available at the time, include in the posting a public notice of the date, time, and location of a public meeting or hearing at least 7 days prior to the meeting or hearing.

(ii) Except as provided in this paragraph, attend, or conduct, one or more public hearings to describe the project to the community, invite questions, solicit written comment, and describe the process by which community input will be considered. If it is believed at the time that the existing facility is not able to be expanded or that expansion is impracticable, disclose that fact and the reasons supporting that belief. If, during the public meeting or hearing process, a new development should occur to allow for an expansion of the existing facility, the Postal Service will make a good faith effort in pursuing this alternative. Under exceptional circumstances that would prevent postal representatives from attending a public meeting or conducting a postal hearing on the planned project within a reasonable time, and subject to approval of the Vice President, Facilities, the Postal Service may distribute a notification card to all affected customers, seeking their comments or other feedback. An example of exceptional circumstances would be a project in a sparsely populated area remote from the seat of local government or any forum where a postal conducted meeting could be held.

(iii) At any public meeting or hearing, advise local officials and the community of their appeal rights and the process by which an appeal can be made. Information provided must include time limitations and an address for the appeal.

(5) Review comments and notify local officials of decision. Not less than 15 days after the date of the most recent public meeting, or after receipt of notification cards, make a decision that takes into account community input and is consistent with postal objectives (e.g., expansion, relocation to another building, or construction of a new owned or leased facility), and notify local officials in writing. This notification must include information on the availability and terms of review under paragraph (c)(6) of this section. At the same time, post a copy of the notification letter in the local post office for the community. Take no action on the decision for at least 30 days following notification of local officials and the community.

(6) Within the time period identified in paragraph (c)(5) of this section, any person may request in writing that the decision be reviewed by the Vice President, Facilities, at Postal Service Headquarters. No particular format is required for requesting review, but the request must be in writing and identify the post office or location affected; and should identify the decision objected to, and state the reasons for the objection. The Vice President, Facilities, will obtain the views of the decision maker, review relevant parts of the project file, and if necessary request more information from the appellant. Upon review of the facts, the Vice President, or a representative, will issue a written determination, if possible, within 15 days. In no event will the Postal Service take action on the decision being reviewed until 15 days following issuance of the final review determination. If the determination on review is to set aside the decision, the project process will return to the public hearing stage of paragraph (c)(4) of this section.

(7) Advertise for sites and existing buildings, in accordance with existing postal procedures.

(d) *Discontinuance of post offices; historic preservation.* (1) It is the policy of the Postal Service, by virtue of Board of Governors Resolution No. 82–7, to comply with Section 106 of the general provisions of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, Executive Order 12072, and Executive Order 13006. Therefore, any facility project that will have an effect on cultural resources will be undertaken in accordance with that policy.

(2) Any action involving the closing or other discontinuance of a post office shall be undertaken only in accordance with 39 U.S.C. 404(b) and 39 CFR 243.1. In the event a facility action is subject to both this section, and either the NHPA or the post office discontinuance requirements, all comment periods and other public participation matters shall be governed by those statutes.

(e) *Site selection.* (1) When the decision is to advertise for sites and existing buildings, and after such sites have been identified, advise local officials in writing of all contending sites, and with respect to all sites not selected, provide an explanation. This notice will advise local officials, and the community, that no decision to select a site will be made for a minimum of 30 days, and that comments or discussions

of all sites are solicited. Post a copy of this letter in the lobby of the affected post office for public notice.

(2) Once a specific site is then selected, notify local officials in writing of the selection decision.

(3) Take no final action to acquire or lease the selected site for 30 days following the notification in paragraph (e)(2) of this section.

(f) *Planning, zoning, building codes.* In carrying out customer service facilities projects, it is the policy of the Postal Service to comply with local planning and zoning requirements and building codes consistent with prudent business practices and unique postal requirements. In order to promote a partnership with local officials and assure conformance with local building codes, plans and drawings will be sent to the appropriate building department or other officials for review. Where payment of fees is normally required of private entities, the Postal Service will pay a reasonable fee for the review. The Postal Service will give local public officials written notice of any timely, written objections or recommendations that it does not plan to adopt or implement.

(g) *Continuing communication.* During construction, whether renovation or new construction, the postmaster should keep local officials and the community informed via letters and news releases. The postmaster and other postal officials should plan, conduct and invite the community and local officials to any ''grand opening'', as appropriate.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 98–23377 Filed 9–1–98; 8:45 am]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Region II Docket No. NY27–2–181; FRL–6140–3]**

## Approval and Promulgation of Implementation Plans; Emission Trade to Meet Reasonably Available Control Technology for the State of New York

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is announcing approval of a revision to the New York State Implementation Plan for ozone. This revision establishes and allows an emission trade between Niagara Mohawk Power Corporation and Champion International Corporation which will result in both sources meeting the requirements of reasonably available control technology for oxides of nitrogen. The intended effect of this action is to approve source-specific permit conditions, requiring the sources to trade emissions in accordance with requirements of the Clean Air Act, and resulting in emission reductions which will help toward attaining the national ambient air quality standards for ozone.

**EFFECTIVE DATE:** This rule will be effective October 2, 1998.

**ADDRESSES:** Copies of the state submittals and other information are available for public inspection during normal business hours, by appointment, at the Air Programs Branch, U.S. EPA, Region II Office, 290 Broadway, 25th Floor, New York, New York, 10007–1866; as well as the New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233; and the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Richard Ruvo, Environmental Engineer, Air Programs Branch, U.S. EPA, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866; (212) 637-4014.

**SUPPLEMENTARY INFORMATION:** On April 9, 1996, New York State submitted special permit conditions for two sources to EPA as a source-specific revision to the State Implementation Plan (SIP) for ozone. The special permit conditions are for the Niagara Mohawk Power Corporation and the Champion International Corporation for an emission trade to meet the reasonably available control technology for oxides of nitrogen ($NO_x$ RACT) requirements of New York State's Part 227–2. New York supplemented the April 9, 1996 SIP revision with amended special permit conditions on February 2, 1998. On May 21, 1998, EPA published in the **Federal Register** (63 FR 27897) a Notice of Proposed Rulemaking (NPR) proposing to approve the special permit conditions as a SIP revision and providing for a 30-day public comment period. EPA received no comments regarding the NPR. For a more detailed discussion of New York's SIP submittal and EPA's action, the reader is referred to the NPR.

### Conclusion

EPA is approving the source-specific permit conditions which allow Niagara Mohawk Power Corporation and Champion International Corporation to trade emissions to meet the requirements of NOx RACT. EPA is approving these special permit conditions, as submitted by the State of New York on April 9, 1996 and supplemented on February 2, 1998, as part of the SIP.

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.

### Administrative Requirements

*Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, 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).

*Executive Order 13045*

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

*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 annual 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 annual 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.

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3).

**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 November 2, 1998. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 30, 1998.

**Jeanne M. Fox,**

*Regional Administrator, Region 2.*

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 *et seq.*

### Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(94) to read as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(c) * * *

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(94) A revision to the State Implementation Plan submitted by the New York State Department of Environmental Conservation on April 9, 1996 and supplemented on October 17, 1996 and February 2, 1998 that allows Niagara Mohawk Power Corporation and Champion International Corporation to trade emissions to meet the requirements of $NO_X$ RACT.

(i) Incorporation by reference:

(A) Permits to Construct and/or Certificates to Operate: The following facilities have been issued permits to construct and/or certificates to operate by New York State and such permits and/or certificates are incorporated for the purpose of establishing an emission trade to be consistent with Subpart 227–2:

(1) Niagara Mohawk Power Corporation's system-wide utility boilers; New York special permit conditions and approval letter dated December 14, 1995.

(2) Champion International Corporation's two coal-fired boilers, Units 1 and 2, Jefferson County; New York special permit conditions and approval letter dated December 2, 1997.

(ii) Additional information:

(A) Documentation and information to support the emission trade in three letters addressed to EPA from the New York State Department of Environmental Conservation and dated as follows:

(1) April 9, 1996 to Mr. Conrad Simon, Director of Air and Waste Management Division from Deputy Commissioner David Sterman for a SIP revision for Niagara Mohawk Power Corporation and Champion International Corporation.

(2) October 17, 1996 letter to Mr. Ted Gardella, EPA from Mr. Patrick Lentlie, supplementing the SIP revision with the special permit condition approval letters.

(3) February 2, 1998 letter to Mr. Ronald Borsellino, Chief of the Air Programs Branch from Mr. Patrick Lentlie, supplementing the SIP revision with the amended special permit conditions for Champion International Corporation.

[FR Doc. 98–23332 Filed 9–1–98; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 212–0092a; FRL–6142–5]**

### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of particulate matter (PM) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control PM emissions from stationary sources, including process industries and cement plants. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality

standards, and plan requirements for nonattainment areas.

**DATES:** This rule is effective on November 2, 1998 without further notice, unless EPA receives adverse comments by October 2, 1998. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

**FOR FURTHER INFORMATION CONTACT:** Patricia Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

**SUPPLEMENTARY INFORMATION:**

## I. Applicability

The rules being approved into the California SIP include: SCAQMD Rule 404, Particulate Matter—Concentration; Rule 405, Solid Particulate Matter—Weight; and Rule 1112.1, Emissions of Particulate Matter from Cement Kilns. These rules were submitted by the California Air Resources Board to EPA on June 4, 1986.

## II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the South Coast Air Basin (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). The South Coast Air Basin and the Coachella Valley Planning Area (which is also under SCAQMD's jurisdiction) were among the areas designated nonattainment. On February 8, 1993, EPA re-classified five moderate non-attainment areas to serious nonattainment, including the South Coast Air Basin and the Coachella Valley Planning Area. See 58 FR 3334 (January 1, 1993). This **Federal Register** action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.[2]

Section 189(a) of the CAA requires moderate PM–10 nonattainment areas to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) of the CAA requires serious nonattainment areas to adopt best available control measures (BACM), including best available control technology (BACT).

In response to section 110(a) and part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP on June 4, 1986, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rule 404, Particulate Matter—Concentration; Rule 405, Solid Particulate Matter—Weight; and Rule 1112.1, Emissions of Particulate Matter from Cement Kilns. SCAQMD adopted these rules on February 7, 1986. These submitted rules are being finalized for approval into the SIP.

SCAQMD Rule 404 and Rule 405 are general PM rules that limit the concentration and rate of PM emissions from stationary sources. SCAQMD Rule 1112.1 limits PM emissions from cement plants. PM emissions can harm human health and the environment. These rules were originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for TSP. The following is EPA's evaluation and final action for these rules.

## III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

The statutory provisions relating to RACM/RACT and BACM/BACT are discussed in EPA's ''General Preamble'', which provides the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), and 59 FR 41998 (8/16/94). In this rulemaking action, EPA is applying these policies, taking into consideration the specific factual issues presented.

On September 28, 1981 EPA approved into the SIP versions of SCAQMD Rule 404, Particulate Matter—Concentration, and Rule 405, Solid Particulate Matter—Weight, that had been adopted on October 5, 1979. The submitted versions of Rule 404 and Rule 405 contain the same requirements as the current SIP rules but have been revised to exempt sources subject to SCAQMD Rule 1112.1, Emissions of Particulate Matter from Cement Kilns.

There is currently no version of SCAQMD Rule 1112.1, Emissions of Particulate Matter from Cement Kilns, in the SIP. The submitted rule applies to gray cement plants and includes the following provisions:

- Emission limit of 0.40 pounds per ton of kiln feed for plants with kiln feed rates of less than 75 tons per hour (tph)
- Emission limit of 30 pounds per hour for plants with kiln feed rates of 75 tph or greater.

EPA has evaluated the submitted rules and has determined that they fulfill the RACT requirements of CAA

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards. This action is part of SCAQMD's efforts to achieve compliance with the 1987 PM–10 standards.

[2] The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified AQMA. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code. Reg. § 60114); the Victor Valley/Barstow Region in San Bernardino County and the Antelope Valley Region in Los Angeles County are a part of the Mojave Desert Air Basin (17 Cal. Code. Reg. § 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code § 40106).

section 189(a). In subsequent action on the SCAQMD PM–10 BACM Plan, EPA will determine if the submitted rules also fulfill the BACT requirements of CAA section 189(b).

SCAQMD Rule 404, Particulate Matter—Concentration; SCAQMD Rule 405, Solid Particulate Matter—Weight; and SCAQMD Rule 1112.1, Emissions of Particulate Matter from Cement Kilns, are consistent with the CAA, EPA regulations, and EPA PM–10 RACT policy. Therefore, the rules are being approved under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and part D. A more detailed evaluation can be found in EPA's evaluation report for these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective November 2, 1998 without further notice unless the Agency receives relevant adverse comments by October 2, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 2, 1998 and no further action will be taken on the proposed rule.

## IV. Administrative Requirements

### *A. Executive Orders 12866 and 13045*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

### *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 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 this approval action 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 Federal 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*

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

### *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 November 2, 1998. 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

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

Dated: July 31, 1998.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

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 *et seq.*

### Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(169) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(169) New and amended regulations submitted on June 4, 1986 by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rules 404 and 405 adopted on May 7, 1976 and amended on February 7, 1986. Rule 1112.1 adopted on February 7, 1986.

* * * * *

[FR Doc. 98–23328 Filed 9–1–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MD 061–3028a, MD 065–3028a; FRL–6148–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to VOC Regulations for Dry Cleaning and Stage I Vapor Recovery

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving two State Implementation Plan (SIP) revisions submitted by the State of Maryland. The first revision amends Maryland's dry cleaning regulation such that its volatile organic compound (VOC) requirements no longer apply to dry cleaning operations using perchloroethylene. The second revision amends Maryland's Stage I Vapor Recovery regulation such that it is no longer applicable to gasoline storage tanks with a capacity of less than 2000 gallons. The intended effect of this action is to approve these revisions to Maryland's SIP in accordance with the Clean Air Act (the Act).

**DATES:** This final rule is effective November 2, 1998 unless within October 2, 1998, adverse or critical comments are received. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Donahue, (215) 814–2095, or by e-mail at donahue.carolyn@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On February 6, 1998, the Maryland Department of the Environment (MDE) submitted two formal revisions to its State Implementation Plan (SIP). The first SIP revision amends *COMAR 26.11.19.12: Control of VOCs from Dry Cleaning Installations* such that its VOC control requirements no longer apply to dry cleaning operations using perchloroethylene. EPA has determined that the compound perchloroethylene has minimal photochemical reactivity and, therefore, does not contribute significantly to the formation of ground level ozone. The second SIP revision amends *COMAR 26.11.13.04: Control of VOCs from Gasoline Storage/Loading Operations* such that it no longer applies to gasoline storage tanks with a capacity of less than 2000 gallons.

### II. Summary of the SIP Revisions

*COMAR 26.11.19.12: Control of VOCs From Dry Cleaning Installations*

In revising this regulation, Maryland removed the VOC requirements for dry cleaning operations using perchloroethylene. EPA has determined that perchloroethylene is not a compound which significantly contributes to the formation of ground level ozone (61 FR 4588, February 7, 1996). This revision removes sections B(1), C, D from COMAR 26.11.19.12 and renumbers the remaining sections accordingly. Dry cleaners that use perchloroethylene are still subject to state and federal toxic and hazardous air pollutant requirements.

*COMAR 26.11.13.04: Control of VOCs From Gasoline Storage/Loading Operations*

Maryland amended this regulation to eliminate the Stage I Vapor Recovery requirements for gasoline storage tanks with a capacity of less than 2000 gallons. Through a survey conducted in August 1995 of Maryland service stations, MDE concluded that less than 2% of the total gasoline throughput was from tanks with a capacity between 250 and 2000 gallons. This revision removes sections C(1)(b), C(2), and C(4) and renumbers the remaining sections accordingly.

EPA is approving this rule without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should adverse or critical comments be filed. This rule will be effective November 2, 1998 without further notice unless the Agency receives relevant adverse comments by October 2, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. 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 rule will be effective on November 2, 1998 and no further action will be taken on the proposed rule. If adverse comments are received that do not pertain to both approval actions taken in this rule, the action not affected by the adverse comments will be finalized in the manner described here. Only those actions which receive adverse comments will be withdrawn in the manner described here.

### III. Final Actions

EPA is approving revisions to *COMAR 26.11.19.12: Control of VOCs from Dry Cleaning Installations.* EPA is also approving the revisions to *COMAR 26.11.13.04: Control of VOCs from Gasoline Storage/Loading Operations.*

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.

## IV. Administrative Requirements

*A. Executive Order 12866 and 13045*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review. The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

*B. 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.

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 EPA 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 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 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*

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

### 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 November 2, 1998. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to two of Maryland's VOC revisions 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements.

Dated: August 11, 1998.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(131) and (132) to read as follows:

### § 52.1070 Identification of plan.

* * * * *

(c) * * *

(131) Revisions to the Maryland State Implementation Plan submitted on February 6, 1998 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of February 6, 1998 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan, pertaining to volatile organic compounds in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revision to COMAR 26.11.19.12: Control of Volatile Organic Compound Emissions from Dry Cleaning Installations, adopted by the Secretary of the Environment on August 18, 1997, and effective on September 22, 1997, including the following:

(*1*) Deletion of COMAR 26.11.19.12.B(1), pertaining to perchloroethylene dry cleaner installations applicability.

(*2*) Deletion of COMAR 26.11.19.12.C, Equipment Specifications and Emission Standards—Perchloroethylene Dry Cleaning Installations.

(*3*) Deletion of COMAR 26.11.19.12.D, Determination of Compliance—Perchloroethylene Dry Cleaning Installations.

(ii) Additional Material—Remainder of February 6, 1998 State submittal pertaining to COMAR 26.11.19.12 Control of Volatile Organic Compound Emissions from Dry Cleaning Installations

(132) Revisions to the Maryland State Implementation Plan submitted on February 6, 1998 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of February 6, 1998 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan, pertaining to volatile organic

compounds in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revision to COMAR 26.11.13.04: Control of Gasoline and Volatile Organic Compound Storage and Handling from Loading Operations, adopted by the Secretary of the Environment on July 18, 1997, and effective on August 11, 1997, including the following:

(1) Deletion of COMAR 26.11.13.04.C(1)(b), pertaining to the applicability of this regulation to gasoline storage tanks with a capacity greater than 250 gallons and less than 2000 gallons.

(2) Deletion of COMAR 26.11.13.04.C(2), Exemptions.

(3) Deletion of COMAR 26.11.13.04.C(4), Effective Date of Stage I Requirement for Certain Sources.

(ii) Additional material—Remainder of February 6, 1998 State submittal pertaining to COMAR 26.11.13.04 Control of Gasoline and Volatile Organic Compound Storage and Handling from Loading Operations.

[FR Doc. 98–23326 Filed 9–1–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA 119–4074a; FRL–6148–3]**

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

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

**ACTION:** Direct final rule.

**SUMMARY:** This action serves to remove several conditions of EPA's January 28, 1997 interim final approval of the Commonwealth of Pennsylvania's State Implementation Plan (SIP) revision for its enhanced motor vehicle emissions inspection and maintenance (I/M) program. The Commonwealth has amended its SIP (since EPA granted conditional interim approval of that plan) to address these deficiencies. EPA is removing these conditions by approving two related SIP revisions submitted by Pennsylvania. These revisions serve to bolster the Commonwealth's I/M SIP, and to strengthen its I/M program. The intended effect of this action is to remove several conditions placed by EPA upon the approval of the Commonwealth's SIP. However, as Pennsylvania has yet to address several other outstanding rulemaking conditions on this same SIP, the Commonwealth's I/M SIP will continue to be conditionally approved, in accordance with the Clean Air Act, until the Commonwealth satisfies the remaining conditions.

**DATES:** This direct final rule is effective on November 2, 1998 without further notice, unless EPA receives adverse comment by October 2, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments should be mailed to Marcia Spink, Associate Director, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street—14th Floor, Philadelphia, Pennsylvania 19103; and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814–2176, or by e-mail at rehn.brian@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 28, 1997, EPA published in the **Federal Register** a document (62 FR 4004) granting conditional interim approval to Pennsylvania's enhanced I/M program SIP (submitted March 22, 1996)—under the authority of both the National Highway Systems Designation Act of 1995, and the Clean Air Act as amended in 1990. The NHSDA established key changes to previous EPA I/M requirements. Under the NHSDA, EPA could not disapprove, or automatically discount the effectiveness of, a state's I/M program solely because it utilized a decentralized testing network. Instead, on the basis of a ''good faith estimate'' by a state, the NHSDA allowed for presumptive equivalency of such decentralized networks to the benchmark of centralized programs. Under the NHSDA, EPA was to grant ''interim'' approval of such decentralized programs, for an 18-month period, at the end of which the state is required to submit an evaluation of the actual effectiveness of the enhanced program.

In Pennsylvania's case, EPA granted interim approval of the enhanced I/M program SIP, but also conditioned approval of that SIP upon the satisfaction of five major deficiencies, and fourteen minor, or de minimus, deficiencies. EPA's January 28, 1997 interim conditional approval stipulated that the five major conditions were to be corrected within one year of approval, and that the de minimus conditions be addressed within eighteen months of approval. On January 9, 1998, EPA published (63 FR 1362) a final rule amending federal I/M requirements for ongoing evaluation methodologies for state I/M programs—one of the major deficiencies of Pennsylvania's program identified by EPA in its January 1998 interim conditional approval. EPA's I/M requirements rule change also served to amend the related condition of the Commonwealth's approval. As a result, the deadline for the Commonwealth to satisfy this condition was extended from February of 1998 to November 30, 1998.

The NHSDA effectiveness demonstration described previously is also due at the end of the 18-month NHSDA, interim approval period. The Commonwealth's interim approval period granted under authority of the NHSDA expires on August 28, 1998.

#### Status of I/M Program SIP Revisions

On November 13, 1997 and on February 24, 1998, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). These November 13, 1997 SIP revisions consist of Pennsylvania's revised, final I/M program regulations, as well as supporting information and materials. The February 24, 1998 SIP revision contains updated emissions benefit computer modeling to demonstrate that Pennsylvania's program meets federal performance-based standards for enhanced I/M programs. Both SIP revisions are intended to partially satisfy ''major'' and ''minor'', or de minimus, deficiencies identified by EPA in its January 28, 1997 interim conditional approval of the Commonwealth's March 22, 1996 I/M program SIP submittal.

EPA views the November 13, 1997 and the February 24, 1998 SIP revisions as separate, independent SIP amendments from the enhanced I/M SIP revision submitted on March 22, 1996. While these two more recent SIP revisions are related to the March 1996 enhanced I/M SIP revision submitted by the Commonwealth, they serve to supplement and to strengthen the Commonwealth's enhanced I/M program SIP—not to replace it. EPA is today acting only upon the November

1997 and the February 1998 SIP revisions submitted by the Commonwealth to satisfy certain deficiencies of its conditionally approved enhanced I/M plan, and in so doing EPA is not reopening its January 27, 1997 final rulemaking granting conditional interim approval of the Commonwealth's enhanced I/M SIP submitted on March 22, 1996.

Since at the time of this rulemaking action, the Commonwealth has not yet addressed all of the outstanding deficiencies, nor has it submitted its NHSDA I/M network effectiveness demonstration, EPA cannot grant full interim approval at this time. That effectiveness demonstration is not due until August 28, 1998. Therefore, the Commonwealth's I/M SIP revision cannot receive full approval, and instead must maintain a form of conditional interim approval. The Commonwealth has indicated that it will submit its NHSDA effectiveness demonstration and a revision to address all remaining EPA-identified deficiencies prior to August 28, 1998. EPA will act upon those submittals in a separate, later rulemaking action.

**Summary of Subject I/M SIP Revisions**

The November 13, 1997 SIP revision that is the subject of today's action contains Pennsylvania's enhanced I/M program regulations for all applicable areas of the Commonwealth, as well as supporting information provided to bolster and to better document the conditionally approved March 1996 I/M SIP submission. The regulations were revised, in part, to address deficiencies identified in EPA's January 1997 interim conditional approval of the plan. The supporting information in the November 1997 SIP revision also includes additional information for the Commonwealth's demonstration of the adequacy of windshield stickers as a means to ensure motorist compliance with the enhanced I/M program. In addition, a *Pennsylvania Bulletin* notice certifying the list of counties subject to enhanced I/M that would commence enhanced testing October 1, 1997 was included as part of that SIP revision. Also included, was a description of the Commonwealth's emissions waiver program, as well as a description of the Commonwealth's plan for providing consumers general information on the program and on the effectiveness of repair facilities in performing emissions-related repairs.

The February 24, 1998 SIP amendment contain's Pennsylvania's modeling demonstration, which shows that its enhanced I/M programs (for each subject I/M program area) will achieve the desired emissions benefits by meeting federal performance-based standards.

These two SIP revisions fully satisfy four of the five ''major'' conditions and seven of the fourteen de minimus conditions identified by EPA in its January 28, 1997 interim conditional approval of the Commonwealth's enhanced I/M program.

The conditions that EPA has placed upon its interim approval of Pennsylvania's SIP are codified at 40 CFR 52.2026. Those conditions which the Commonwealth has satisfied in its November 1997 and February 1998 SIP revisions are detailed below. This includes the following ''major'' conditions:

(1) By no later than September 15, 1997, a notice must be published in the Pennsylvania Bulletin by the Secretary of the Pennsylvania Department of Transportation which certifies that the enhanced I/M program is required in order to comply with federal law and also certifies the geographic areas which are subject to the enhanced I/M program (the geographic coverage must be identical to that listed in Appendix A–1 of the March 22, 1996 SIP submittal), and certifies the commencement date of the enhanced I/M program;

(2) The Commonwealth must submit to EPA as a SIP amendment, by November 30, 1998, the final Pennsylvania I/M program evaluation plan requiring an approved alternative sound evaluation methodology to be performed on a minimum of 0.1 percent of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets the program evaluation elements as specified in 40 CFR 51.353(c). [Note: The Commonwealth submitted, in the November 13, 1997 SIP revision submittal, amendments to its enhanced I/M regulation requiring that the ongoing evaluation of its program be conducted as specified, above. By November 30, 1998, the Commonwealth must submit its actual program evaluation plan including the specific EPA-approved methodology it will use to conduct the ongoing program evaluation required under its I/M regulation. Submittal of that program evaluation plan is necessary to satisfy this condition fully.]

(3) By no later than November 15, 1997, the Commonwealth must submit a demonstration to EPA as an amendment to the SIP that meets the requirements of 40 CFR 51.361 (b)(1) and (b)(2) and demonstrates that Pennsylvania's existing sticker enforcement system is more effective than registration denial enforcement;

(4) Within twelve months of EPA's final interim rulemaking action, Pennsylvania must adopt and submit a final Pennsylvania I/M regulation which requires and which specifies the following: exhaust test procedures, standards, and equipment specifications; and evaporative system functional test methods, standards and procedures; a visual inspection procedure for determining the presence of or tampering with of vehicle emission control devices; and a repair technician training and certification (TTC) program. The test methods and procedures established under the Commonwealth's I/M regulation must be acceptable to EPA, as well as to the Commonwealth. The test methods and standards provided for by the Commonwealth's final regulation must reflect the modeling assumptions found in the Commonwealth's final performance standard modeling demonstration (which must satisfy the requirements of 40 CFR 51.351). Within the same time frame, detailed test equipment specifications and standards (which are acceptable to EPA, as well as to the Commonwealth) for all of the I/M evaporative and exhaust tests provided for by the Commonwealth's regulation (as described above) must be finalized and submitted as a SIP revision to EPA; and

(5) The Commonwealth must perform the final modeling demonstration that its program will meet the relevant enhanced performance standard and submit it to EPA, within twelve months of EPA's final interim rulemaking.

In addition to the above conditions for approval, the EPA required the Commonwealth to correct fourteen minor, or de minimus deficiencies, related to approval of the enhanced I/M program. EPA required that these ''minor'' deficiencies be corrected prior to the end of the 18-month interim period granted to the Pennsylvania enhanced I/M SIP under the National Highway Safety Designation Act of 1995. The de minimus conditions that Pennsylvania satisfied in its November 1997 and February 1998 submittals are all detailed below and include:

(1) This condition has not yet been addressed. To be addressed in a future SIP submittal, expected by August, 1998;

(2) The definition of light duty truck in the definitions section of the final Pennsylvania I/M regulation must provide for coverage up to 9,000 pounds GVWR;

(3) The final Pennsylvania I/M regulation must require implementation of the final full stringency emission standards at the beginning of the second

test cycle so that the state can obtain the full emission reduction program credit prior to the first program evaluation date;

(4) The final Pennsylvania I/M regulation must require a real-time data link between the state or contractor and each emission inspection station as per 40 CFR 51.358(b)(2);

(5) This condition has not yet been addressed. To be addressed in a future SIP submittal, expected by August, 1998;

(6) The Pennsylvania I/M regulation must *only* allow the Commonwealth or a single contractor to issue waivers as per 40 CFR 51.360(c)(1);

(7) This condition has not yet been addressed. To be addressed in a future SIP submittal, expected by August, 1998;

(8) This condition has not yet been addressed. To be addressed in a future SIP submittal, expected by August, 1998;

(9) This condition has not yet been addressed. To be addressed in a future SIP submittal, expected by August, 1998;

(10) This condition has not yet been addressed. To be addressed in a future SIP submittal, expected by August, 1998;

(11) The final Pennsylvania I/M regulation must require that emissions inspectors complete a refresher training course or pass a comprehensive skill examination prior to being recertified and the final SIP revisions must include a commitment that the Commonwealth will monitor and evaluate the inspector training program delivery, per the requirements of 40 CFR 51.367;

(12) The final I/M SIP submittal must include a RFP, or other legally binding document, which adequately addresses how the Commonwealth's selected contractor will comply with the public information requirements of 40 CFR 51.368;

(13) The Pennsylvania I/M regulation must include provisions that meet the requirements of 40 CFR 51.368(a) and 51.369(b) for a repair facility performance monitoring program plan and for providing the motorist with diagnostic information based on the particular portions of the test that were failed; and

(14) This condition has not yet been addressed. To be addressed in a future SIP submittal, expected by August, 1998.

EPA has reviewed the Commonwealth's SIP revisions and determined that they address the above conditions. EPA's detailed review is contained in the technical support document (TSD) it prepared in support of this rulemaking action. The TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. EPA is approving the Commonwealth's November 13, 1997 and February 24, 1998 SIP submittals as having satisfied those conditions set forth above. The purpose of this approval action is to remove certain conditions EPA had placed upon the Commonwealth's SIP, which have been addressed by subsequent SIP revisions. EPA is therefore removing these conditions from EPA's conditional interim approval of the Pennsylvania I/M SIP.

EPA is approving these SIP revisions without prior proposal because the Agency views this as a non-controversial SIP amendment and anticipates no adverse comments on this rulemaking action. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments related to today's rulemaking be filed. This rule will be effective November 2, 1998 without further notice unless the Agency receives adverse comments by October 2, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only 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 rule will be effective on November 2, 1998 and no further action will be taken on the proposed rule.

## Final Action

EPA is approving the Commonwealth's November 13, 1997 and February 24, 1998 SIP submittals as having fully satisfied four major conditions and seven de minimus conditions identified by EPA in its January 28, 1997 interim conditional approval of the Pennsylvania enhanced I/M SIP [62 FR 4004]. Upon approval of these SIP revisions, there will still remain one major, and seven minor conditions on EPA's interim approval of the Commonwealth's enhanced I/M program SIP. Therefore, EPA is maintaining conditional interim approval of the Commonwealth's SIP, until Pennsylvania addresses all remaining deficiencies and submits a enhanced I/M program network effectiveness demonstration, as required under authority of the National Highway Systems Designation Act of 1995.

For the purpose of clarity and to avoid confusion over the remaining conditions upon interim approval of Pennsylvania's plan, EPA is removing those conditions from 40 CFR 52.2026 which have been satisfied by the Commonwealth's November 1997 and February 1998 SIP revisions. EPA is reserving the sections of 40 CFR 52.2026 that correspond to these conditions, so as not to renumber the outstanding conditions of approval listed in that section. The list of remaining conditions upon interim approval of Pennsylvania's enhanced I/M SIP will now read as follows:

*''Major'' Conditions*

(1) <Reserved>

(2) The Commonwealth must submit to EPA as a SIP amendment, by November 30, 1998, the final Pennsylvania I/M program evaluation plan requiring an approved alternative sound evaluation methodology to be performed on a minimum of 0.1 percent of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets the program evaluation elements as specified in 40 CFR 51.353(c). The Commonwealth submitted, in the November 13, 1997 SIP revision submittal, amendments to its enhanced I/M regulation requiring that the ongoing evaluation of its program be conducted as specified, above. By November 30, 1998, the Commonwealth must submit its actual program evaluation plan including the specific EPA-approved methodology it will use to conduct the ongoing program evaluation required under its I/M regulation.

(3) <Reserved>

(4) <Reserved>

(5) <Reserved>

*''Minor''/De Minimus Conditions*

(1) The final I/M SIP submittal must detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions as per 40 CFR 51.354;

(2) <Reserved>

(3) <Reserved>

(4) <Reserved>

(5) The final I/M SIP submittal must provide quality control requirements for one-mode ASM (or two-mode ASM if the Commonwealth opts for it);

(6) <Reserved>

(7) The final I/M SIP submittal must include the RFP, or other legally

binding document, which adequately addresses how the private vendor selected to perform motorist compliance enforcement responsibilities for the Commonwealth's program will comply with the requirements, as per 40 CFR 51.362;

(8) The final I/M SIP submittal must include the RFP that adequately addresses how the private vendor will comply with 40 CFR 51.363, a procedures manual which adequately addresses the quality assurance program and a requirement that annual auditing of the quality assurance auditors will occur as per 40 CFR 51.363(d)(2);

(9) The final I/M SIP submittal must include provisions to maintain records of all warnings, civil fines, suspensions, revocations, violations and penalties against inspectors and stations, per the requirements of 40 CFR 51.364;

(10) The final I/M SIP submittal must include a RFP, or other legally binding document, which adequately addresses how the private vendor selected by the Commonwealth to perform data collection and data analysis and reporting will comply with all the requirements of 40 CFR 51.365 and 51.366; and

(11) <Reserved>

(12) <Reserved>

(13) <Reserved>

(14) The final I/M SIP submittal must contain sufficient information to adequately address the on-road test program resource allocations, methods of analyzing and reporting the results of the on-road testing and information on staffing requirements for both the Commonwealth and the private vendor for the on-road testing program.

Nothing in EPA's rulemaking 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 SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## I. Administrative Requirements

### *A. Executive Orders 12866 and 13045*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review. The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

### *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 approval of a SIP submittal under section 110 and subchapter I, part D of the CAA does not create any new requirements but simply approve requirements that a state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, EPA 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)]. If a conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities.

### *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*

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

### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this direct final approval action for Pennsylvania's enhanced I/M SIP revision must be filed in the United States Court of Appeals for the appropriate circuit by November 2, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule pertaining to the Pennsylvania enhanced I/M SIP 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 11, 1998.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, EPA Region III.*

40 CFR Part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart NN—Pennsylvania

2. Section 52.2026 is amended by removing and reserving paragraphs

(a)(1), (3), (4), and (5), and paragraphs (b)(2), (3), (4), (6), (11), (12), and (13).

3. Section 52.2026 is further amended by adding the following two sentences at the end of paragraph (a)(2):

**§ 52.2026 Conditional approval.**

* * * * *

(a) * * *

(2) * * * The Commonwealth submitted, in a November 13, 1997 SIP revision submittal, amendments to its enhanced I/M regulation requiring that the ongoing evaluation of its program be conducted as specified in this paragraph. By November 30, 1998, the Commonwealth must submit its actual program evaluation plan including the specific EPA-approved methodology it will use to conduct the ongoing program evaluation required under its I/M regulation.

[FR Doc. 98–23324 Filed 9–1–98; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

**[OPPTS–62158A; FRL–6017–8]**

**RIN 2070–AD11**

### Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors

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

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing this final rule to establish fees for the accreditation of training programs and certification of contractors engaged in lead-based paint activities pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA). As specified in section 402(a)(3), EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's cost of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors engaged in lead-based paint activities. Specifically, this rule establishes the fees to be charged in those States and Indian country without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

About three-quarters of the nation's housing stock built before 1978 (64 million homes) contains some lead-based paint. When properly maintained and managed, this paint poses little risk. If improperly managed, chips and dust from this paint can create a health hazard. Recent studies indicate that nearly one million children have blood-lead levels above safe limits; the most common source of lead exposure in the United States is lead-based paint. Today's rule supports the effort of 40 CFR part 745, subpart L to ensure that contractors claiming to know how to inspect, assess or remove lead-based paint, dust or soil are well qualified, trained and certified to conduct these activities.

**DATES:** This rule is effective October 19, 1998 unless significant adverse comments are received by October 2, 1998. If significant adverse comments are received in a timely manner, this rule will be subsequently withdrawn and notice will be published in the **Federal Register** before the effective date.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III of the SUPPLEMENTARY INFORMATION section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mike Wilson, Project Manager, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: 202–260–4664; fax: 202–260–1580; e-mail: wilson.mike@epa.gov. For general information: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: 202–554–1404, TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under TSCA section 402 and 40 CFR 745.225, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with TSCA section 402 and 40 CFR 745.226. Potentially affected categories and entities may include:

| Category | Examples of Regulated Entities |
|---|---|
| Lead abatement professionals. | Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities. |
| | Firms engaged in lead-based paint activities. |
| Training programs. | Training programs providing training services in lead-based paint activities. |

This table is not intended to be exhaustive, but rather provides a guide to the entities that are likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the provisions in the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the FOR FURTHER INFORMATION CONTACT section.

#### II. How Can I Get Additional Information or Copies of this or Other Support Documents?

*A. Electronically*

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/homepage/fedrgstr/.

*B. In Person or by Phone*

If you have any questions or need additional information about this action please contact one of the persons identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this action has been established under docket control number [OPPTS–62156A], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. NE B–607, Waterside Mall, 401 M St., SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Document Control Office telephone number is 202–260–7093.

## III. How Can I Respond to this Action?

*A. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number [OPPTS–62158A] in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, East Tower, Waterside Mall, 401 M St., SW., Washington, DC; telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments in ASCII file format avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket control number. You may also file electronic comments and data online at many Federal Depository Libraries.

*B. How Should I Handle CBI Information in My Comments?*

You may claim information that you submit in response to this action as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. All CBI claims must be made at the time the information is submitted. Failure to make a CBI claim at the time of submittal will be considered a waiver of such claims. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

## IV. Under What Legal Authority Is this Action Being Issued?

EPA is issuing this rule under the authority of section 402 of TSCA (15 U.S.C. 2682). Sections 402(a)(1) and (a)(2) require the Agency to promulgate regulations for, among other things, the accreditation of training programs and the certification of individuals and firms engaged in lead-based paint activities. This regulation was published in the **Federal Register** on August, 29 1996 (61 FR 45805–45808)(FRL–5389–9) and appears at 40 CFR part 745, subpart L. Section 402(a)(3) of TSCA requires, with certain exceptions, that the Administrator of EPA impose a fee on persons operating accredited training programs and on individuals and firms engaged in lead-based paint activities certified under TSCA. Section 402(a)(3) requires that the fees be established at a level necessary to cover the costs of administering and enforcing the standards and regulations under this section. EPA does not have the authority to retain fees collected under this program. Therefore, fees collected by the Agency will be deposited into the Treasury as required by 31 U.S.C. 3302(b).

## V. How Does this Action Fit into EPA's Overall Lead Program?

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X direct EPA to promulgate regulations aimed at fulfilling the purposes of Title X. These include TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and to establish standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States seeking to establish their own lead-based paint activities programs. On August 29, 1996, EPA promulgated final rules that implemented sections 402 and 404 of TSCA titled ''Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities''. These rules are codified at 40 CFR part 745, subpart L. Section 402(a)(3) of TSCA directs the Agency to establish fees for the accreditation of training programs and certification of individuals and firms conducting lead-based paint activities. Today's rule addresses this TSCA requirement with respect to entities regulated under part 745, subpart L. EPA expects to develop additional regulations addressing lead-based paint activities for commercial and public buildings, and for the disposal of lead-based paint debris. To the extent EPA requires additional accreditations or certifications pursuant to such rules, additional fee rules may be developed.

Before EPA began the development of this rule, the Agency consulted with States with lead-based paint activities programs, Federal officials with experience in operating fee-charging programs, and with other interested parties. Over the last several months, the Agency has carefully reviewed and considered the information that has been provided. While not all of this information has been incorporated into this notice, all points of view have been carefully evaluated and many of the concepts of the interested parties are reflected in this rule.

## VI. Who Will Be Required to Pay Fees Under this Rule?

The fees in this rule apply to (1) training programs applying to EPA for the accreditation and re-accreditation of training courses in the following disciplines: inspector; risk assessor; supervisor; project designer; abatement worker; and (2) individuals and firms seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the above mentioned disciplines. Consistent with TSCA section 402(a)(3) and as further described in this preamble, this rule precludes the imposition of fees for the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

This rule applies only in States and Indian country where there are no authorized programs pursuant to 40 CFR part 745, subpart Q. For further information regarding the authorization status of areas or regions of the country contact the National Lead Information Center (NLIC) at 1–800–424–LEAD.

## VII. What Fee System Is Being Established With this Action?

As directed by section 402(a)(3) of Title IV of TSCA, EPA is establishing fees to recover the costs of administering and enforcing the standards and regulations promulgated for the accreditation and certification program for lead-based paint activities. TSCA Section 402(a)(3)(A) precludes EPA from imposing fees for the accreditation of training programs operated by a State, local government, or nonprofit organization. As discussed below, EPA is also providing an exemption for training programs operated by federally recognized Indian Tribes. EPA will absorb the cost of exempt participants and will only collect operating costs associated with

non-exempt participants in this program.

This rule establishes fees for the certification and periodic re-certification of individuals and firms, and for the accreditation and periodic re-accreditation of training programs. Also included are fees for examinations, replacement of a lost certificate or identification card, and for multi-state registration. The multi-state registration fee will apply to individuals and to training programs intending to provide training or perform lead-based paint activities in more than one State administered by the EPA program. This fee will be applied per discipline for each additional EPA- administered State in which the applicant seeks certification/re-certification or accreditation/re-accreditation.

To develop the accreditation and certification fee levels, EPA estimated the demand for accreditation and certification in EPA-administered areas and the costs of administering and enforcing the relevant standards and regulations in these areas. Based on these estimates, EPA developed a fee schedule to cover the relevant costs. Fees for certification exams, multi-state registration, and identification card and certificate replacement were estimated based on the burdens required for Agency clerical, technical, and managerial staff to perform similar tasks.

The following are discussions of key decision points regarding distribution of cost, fee structure and accreditation fee waivers. For each key issue, the alternatives considered by the Agency are discussed, the Agency's selection is identified, and a rationale for the Agency's decision is presented. For more detailed information regarding assumptions and methods used to estimate costs and develop the fee structure please refer to the Regulatory Impact Analysis titled ''Economic Assessment for the TSCA Section 402(a)(3) Lead-Based Paint Accreditation and Certification Fees Rule,'' which can be found in the docket for this action.

*A. How Will Costs Not Related to Application Processing be distributed?*

Not all costs of administration and enforcement are attributable to specific applications. Although EPA Regional administrative costs depend directly on the number and type of accreditation or certification applications received, EPA enforcement and Headquarters administrative costs generally cannot be estimated based on the number of applications. Accordingly, EPA Regional administrative costs are estimated and allocated on a per application basis. The Agency evaluated the following two alternatives for allocating EPA enforcement costs and Headquarters administrative costs to all entities covered by the rule:

1. *Fixed amount per application.* In this approach, EPA calculated a fixed amount per application by dividing the sum of the cost of all enforcement and EPA Headquarters administrative activities over the 5–year projection period by the estimated number of accreditations, re-accreditations, certifications, and re-certifications over the same period. The same amount of these costs would have been attributed to each application.

2. *Fixed ratio of Regional administrative costs to enforcement and Headquarters administrative costs.* In the second approach, EPA calculated a fixed ratio for allocating enforcement and Headquarters administrative costs by dividing the sum of these costs by Regional administrative costs. The Regional administrative costs for each type of accreditation or certification was multiplied by this fixed ratio to determine the portion of enforcement and Headquarters administrative cost each applicant would pay.

A comparison of the fee levels shows that they tend to be higher for training programs using the fixed ratio approach, and higher for individuals using the fixed amount approach. The much higher number of individual certifications means that individuals will be attributed more of the enforcement and EPA Headquarters administrative costs than training programs if a fixed amount is applied. The much higher EPA Regional administrative costs per accreditation, in comparison to those costs for an individual certification, means that training programs will be attributed more of the enforcement and Headquarters administrative costs than individuals if a fixed ratio is applied.

The Agency has chosen the fixed amount approach to distribute fixed activity costs. The fixed amount approach was selected because it most equitably divides enforcement and headquarters administrative costs among program participants. The Agency feels the fixed ratio approach by linking enforcement burden to application processing cost unduly allocates a larger portion of these costs to training providers.

*B. What Types of Fee Structures Were Considered?*

EPA estimated fee levels for two fee structure options: Stratified Average Cost and Simplified Average Cost. The Stratified Average Cost option estimates fee levels for different types of participants based on the administrative burden they impose on government. The Simplified Average Cost option estimates average fee levels for broad groups of training programs, firms, and individuals and generally does not vary according to the relative burden that a fee payer within this larger group imposes on the government. The two fee structure options result in categories of fees as outlined below:

1. *Stratified Average Cost*— i. *Training programs.* Fees depend on whether the training program is applying for accreditation or re-accreditation of an initial or refresher training course in each of five disciplines. Under this option the estimated accreditation fee and the estimated re-accreditation fee for four categories of refresher training courses are the same. This occurs since both the EPA Regional administrative cost, based on State data, and the fixed ratio applied for enforcement and EPA Headquarters administrative costs are estimated to be equal for these four categories.

ii. *Firms.* Firms are charged a fee only when they apply for certification. (Firms are not required to periodically re-certify.) This fee does not vary.

iiii. *Individuals.* Fees vary by discipline and differ depending on whether the individual is applying for initial certification or re-certification.

2. *Simplified Average Cost*— i. *Training programs.* Fees do not vary by discipline or by initial versus refresher course. Instead, they depend on whether the training program is applying for accreditation or re-accreditation of a training course, thereby resulting in two separate fee levels.

ii. *Firms.* Firms are charged a fee only when they apply for certification. This fee does not vary.

iii. *Individuals.* Fees vary by two groups of disciplines: (a) Inspectors, risk assessors, and supervisors and (b) workers and project designers. The fees do not depend on whether the individual is applying for initial certification or re-certification, thereby resulting in only two separate fees.

The stratified average cost approach results in a wide range of fee levels. The Simplified Average Cost approach estimates fee levels by calculating an average EPA burden of accreditation or certification. As a result, under the Simplified Average Cost approach some training programs and individuals have to pay more or less than the actual burden incurred by EPA to accredit or certify them. A comparison of fees under the two approaches shows that

some training programs and some individuals could be charged over three times as much under the Simplified Average Cost approach. Certification fees of firms are not affected, however, since a single fee category is estimated for them under both fee structure options.

The Agency has selected the stratified average cost option to determine fee structure. Under this option, fees that more closely reflect the administrative burden per application type are imposed. EPA believes that the simplified average cost option, while providing a simplified fee structure, does not equitably or fairly distribute program cost nor accurately reflect the demands on the agency.

*C. What Are the Accreditation Fee Waivers?*

Today's rule includes the statutorily-prescribed exemption from user fees for training programs operated by State and local governments, and non-profit organizations. Title IV of TSCA does not address how Indian Tribes should be viewed for purposes of fees, and EPA does not believe that Congress considered whether to grant fee waivers to Indian Tribes when it specified these exemptions. EPA is thus filling a statutory gap in providing a fee waiver for Indian Tribes. This is consistent with EPA's view that eligible Indian Tribes may operate lead-based paint worker certification and training programs in lieu of the Federal government. See 61 FR 45805–45808 (August 29, 1996). EPA's action in exempting Tribal training programs from the requirement to pay user fees recognizes that Tribes are government entities that should not be singled out from States and local governments for the payment of user fees. Although EPA believes it is authorized to provide the fee waiver as a gap-filling measure, EPA could, in the alternative, achieve the same result by interpreting the term ''local government'' in section 402(a)(3) to include Indian Tribes.

TSCA section 402(a)(3) states that EPA may waive the training program accreditation fee for firms for the purpose of training their own employees. EPA has decided not to adopt a policy of waiving accreditation fees for firms who wish to train their own employees. None of the nine States contacted by EPA allow such a waiver under their lead accreditation programs. By allowing such a waiver the Agency feels that there would be a greater need for enforcement activities to ensure only persons who meet training requirements are awarded course completion certificates. Also, the availability of training courses for small firms and individuals may suffer due to decreased demand for these training services. Furthermore, a waiver of this type will further increase competitive pressures on for-profit training programs, and would diminish returns to the U.S. Treasury.

## VIII. How Are the Fees Adjusted for Full Cost Recovery, Inflation, and Other Factors?

EPA will review and modify the fees established by 40 CFR 745.238 periodically to assure that charges continue to reflect EPA's costs. Fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the **Federal Register**.

## IX. How Do I Pay the Fees?

Each fee payment described in this rule shall be in U.S. currency and shall be paid by check or money order. Individuals, firms or training programs shall submit fee payments in accordance with instructions provided with the application materials. No application will be considered complete until payment is made and final certification/accreditation shall be dependent on the payment of the applicable fees.

## X. How Can I Apply for Accreditation or Certification?

The application requirements can be found in 40 CFR 745.225 and 745.226. In addition, the Agency has prepared application packages and guidance on applying. This material is available from EPA through the National Lead Information Center at 1–800–424–LEAD.

## XI. Why Is EPA Issuing this Action as a Final Rule Yet Allowing an Opportunity for Public Comment?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As such, two independent bases exist which qualify this action for the ''good cause'' exemption in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) that allows agencies in limited circumstances to issue final rules without first providing notice and an opportunity for comment. Virtually all of the significant policy choices associated with this rulemaking have already been made by Congress, and this rule is in most respects merely a technical application of statutory directive.

There are three major components to the rulemaking. First, the rule is based on an estimate of EPA administrative and enforcement costs. EPA is clearly in the best position to provide this estimate, as it necessarily involves consideration of internal EPA operating procedures, costs, and personnel practices. Thus, it is unlikely that the public will be able to provide meaningful comment on this aspect of the rulemaking.

Second, the rule reflects a policy choice on how EPA costs are to be distributed among those required to pay fees. Although those participants paying the highest fees under the rule may prefer that EPA flatten the fee structure so that their fees would be reduced, EPA has already considered this option and has determined that such an approach would be inequitable. In light of EPA's policy choice, the assessment of individual fees turns on a technical assessment of EPA administrative and enforcement costs for each category of participant. Once again, it is unlikely that the public can provide meaningful input on EPA's estimates of its own program costs.

The third component of the rule relates to fee waivers. Although the rule largely incorporates statutory directives in this regard (as to State and local governments, and non-profit training providers), it also provides a fee waiver for Indian Tribes, and specifies that contractors training their own employees will not be entitled to a fee waiver. Since the fee waiver for Indian Tribes is consistent with the statutory waivers provided for States and local governments, is consistent with EPA treatment of Indian Tribes for purposes of authorizing Tribal lead-based paint programs under 40 CFR 745.320–745.339, and relieves (rather than imposes) a regulatory requirement, EPA does not expect that the public would provide adverse comment on the Tribal fee waiver.

EPA recognizes that there may be some who are dissatisfied by the Agency's decision not to waive fees for contractors training their own employees, but EPA does not expect that the public can suggest a basis for a fee waiver that will override the objective of maximizing recovery of EPA costs associated with this program. Thus, EPA believes that providing an opportunity for public comment is unnecessary. While not required to do so under the APA, EPA is willing to delay the effective date of this rule pending the unlikely receipt of significant adverse comments that would inform the decision in ways not already considered. Such a delay seems

prudent to avoid the possibility and the resultant confusion, of adjusting the fees once the application process has started. If significant adverse comment is received during a 30–day period (described in more detail below), EPA will issue a notice to withdraw those aspects of this final rule which are addressed by the adverse comment.

The Agency is scheduled to begin receiving applications for accreditation of training providers in September of 1998. The Agency believes that it is critically important for the necessary fees to be established prior to the initiation of the application period. Without established fees, it will be more difficult for applicants to determine the extent to which they may wish to participate in the program. Without a fee rule in place, EPA would need to assess fees on a case-by-case basis, based on actual EPA costs in reviewing individual applications and on estimated future administrative and enforcement costs. This approach would burden EPA with the requirement of keeping track of all time spent processing individual applications. The use of a case-by-case assessment would undoubtedly prolong the application process and result in uncertainty to potential program applicants who would not know the amount of fees they will be required to pay until their application is fully processed. Delaying issuance of the rule to allow an opportunity for public comment would require issue of the case-by-case assessment process in the interim pending finalization of a fee rule and would not, therefore, be in the public interest.

Although the Agency believes that it is appropriate to issue this action immediately as a final rule, EPA is providing an opportunity for the public to submit comment on it. If no significant adverse comment is submitted within 30 days of publication of this rule in the **Federal Register**, this action will become effective 45 days after publication in the **Federal Register** without any further action by the Agency. If, however, a significant adverse comment is received during the comment period, those aspects of the rule addressed by the commenters will be withdrawn and the public comments received will be addressed in a subsequent final rule. EPA is today issuing a companion proposed rule elsewhere in this issue of the **Federal Register** to ensure that the public is aware of its opportunity to comment, and to provide the APA-required proposal in the event that significant adverse comment is received and issuance of a subsequent final rule is necessary.

## XII. How Do Other Regulatory Assessment Requirements Apply to this Action?

### *A. Executive Order 12866*

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) it has been determined that this is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). EPA has, however, prepared an economic analysis of the potential impact of this action, which is estimated to be $5.6 million over the next 5 years. The analysis is contained in a document entitled ''Economic Analysis of the TSCA Section 402(a)(3) Lead-Based Paint Accreditation and Certification Fee Rule.'' This document is available as a part of the public record for this action and is briefly summarized in Unit VII of this preamble.

### *B. Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As indicated in Unit I. of this preamble, within the EPA-Administered universe, the potentially affected entities consist of the following three basic types of entities: (a) individuals engaged in lead-based paint activities; (b) firms engaged in lead-based paint activities; and (c) for-profit entities providing lead-based paint training. The potential impact of this action on small entities within this universe is described in Chapter 6 of the economic analysis, as referred to in Unit XII.A. of this preamble.

In estimating the universe of potentially impacted small entities, EPA used the definitions provided by the Small Business Administration (SBA). As explained in Unit VII.C. of this preamble, this rule provides fee waivers for State and local governments, Indian Tribes and non-profit organizations that operate a training program for their employees. As such, these entities are not affected by this rule. With regard to individuals, to the extent that ''individuals'' are in business for themselves, EPA considered that entity to be a firm with one employee. The analysis assumes that firms are likely to pay all or a portion of their employee's certification fees. As a result, the small entity impact analysis focuses on the potential impacts on two distinct types of affected entities, i.e., firms engaged in lead-based paint activities (including individuals in business for themselves), and for-profit entities providing lead-based paint training.

EPA estimates that 1,541 firms engaged in lead-based paint activities will be certified during the first five years in the EPA-administered program universe. Using the revenue distribution for SIC 1799 and 8734, EPA estimates that approximately 98 percent of these firms qualify as ''small'' under the SBA definition for small businesses. However, even if the Agency assumes that the firms pay all of the certification fees for their employees, the impact is still estimated to be less than 1 percent of annual revenues for all of these firms.

Within the EPA-administered program universe, EPA estimates that there will be 52 training providers accredited during the first five years in the EPA-administered program universe. Of the 52, only 60 percent of these training providers are estimated to be for-profit entities, i.e., required to pay a fee. Using the revenue distribution for SIC 1799, EPA estimates that virtually all of these for-profit training providers qualify as ''small'' under the SBA definition of small business. Although it is estimated that 12 of these 31 fee paying for-profit training providers may incur impacts that are slightly higher than 3 percent of their revenue, the data also suggests that these for-profit training providers have greater revenues than the SIC 1799 revenue distribution suggests. For example, using the revenue distribution of Massachusetts and Ohio training providers, only one of the 31 for-profit training providers is estimated to have a potential impact of greater than 1 percent of annual sales.

As indicated above, additional details regarding the Agency's basis for this certification are presented in Chapter 6 of the economic analysis, which is included in the public record for this action. In addition, information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request.

### *C. Paperwork Reduction Act*

This regulatory action does not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. The information collection referenced in this rule (i.e., those included in 40 CFR 745.238) have already been approved by OMB under control number 2070–0155 (EPA ICR #1715.02). EPA does not believe that this rule has any impact on the existing burden estimate or collection

description, such that additional approval by OMB is necessary.

Specifically, ICR 1715.02 identifies and quantifies the burden associated with submission of applications by individuals, firms, and training programs. The burden estimates are based on the following required submissions:

1. *Firms.* A certification letter.

2. *Training program.* An application which includes the following: (i) The training programs name, address, and telephone number, (ii) a list of courses for which it is applying for accreditation, (iii) a statement signed by the training program manager that clearly indicates how the training program meets the minimum requirement for accreditation, or a statement that indicates that the training program will use the EPA developed curriculum if available, (iv) a copy of the course test, a description of the activities and procedures for conducting the assessment of hands on skills, and a description of the facilities and equipment for lecture and hands on training, and (v) a quality control plan, which outlines procedures for periodic revision of training materials and exams, annual reviews of instructors, and adequacy of training facilities.

3. *Individuals.* For supervisors, risk assessors, and inspectors an application which includes the submission of proof of: (i) Completion of an accredited training course, (ii) passing the course test, (iii) meeting the educational and/or experience requirements (if applicable), and (iv) passing the third party exam. For project designers and abatement workers an application which includes submission of proof of: completion of a training course, passing the course test, and meeting educational and/or experience requirements (if applicable).

EPA is in the process of preparing forms to simplify the application and notification process. These forms, when complete will be forwarded to OMB.

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Comments may be sent on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing applicant burden, including through the use of automated collection techniques. Send comments on the ICR to the EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the ICR number in any correspondence.

### *D. Unfunded Mandates Reform Act (UMRA)*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), EPA has determined that this regulatory action is not subject to the requirements of sections 202 and 205. The rule would not impose an enforceable duty on any State, local or Tribal governments because all such entities are exempt from fee payment under the rule. The rule is not expected to result in expenditures by the private sector of $100 million or more in any given year. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the UMRA.

### *E. Executive Orders 12875 and 13084*

1. *Executive Order 12875.* Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. As explained in more detail in Unit IV. of this preamble, the statutory waivers provided for States and local governments are being extended to Indian Tribes. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

2. *Executive Order 13084.* Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. As explained in more detail in Unit IV. of this preamble, the statutory waivers provided for States and local governments are being extended to Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *F. Executive Order 12898*

Pursuant to Executive Order 12898, entitled Federal Actions to Address

Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency's analysis determined that lead-based paint hazards are more prevalent in minority and low-income households. Therefore, the national strategy of eliminating lead-based paint hazards and reducing children's lead exposure targets a problem affecting a greater share of minorities and low-income households. Because the cost of lead-based paint activities is the same for lower-and-upper-income households, several Federal agencies have established grant programs that will provide financial support to reduce the prevalence of lead poisoning among disadvantaged children. However, it appears that minorities and low income households have to forego a larger share of their income to reduce children's exposure to lead-based paint hazards.

*G. Executive Order 13045*

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA has determined that this rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit XII.A. of this preamble). Furthermore, although this rule is associated with EPA's overall lead-based-paint management program which is designed to reduce health risks to children, this rule itself simply establishes a user fee schedule and does not address environmental health or safety risk.

*H. National Technology Transfer and Advancement Act*

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

*I. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of October 19, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 745**

Environmental Protection, Fees, Hazardous Substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: August 25, 1998.

**Carol M. Browner,**

*Administrator.*

Therefore, 40 CFR part 745 is amended as follows:

## PART 745— [AMENDED]

1. The authority citation for part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2615, 2681–2692, and 42 U.S.C. 4852d.

2. In § 745.223 by adding the following three new definitions in alphabetical order to read as follows:

**§ 745.223 Definitions.**

* * * * *

*Local government* means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

* * * * *

*Nonprofit* means an entity that has qualified for an exemption from Federal taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

* * * * *

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

* * * * *

3. In § 745.225 by adding paragraph (b)(4) to read as follows:

**§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.**

* * * * *

(b) * * *

(4) A training program applying for accreditation must submit the appropriate fees in accordance with § 745.238.

* * * * *

4. In § 745.226 by adding paragraph (a)(6) to read as follows:

**§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.**

(a) * * *

(6) Individuals and firms applying for certification must submit the appropriate fees in accordance with § 745.238.

* * * * *

5. By adding § 745.238 to read as follows:

**§ 745.238 Fees for accreditation and certification of lead-based paint activities.**

(a) *Purpose.* To establish and impose fees for certified individuals and firms engaged in lead-based paint activities and persons operating accredited training programs under section 402(a) of the Toxic Substances Control Act (TSCA).

(b) *Persons who must pay fees.* Fees in accordance with paragraph (c) of this section must be paid by:

(1) *Training programs.* (i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: inspector; risk assessor; supervisor; project designer; abatement worker.

(ii) Exemptions, no fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

(2) *Firms and individuals.* All firms and individuals seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the following disciplines: inspector; risk assessor; supervisor; project designer; abatement worker.

(c) *Fee amounts*—(1) *Certification and accreditation fees.* Initial and renewal certification and accreditation fees are specified in the following table:

CERTIFICATION AND ACCREDITATION FEE LEVELS

| | Accreditation[1] | Re-accreditation[1] | Certification | Re-certification |
|---|---|---|---|---|
| Training program. | | | | |
| Initial Course Inspector | $2,500 | $1,600 | ..... | ..... |
| Risk assessor | 1,760 | 1,150 | ..... | ..... |
| Supervisors | 3,250 | 2,050 | ..... | ..... |
| Workers | 1,760 | 1,150 | ..... | ..... |
| Project designers | 1,010 | 710 | ..... | ..... |
| Refresher Course Inspector | 1,010 | 710 | ..... | ..... |
| Risk assessor | 1,010 | 710 | ..... | ..... |
| Supervisors | 1,010 | 710 | ..... | ..... |
| Workers | 1,010 | 710 | ..... | ..... |
| Project designers | 640 | 490 | ..... | ..... |
| Individual. | | | | |
| Inspector | ..... | ..... | $520 | $420 |
| Risk assessor | ..... | ..... | 470 | 390 |
| Supervisor | ..... | ..... | 400 | 350 |
| Worker | ..... | ..... | 360 | 320 |
| Project designer | ..... | ..... | 470 | 390 |
| Firm | ..... | ..... | 540 | ..... |

[1] Fees will be adjusted periodically based on adjustments accounting for changes in participation and operating costs.

(2) *Certification examination fee.* Individuals required to take a certification exam in accordance with § 745.226 will be assessed a fee of $70 for each exam attempt.

(3) *Multi-state registration fee.* An individual or training program certified or accredited in an EPA-administered State or Indian Tribe may wish to provide training or perform lead-based paint activities in additional EPA-administered States or Indian Tribes. A fee of $35 per discipline will be assessed for each additional EPA-administered State or Indian Tribe in which an individual or training program applies for certification/re-certification or accreditation/re-accreditation.

(4) *Lost identification card or certificate.* A $15 fee shall be charged for replacement of an identification card or certificate. (See replacement procedure in paragraph (e) of this section.)

(d) *Application/payment procedure*—(1) *Certification and re-certification in one or more EPA-administered state*—(i) *Individuals.* Submit a completed application (titled ''Application for Individuals to Conduct Lead-based Paint Activities''), the materials described at § 745.226, and the application fee described in paragraph (c) of this section.

(ii) *Firms.* Submit a completed application (titled ''Application for Firms to Conduct Lead-based Paint Activities''), and the application fee described in paragraph (c) of this section.

(2) *Accreditation and re-accreditation in one or more EPA-administered state.* Submit a completed application (titled ''Accreditation Application for Training Programs''), the materials described at § 745.225, and the application fee described in paragraph (c) of this section.

(3) *Application forms.* Application forms and instructions can be obtained from the National Lead Information Center at: 1–800–424–LEAD.

(e) *Identification card replacement and certificate replacement.* (1) Parties seeking identification card or certificate replacement shall complete the applicable portions of the appropriate application in accordance with the instructions provided. The appropriate applications are:

(i) *Individuals.* ''Application for Individuals to Conduct Lead-based Paint Activities''.

(ii) *Firms.* ''Application for Firms to Conduct Lead-based Paint Activities''.

(iii) *Training programs.* ''Accreditation Application for Training Programs''.

(2) Submit application and payment in the amount specified in paragraph (c)(4) of this section in accordance with the instructions provided with the application package.

(f) *Adjustment of fees.* (1) EPA will collect fees reflecting the costs associated with the administration and enforcement of subpart L of this part with the exception of costs associated with the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, and nonprofit organization. In order to do this, EPA will periodically adjust the fees to reflect changed economic conditions.

(2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the **Federal Register**.

(g) *Failure to remit a fee.* (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Parts 1000, 1001, 1002 and 1005

**RIN 0991–AA87**

### Health Care Programs: Fraud and Abuse; Revised OIG Exclusion Authorities Resulting From Public Law 104–191

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule addresses revisions to the OIG's administrative sanction authorities to comport with sections 211, 212 and 213 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, along with other technical and conforming changes to the OIG exclusion authorities set forth in 42 CFR parts 1000, 1001, 1002 and 1005. These revisions serve to expand the scope of certain basic fraud authorities, and revise and strengthen the current legal authorities pertaining to exclusions from the Medicare, Medicaid and all other Federal health care programs.

**EFFECTIVE DATE:** October 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*The Health Insurance Portability and Accountability Act of 1996*

On September 8, 1997, the Office of Inspector General (OIG) published proposed rulemaking (62 FR 47182) addressing the program exclusion provisions set forth in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191. Among other things, the HIPAA provisions revised or expanded the authorities pertaining to exclusion from Medicare and the State health care programs. With respect to the OIG's program exclusion authorities, the HIPAA provisions served to (1) broaden the OIG's mandatory exclusion authority; (2) establish minimum periods of exclusion for certain permissive exclusions; and (3) establish a new permissive exclusion authority applicable to individuals with ownership or control interest in sanctioned entities.

(The Balanced Budget Act (BBA) of 1997, Public Law 105–33, also enacted new or expanded exclusion and civil money penalty authorities. Among the provisions in the BBA, section 4331(c) amended sections 1128(a) and (b) of the Act to (1) provide that the scope of an OIG exclusion extends beyond Medicare and the State health care programs to all Federal health care programs (as defined in section 1128B(f) of the Act) [1], and (2) enable the OIG to directly impose exclusions from all Federal health care programs. While regulations implementing the BBA exclusion provisions are being developed under separate rulemaking by the Department, for purposes of clarity, we are conforming language in this final rule to be consistent with the statute and the expanded scope of an OIG exclusion that encompasses all Federal health care programs. As a result, in all references in this preamble and in the regulations, as amended, we are substituting the phrase ''Medicare and the State health care programs'' with the phrase ''Medicare, Medicaid and all other Federal health care programs.'' Additional regulatory changes in 42 CFR part 1001 with regard to this expanded scope of an OIG exclusion will be specifically addressed in the BBA-implementing regulations referenced above.)

Because the new HIPAA statutory provisions afford the Department some policy discretion in their implementation, the OIG developed proposed rulemaking to address both the new statutory provisions of HIPAA and other technical revisions to the OIG's exclusion authorities, that were previously codified in 42 CFR parts 1000, 1001, 1002 and 1005. The proposed rule established a 60-day public comment period during which interested parties were invited to submit written comments to the OIG on these proposed changes.

[1] In accordance with section 1128B(f) of the Act, the term ''Federal health care program'' means (1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under 5 U.S.C. 89; or (2) and State health care program, as defined in section 1128(h) of the Act.

## II. Summary of the Proposed Rule

*1. The HIPAA Exclusion Provisions*

The proposed rule set forth the Department's three new exclusion authorities to be codified in 42 CFR part 1001 as follows:

- *Mandatory OIG exclusion from Medicare and State health care program participation.* Section 211 of HIPAA expanded the OIG's minimum 5-year mandatory program exclusion authority to cover any felony conviction under Federal, State or local law relating to health care fraud, even if governmental programs are not involved. Felony convictions relating to controlled substances were also made a basis for a mandatory exclusion. Accordingly, we proposed to revise § 1001.101 to address the mandatory provisions set forth in new sections 1128(a)(3) and (4) of the Act. To appropriately restrict the imposition of mandatory program exclusions to only those individuals and entities who might reasonably be expected to have future contact with Medicare, Medicaid and all other Federal health care programs, we proposed to limit applicability of this provision only to those individuals or entities that (1) are or have been health care practitioners, providers or suppliers; (2) hold or have held a direct or indirect ownership or control interest in a health care entity; or (3) are or have been officers, directors, agents or managing employees of such an entity, or are or have ever been employed in any capacity in the direct or indirect provision of health care items or services.
- *Establishment of minimum periods of exclusion for certain permissive exclusions.* The proposed rule addressed the establishment of minimum periods of exclusion in 42 CFR part 1001 ranging from 1 to 3 years for permissive exclusions from the Medicare , Medicaid and all other Federal programs. In accordance with section 212 of HIPAA—

(1) A standard period of exclusion of 3 years would be established for convictions of misdemeanor criminal health care fraud offenses; criminal offenses relating to fraud in non-health Federal or State programs; convictions relating to obstruction of an investigation of health care fraud; and

convictions of misdemeanor offenses relating to controlled substances. Aggravating and mitigating circumstances may be taken into account to lengthen or shorten this period, as appropriate.

(2) For permissive exclusions from Medicare, Medicaid and all other Federal programs resulting from the revocation, surrender or suspension of an individual's or entity's health care license relating to professional competence, professional performance or financial integrity, an exclusion would be imposed for a period not less than the period during which the individual's or entity's license was revoked or suspended.

(3) For permissive exclusions derived from the suspension or exclusion from other Federal health care programs, such as CHAMPUS, Veterans and other State health care programs, relating to an individual's or entity's professional competence, professional performance or financial integrity, an exclusion would be imposed for a period not less than the period the individual or entity is excluded or suspended from that Federal or State health care program.

(4) A minimum one-year period of exclusion would be established for individuals or entities who are found to have submitted claims for excessive charges or who furnished unnecessary or substandard items or services; and health maintenance organizations that are found to have failed to provide medically necessary items and services. (An inadvertent error was made in the proposed rule in addressing the scope of the minimum one-year period of exclusion. A technical revision is set forth in section IV. of this preamble.)

• *Permissive exclusion of individuals with ownership or control interest in sanctioned entities.* In accordance with section 213 of HIPAA, a new § 1001.1051 was proposed to implement permissive exclusions applicable to individuals who have a majority ownership interest in, or have significant control over the operations of, an entity that has been convicted of an offense or excluded. Under this section, we proposed that the length of exclusion generally be for the same period as that of the sanctioned entity with which the individual had a relationship.

*2. Additional Technical and Conforming Changes*

In addition to proposing codification in regulations of the HIPAA exclusion provisions, we also set forth for comment a number of proposed technical and conforming changes designed to clarify OIG exclusion authority policy currently codified in 42 CFR parts 1000, 1001, 1002 and 1005. Among the revisions set forth in the proposed rule—

• We proposed revising § 1001.2 to indicate that the term ''incarceration'' would include imprisonment or any type of confinement, with or without supervised release.

• Because the term ''patient'' has been narrowly defined in some instances to restrict its scope to only an individual in a traditional medical care setting, we proposed to revise §§ 1001.2 and 1001.101 to define the term to include any individual receiving health care services, including any item or service provided to meet his or her physical, mental or emotional needs, regardless of whether it is reimbursed under Medicare, Medicaid or any other Federal health care program and regardless of the location in which it is provided.

• In order to distinguish between more and less egregious cases involving patient abuse or neglect, we proposed adding a new aggravating factor to § 1001.102(b) to indicate that the OIG would consider whether the action that resulted in the conviction was premeditated, part of a continuing pattern of behavior, or consisted of non-consensual sexual acts.

• In allowing greater flexibility to consider an additional conviction if the individual or entity is convicted of both Medicare fraud and another offense, such as tax evasion, we proposed to amend various sections of 42 CFR part 1001 to allow the Department to consider any other conviction or civil or administrative sanction prior to, concurrent with or subsequent to the conviction upon which the exclusion was based.

• We proposed to revise §§ 1001.2002 and 1005.15 to indicate that the initial notice letter of exclusion to the affected individual or entity could be amended should any additional information or wrongdoing occur or come to the attention of the OIG subsequent to the letter, and that these additional items or information may be introduced into evidence by either party at the hearing before the administrative law judge.

• To encourage greater cooperation by individuals and entities, and to afford the OIG greater flexibility in identifying and addressing issues related to program fraud and abuse, we proposed adding a new mitigating factor applicable to the authorities in 42 CFR part 1001 that would take into account whether the cooperation of an individual or entity resulted in additional cases being investigated or reports issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses.

• In § 1001.701, we proposed to more clearly explain the imposition of exclusions under section 1128(b)(6) of the Act concerning excessive charges or costs and to whom an individual's or entity's excess charges or costs apply.

• We proposed to clarify the term ''agent'' in § 1001.1001 by reiterating existing OIG policy concerning the legitimacy of transfer of a health care entity from an excluded individual to a spouse, and the circumstances constituting divestment of ownership and control of the entity by the excluded individual.

• To clarify that the obtaining of a program provider number or equivalent would not automatically result in an individual's or entity's reinstatement into the programs, we proposed revising §§ 1001.1901, 1001.3001 and 1001.3002 to clarify existing OIG policy that an excluded individual or entity continues to be excluded until officially reinstated by the OIG, regardless of whether a provider number or equivalent is obtained prior to this OIG action. In § 1001.1901, we also proposed to reiterate current HCFA policy regarding payment of the first claim of a supplier after notice of a provider's exclusion, i.e., HCFA will not pay for items and services furnished by a supplier past the fifth day following the date of the written notice to the supplier of the provider's program exclusion.

• Because the OIG has the obligation to impose an exclusion on individuals or entities when the statutory requirements of section 1128 of the Act are met, regardless of whether the individual or entity is paid by the programs directly, or the items or services are reimbursed by the programs indirectly through claims of a third party who is a direct provider, we proposed to clarify the definition of ''furnished'' in § 1000.10 to indicate that exclusions would apply to any individual or entity that provides or supplies items or services, directly *or indirectly*. In this section, we proposed to make clear that no payment would be made to any direct provider for items and services manufactured, distributed or otherwise provided by an excluded individual or entity.

• With regard to the Medicaid State agency's obligations to notify the OIG of certain actions, we proposed revising § 1002.3 to state that the Medicaid agency would be required to promptly notify the OIG of *any and all* actions—including suspension actions, settlement agreements and situations where the individual or entity voluntarily agrees to withdraw from the

program to avoid a formal sanction action—that it takes to limit any individual's or entity's ability to participate in its program.

**III. Response to Comments and Summary of Revisions**

In response to the notice of proposed rulemaking, the OIG received a total of 109 timely-filed public comments from various health care providers and organizations, State and professional medical societies and associations, and other interested parties. Set forth below is an abstract of the various comments and recommendations received, our response to those concerns, and a summary of the specific revisions and further clarifications being made to the regulations at 42 CFR parts 1000, 1001, 1002 and 1005 as a result of the proposed HIPAA exclusion rule and these public comments.

*Section 1000.10, Definition of the term ''furnished''*

*Comment:* We proposed to clarify the current definition of the term ''furnished'' in § 1000.10 to indicate that exclusions will apply to any individual or entity that provides or supplies items or services, directly *or indirectly*.[2] A total of 22 comments responded to this proposed revision. Citing sections 1128a–7a and 1128(b)(7) of the Act and the legislative history of the 1987 amendments to the Act, a number of commenters questioned whether the OIG had the statutory authority to take remedial action and exclude individuals or entities from participation in Medicare and Medicaid if such individuals or entities do not directly ''participate'' in these programs by submitting claims for reimbursement to them. Commenters further stated that the expansion of the exclusion authority to indirect providers was proposed and contemplated in previous OIG rulemakings (55 FR 12205, April 2, 1990; 57 FR 3298, January 29, 1992)—addressing revisions to OIG sanction authorities resulting from Public Law 100–93—and that no new circumstances or substantive reasons exist now that warrant further consideration of this revision.

[2] The term ''indirectly'' means the provision of items and services manufactured, distributed or otherwise supplied by individuals or entities who do not directly submit claims to Medicare, Medicaid or other Federal health care programs, but that provide items and services to providers, practitioners or suppliers who submit claims to these programs for such items and services. The term ''indirectly'' does not include individuals and entities that submit claims directly to these programs for items and services ordered or prescribed by another individual or entity.

*Response:* As indicated in the preamble to the proposed rule, the OIG intends to change its position on this issue. In 1992, we elected to publicly state in the preamble to the final exclusion regulations implementing the Medicare and Medicaid Patient and Program Protection Act of 1987 our intention to refrain from exercising our exclusion authority in the case of manufacturers or distributors that could be subject to exclusion but do not submit claims to the programs for the items they supply (57 FR 3298, January 29, 1992). While we were cognizant at that time of our authority to exclude such indirect providers, and said so explicitly in the preamble to that final rule, we were also concerned that it would be difficult to administer exclusions against entities that are not reimbursed directly by the Department. We have now concluded that such exclusions should be undertaken, when warranted by the conduct of such entities, notwithstanding the administrative burdens.

In our earlier discussion of the effect of an exclusion, we cited section 1862(e) of the Act, which denies both payment for items and services provided by an excluded individual or entity *and* payment for services furnished at the medical direction or on the prescription of an excluded physician. This provision reflects the intent of Congress and the Secretary that the Government not pay—directly or indirectly—for the services of untrustworthy individuals and entities with whom the Department has determined it should cease doing business. Historically, with each set of amendments to the original 1977 exclusion statute (section 1128(a) of the Act) mandating ''suspension'' of ''physicians and other practitioners'' from the programs subsequent to any conviction for a program-related crime, Congress has expanded the scope of the exclusion authority to permit, and sometimes to mandate, exclusion of a wider scope of ''untrustworthy'' individuals and entities.

For example, in the 1980 amendments to section 1128(a) of the Act, Congress stated that it was broadening the exclusion authorities to make such authorities ''apply to other categories of health professionals, such as administrators of health care institutions' (House Report 96–1167, p. 5572). The Report by Congress went on to say that ''[i]n the case of those professionals who do not directly furnish medical care or services, *payment would not be made to the provider for the cost of any services furnished to or on behalf of the provider by the convicted professional* * * *'' (underlining added). We believe that the 1980 amendments made it clear that indirect providers that were convicted were to be excluded, and that the effect of such an exclusion would be that items and services furnished by these indirect providers could not be reimbursed. We believe this is consistent with the Department's interpretation of its current authority to exclude any individual or entity that violates the prohibitions of section 1128 of the Act.

Further, in the Balanced Budget Act (BBA) of 1997, Congress again indicated its continued expectation that indirect providers of items and services will be excluded from the programs. In the BBA, Congress enacted a civil money penalty (CMP) to deter providers from doing business with excluded individuals or entities. The new statutory authority—section 1128A(a)(6) of the Act—permits the Secretary to impose a CMP against any person (defined broadly in the statute to include entities) who ''arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a federal health care program * * * for the provision of items or services for which payment may be made under such a program.'' Implicit in the enactment of this CMP authority is Congress' expectation that indirect providers who do not submit claims to the programs are subject to exclusion. Services furnished by such indirect providers, and items manufactured or supplied by them, would be unreimbursable due to the excluded status of the individual or entity. In addition, the direct provider who submits a request for reimbursement for such items or services is subject to a CMP. Thus, from 1980 to the present, Congress has consistently and repeatedly expressed its view that any individual and entity that furnishes items or services that are reimbursable under the programs is subject to exclusion from the programs, regardless of whether that individual or entity directly presents a bill to the program.

Thus, we have concluded that our original regulatory policy, while perhaps sensible from the standpoint of administrative ease of enforcement, is not fully consistent with the legislative intent of section 1128 of the Act. Furthermore, it is not appropriate to continue to exempt untrustworthy manufacturers and distributors of products from exclusion, when many other providers are excluded every year due to similar concerns.

*Comment:* Many commenters believed that the proposed rule failed to provide sufficient information about how an exclusion would be applied to indirect providers and to which indirect providers it would apply. Commenters indicated that this definition of ''furnished'' would neither be fair nor effective since the use of an exclusion against individuals or entities that do not receive reimbursement from the Medicare or Medicaid programs will have more of a punitive effect on innocent third parties than it would on the actual wrongdoer. Commenters indicated that limiting the number of available or appropriate sources of equipment or supplies would have anti-competitive effects and could result in beneficiaries being denied services or supplies. In addition, the commenters stated that direct providers may be inappropriately denied reimbursement, unfairly burdened with monitoring responsibilities, and inappropriately subject to False Claims Act prosecution. Some commenters believed that since some equipment manufacturers and suppliers rely heavily on their ability to sell their products to providers who receive Medicare and Medicaid program reimbursement, this lack of ability to sell their products to program providers would effectively force them out of business.

*Response:* Since 1980, the Department has been excluding many ''indirect'' providers of items and services that are reimbursed by the programs. Nurses, home health aides and laboratory technicians, for example, cannot submit claims yet have often been excluded from the programs. During their exclusion period, no employer, such as a hospital or nursing home, may be paid by the programs for any services furnished by these individuals. Employees of companies who provide transportation to nursing home residents, accountants who keep the account books for health care institutions, and an employee of a Medicare carrier who stole checks that belonged to physicians as payment for services provided to beneficiaries are all examples of individuals who have been excluded from the programs. In all cases, the costs attributable to their services may not be charged on cost reports or be claimed by an employer in any other way during the period of their exclusion.

As discussed above, the new CMP authority enacted in BBA is the most recent indication that Congress has not carved out an exception for indirect providers simply because they do not participate in the programs directly through submitting claims and receiving direct reimbursement. Through the new BBA CMP authority, Congress, in fact, has provided the OIG with a new tool to enforce exclusions against indirect providers. By making direct providers liable if they submit claims for others who are excluded, the direct provider is likely to be deterred from doing so. Because fewer of these impermissible claims should be submitted, it should become less common for the programs to unwittingly pay indirectly for items and services furnished by excluded parties.

By law, the Department has an ongoing obligation to impose mandatory exclusions when warranted. Notwithstanding the difficulty in monitoring and administering exclusions against so-called ''indirect'' providers, we believe that an exception for indirect providers and suppliers is not appropriate as a matter of policy. Just as nurses, home health aides, administrators and others who do not bill the programs directly for their services have been excluded over the years, we believe that untrustworthy manufacturers and suppliers of drugs, medical devices and durable medical equipment and other reimbursable items must be treated in a similar fashion.

In addition to revising the definition for the term ''furnished'' in § 1000.10, we are addressing some concerns raised by adding definitions to this section for the terms ''directly'' and ''indirectly,'' as used in the definition of ''furnished,'' to specifically clarify the meaning of these terms.

*Comment:* Commenters recommended that clearer, more specific guidance was necessary on how the OIG intended to administer this authority. Specifically, a number of commenters raised concerns about the effect that this revision would have on current inventories held by providers, and the potential confusion that could result when more than one manufacturer is licensed to manufacture a product, e.g., a prescription drug. It was indicated by some commenters that determining the actual manufacturer of certain products could sometimes be extremely difficult or impossible. Clarification was also requested on the impact on providers who receive a physician's prescription, for example, for a specific item or equipment manufactured by an excluded entity.

*Response:* In clarifying the definition of the term ''furnished,'' we are indicating that exclusions of indirect providers *may* be imposed, when appropriate. We would not expect that manufacturers would often be convicted and subject to a mandatory exclusion. However, on those exceptional or infrequent occasions when a manufacturer *is* convicted, we cannot justify treating it more favorably than we would treat others similarly convicted. Moreover, the concern for protecting the programs from those who are untrustworthy applies to all those convicted of health care criminal offenses.

We are fully aware that exclusion of a manufacturer or supplier may have a significant effect on direct providers, practitioners or suppliers who would be paid by the programs for items or services manufactured, distributed or otherwise provided by an excluded entity. We are committed to exercising this sanction authority carefully and prudently, and acting only where the excluded provider's product can be clearly identified. We are committed to assisting affected beneficiaries to avoid hardship as a consequence of any exclusion of a manufacturer or supplier. Moreover, we are committed to ensuring that no inappropriate hardships will be imposed on direct providers who unknowingly bill Federal health care programs for items and services furnished by an excluded indirect provider. The new civil money penalty provision authorized by section 4304(a) of BBA against those who arrange or contract with an excluded individual or entity will only be used where a direct provider ''knows or should know'' of the exclusion.

While it is impossible to predict every possible scenario and to provide much specific guidance in this document, there is, however, some general guidance that we can offer. Under our proposed revisions, we never intended that items within a direct provider's existing inventory be affected by the exclusion of a manufacturer. Specifically, any health care items that a practitioner, provider or supplier has in inventory from the excluded manufacturer prior to the effective date of the exclusion of the manufacturer will not be affected by the exclusion, and claims may be submitted for the furnishing of such items by the practitioner, provider or supplier. This will include all supplies and items maintained in inventory by a practitioner, provider or supplier that are billed to Medicare or other Federal health care programs through a claims form or on a cost report.

In addition, in an attempt to alleviate some concerns raised by commenters, we have decided to amend § 1001.1901(c)(3) by adding a new provision to permit payment for health care items ordered from an excluded manufacturer prior to the effective date of the exclusion and delivered up to 30 days after the effective date of such

exclusion.[3] We believe this will further protect beneficiaries and direct providers from significant financial harm due to the indirect provider's exclusion.

In those unusual cases where a manufacturer is convicted of health care-related fraud, the OIG will carefully examine the products or services being provided or distributed, and on a case-by-case basis provide the necessary guidance to affected direct providers. Our interest is in enforcing the exclusion while guaranteeing, with reasonable assurance, that no substantial harm comes to program beneficiaries and direct providers. When appropriate and permitted by law, the OIG will entertain a request for waiver of an exclusion, such as, for example, if a convicted pharmaceutical company manufactures the only drug deemed effective to treat a particular disease. If a waiver is requested by a State agency and the OIG deems that such waiver is appropriate and should be implemented nationally, we believe that the OIG has the discretion to extend the waiver to all State Medicaid programs, as well as to Medicare.

*Comment:* Several commenters addressed the potential adverse impact of a manufacturer's exclusion on direct providers and suppliers, indicating that providers such as hospitals could suffer extreme administrative and financial costs in complying with this exclusion authority. Commenters stated that since direct providers or suppliers would not be paid for a particular item or supply furnished by an excluded entity, providers or suppliers may have to collect or maintain additional information to demonstrate to the programs that the item for which it is seeking payment was not furnished by an excluded entity.

*Response:* We do not agree that there will be significant new administrative costs to direct providers, such as hospitals, nursing homes and physicians, in ensuring that they do not submit claims for items manufactured or supplied by excluded parties. Exclusions of manufacturers are rare and usually well-publicized in the press and other media. Further, the OIG will quickly inform the public of the exclusion over the internet, as it does with all exclusions. Direct providers must keep themselves apprised of all exclusions, not only to ensure that their claims are reimbursable, but also to ensure that they are not subject to the new CMP for contracting with or employing an individual or entity that is excluded. We do not believe that the revision to the definition of ''furnished'' will place significant new burdens on direct providers above and beyond the responsibility they already have to refrain from doing business with excluded parties.

*Section 1001.2, Definitions*

*Comment:* One commenter believed that amending the term ''exclusion,'' that is, by adding the words ''ordered or prescribed'' to prohibit Medicare payment to providers that furnish services ordered or prescribed by an excluded provider, confuses the issue of fraud and the real need for medical care since a provider, such as a physician, that has been excluded from the Medicare program may still order services that are medically necessary that need to be furnished by another entity.

*Response:* We believe the commenter has misinterpreted the statutory language. The revised definition of the term ''exclusion'' is being set forth to conform and be consistent with statutory language in Public Law 100–93 under which items and services will not be reimbursed under the programs when furnished, ordered or prescribed by an excluded individual or entity. Although an excluded individual or entity may continue to order or prescribe items and services, those items and services are not reimbursable under the programs.

*Comment:* We proposed revising the definition of the term ''patient'' to ensure that it includes any individual who is receiving any health care items or services to meet physical, mental or emotional needs, whether or not the item or service is reimbursed under Medicare, Medicaid or any Federal health care program and irrespective of the location of where the service is provided. While supportive of this approach, one commenter believed that the statute was not necessarily intended to extend to patient neglect and abuse related to items and services ''wholly unconnected'' with Medicare, Medicaid and all other Federal health care programs, and believed that we should look at other statutory authorities elsewhere to sanction abuse of such individuals before expanding the existing definition.

*Response:* Section 1128(a)(2) of the Act does not directly relate to Medicare, Medicaid or any other specific Federal health care program. This statutory provision covers conduct against any patient regardless of that individual's relationship with these programs. The OIG believes that the statute is intended to prohibit neglect and abuse of *all* individuals receiving health care items and services, regardless of the care giver or the location within which the items or services are provided, and is adopting this definition to ensure consistent interpretation of this provision.

**Part 1001, Additional Aggravating Factor in Determining Length of Exclusion; Conviction of More Than One Offense**

*Comment:* We proposed revising one of the aggravating factors in §§ 1001.102 through 1001.951, that would permit consideration of any adverse actions by other Federal, State or local government agencies or boards based on the same conduct as a basis for lengthening an exclusion. The proposed factor was set forth to consider ''whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of *any other adverse action* by a Federal, State or local government agency or board, even if the adverse action is based on the *same set of circumstances* that serves as the basis for imposition of the exclusion'' (underlining added). A number of commenters disagreed that the OIG should have the discretion to consider other convictions, whether in the past or contemporaneous, as an aggravating factor. Commenters argued that in the case of an individual or entity that was the subject of various ''adverse actions'' by a locality on a matter, unrelated to a later conviction, such other actions should have no bearing on the appropriate length of an individual's program exclusion, and believed that some limits should be placed on the consideration of adverse actions since different agencies (especially ones with no health care responsibilities) may reach varying conclusions based on very different policy considerations. Commenters stated that since simultaneous convictions may be based on only one course of conduct and represent a prosecutor's decision to charge essentially the same conduct under various offenses, we should not be allowed to increase an exclusion period where an individual is convicted of multiple offenses at the same time he or she is convicted of the offense that forms the basis for the exclusion.

*Response:* While the language set forth in these sections is permissive, it is specifically designed to address the issue of an individual's or entity's trustworthiness. Thus, we are revising the language throughout part 1001 so that the factor will be relevant to the

[3] For the first year from the effective date of this provision only, we are permitting payment for health care items ordered from an excluded manufacturer prior to the effective date of the exclusion and delivered up to a 60 day period after the effective date of the exclusion.

same conduct and circumstances that serves as the basis for the imposition of the OIG exclusion. We believe that the revised language is fairer, while allowing the OIG to attain the intended goal of allowing an increased sanction only if the adverse action was related in some way to the original basis for the exclusion. The intent of the revised language is to allow the OIG to increase the length of exclusion if an individual or entity was convicted of *other* offenses at the same time as he or she was convicted of the offense that served as the basis for the exclusion. Inclusion of this aggravating factor will permit the OIG to increase a length of exclusion when an individual is convicted of Medicare fraud and any other offense, such as drug distribution or income tax evasion. The aggravating factor will take into consideration separate and different types of convictions that occurred concurrently; we do not intend to use the basis of the OIG exclusion more than once as a factor in lengthening an exclusion.

**Part 1001, New Mitigating Factor in Determining Length of Exclusion**

*Comment:* A number of commenters supported the proposed new mitigating factor in §§ 1001.102(c)(3) , 1001.201(b)(3)(iii), 1001.301(b)(3)(ii), 1001.401((c)(3)(i), 1001.501(b)(3)(i) and 1001.601(b)(3)(ii) that would take into account whether the cooperation of an individual or entity resulted in additional cases being investigated, or reports being issued, by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses. The commenters believed that this additional factor would positively impact on individuals' cooperation and encourage offenders to assist board investigators and other State authorities. One commenter, however, stated that the value of some information may not be determined until much later, and recommended that credit should also be given to individuals and entities that cooperate and provide information that is not immediately validated by the commencement of a new case or report issuance since preliminary investigations may require a significant amount of time before a case is opened or a report prepared.

*Response:* While we expect this mitigating factor to be taken into consideration only in those situations where the law enforcement agency validated the person's information by opening up a case investigation or by issuing a report, we nevertheless believe that this additional factor will afford the OIG greater flexibility in identifying and addressing issues related to program waste, fraud and abuse.

*Section 1001.701, Excessive Claims or Furnishing of Unnecessary or Substandard Items or Services*

*Comment:* In an effort to more clearly define the scope of an action under section 1128(b)(6) of the Act, we proposed to revise § 1001.701(a)(1) to further clarify to whom an individual's or entity's excess charges or costs apply. Many commenters strongly objected to what they believed was the OIG's setting of Medicare payment policy (for bills submitted on the basis of costs or charges) at the best price charged to any payer. Specifically, the proposed language addressed possible exclusion of providers that have ''submitted, or caused to be submitted, bills or request for Medicare, Medicaid and all other Federal health care program payments that contain charges or costs that are substantially in excess of their usual charges or costs for items or services furnished to *any* of their customers, clients or patients.'' Many of the commenters indicated that this proposed revision would create excessive administrative and billing difficulties that would require a comprehensive and consistent review of charges to all customers. Further commenters stated that this proposal would have substantive implications for providers who work with managed care programs, discouraging providers from entering into these discounted rate arrangements or possibly forcing physicians participating in these programs to increase their contract rates in an effort to recover what may constitute a loss on Medicare program claims. In addition, commenters indicated that the proposed revision fails to take into account that most physician payments under Medicare are now determined by a resource-based relative value scale system.

*Response:* Many commenters misunderstood our proposal. The proposed rule intended to subject those who submit bills based on costs or charges to liability for exclusion if they presented bills for amounts ''substantially in excess'' of lowest prices charged any customer. Nevertheless, persuasive arguments have been raised, and we are withdrawing our proposed modification to § 1001.701 at this time. We have become convinced that the prohibitions of section 1128(b)(6)(A) of the Act have very limited applicability with respect to the current Medicare reimbursement system. The recently-enacted Balanced Budget Act of 1997, Public Law 105–33, either directly mandates prospective payment or provides authority for the Secretary to develop additional fee schedules to replace almost all existing cost or charged-based reimbursement methodologies. The purpose of fee schedules is to bring Medicare reimbursement more in line with market rates. As fee schedules are implemented, providers may have less incentive and less opportunity to claim Medicare payment that is substantially in excess of their usual charges. Therefore, we would expect this statutory authority to have declining relevance within the Medicare reimbursement system. Moreover, the statute contains the undefined term ''substantially in excess,'' which makes enforcement action difficult. As such, we now believe that modifying the definition of ''usual charges'' will have very little impact.

*Section 1001.801. Minimum Period of Exclusion*

*Comment:* Based on section 212 of HIPAA, we proposed amending § 1001.801(c) to require a minimum exclusion period of one year for managed care organizations that are found to have failed to provide medically necessary items or services. One commenter believed that the OIG was in error in interpreting section 212 applicability to this provision. The commenter indicated that section 212 of HIPAA establishes minimum periods of exclusion for some activities prohibited under section 1128(b) of the Act, specifically only those activities described in section 1128(b)(6)(B) of the Act. As a result, the commenter stated that under the exclusion authority in § 1001.801 for managed care organizations that fail to provide medically necessary services, there is no legal authority to mandate a one-year minimum exclusion period. The commenter indicated that under the proposed language if a single physician acts inappropriately, and the managed care organization in which he or she is participating finds out about the issue and acts appropriately and promptly to address the problem, in this instance the OIG would be inappropriately forced to impose a one year exclusion.

*Response:* We believe the commenter is correct in this regard and that the concerns set forth are valid. As a result, we are amending paragraph (c)(1) of this section.

*Section 1001.1051, Exclusion of Individuals With Ownership or Control Interest in Sanctioned Entities*

*Comment:* In accordance with a new HIPAA provision, we proposed to add § 1001.1051 to permit the exclusion of

individuals (1) who have a ''direct or indirect'' ownership or control interest in a sanctioned entity if the individual ''knows or should know'' of the action constituting the basis for the conviction or exclusion, and (2) who are officers or managing employees of a sanctioned entity. Commenters indicated that because the exclusion is potentially applicable in the latter category to persons with no knowledge of the sanctioned entity's wrongdoing, the OIG should provide specific criteria on which decisions are based on whether to seek the imposition of a permissive exclusion against such individuals. Some commenters recommended that the OIG follow a ''deliberate ignorance'' standard for excluding officers and managing employees of sanctioned entities. Commenters indicated that in failing to use a standard of ''deliberate ignorance,'' the OIG would be targeting individual physicians who may have no reason to know whether the entity with which they are affiliated was convicted or excluded. As a result, these commenters believed that to exclude an officer or managing employee without having to show some knowledge of the underlying sanction would be excessive and inappropriate. In addition, some commenters were concerned that the proposed rule did not specifically preclude exclusion of an officer or managing employee who joins a previously sanctioned entity after commission of the conduct on which the sanction was based, and when he or she had no relationship with the entity at the time of the commission of the wrongful actions.

*Response:* In accordance with the statute, in the case of an officer or managing employee, the OIG does not have to demonstrate that such individuals acted in deliberate ignorance of the offense constituting the sanctionable action. It appears that Congress believed that any person serving as an officer or managing employee of the entity is presumed to have specific knowledge of the actions constituting the basis for the exclusion. Our language in § 1001.1051(a) is consistent with the statute and does not afford the OIG policy discretion in this regard when considering the relationship between an officer or managing employee and a sanctioned entity during the period the sanctionable actions were committed.

*Comment:* Several commenters objected to the fact that the period of exclusion for individuals under § 1001.1051(c)(1) would be the same as the period of exclusion for the entity, if the entity is excluded. Commenters stated that an individual's reinstatement request under this section should be judged on its own merits rather than linked to a particular entity's status. The commenters believed that arbitrary application of this provision would impact on individuals, especially in situations where the entity may in fact no longer exist.

*Response:* The language in § 1001.1051(c) is being revised to address these concerns in some respects. While the length of exclusion for such individuals will be for the same period of time as that of the sanctioned entity with which he or she has had the prohibited relationship, any individual excluded under this provision may apply for reinstatement in accordance with the procedures set forth in § 1001.3001 of the regulations.

*Section 1001.1901, Scope and Effect of Exclusion*

*Comment:* We proposed revising § 1001.1901(b)(3) to indicate that submitting, or causing to submit, claims for items or services ordered or prescribed by an excluded individual or entity may be sufficient grounds to deny reinstatement to the programs. One commenter believed that this provision would prevent an excluded person not only from program participation, but also from operating in the health care arena at all during the period of exclusion, and as such, was unwarranted and impermissible.

*Response:* We believe that the revised language is not overly broad, serves to more clearly define what an excluded individual or entity can do, and specifically re-enforces existing OIG policy set forth in exclusion notice letters currently sent to individuals and entities. Accordingly, we are retaining the language in paragraph (b)(3) of this section as set forth in the proposed rule.

*Section 1001.2001, Elimination of In-Person Hearings Prior to When Exclusion is Proposed*

*Comment:* We proposed deletion of § 1001.2001(b) which provides for an in-person hearing when an exclusion is proposed under section 1128(b)(6)(B) and (C) of the Act. Paragraph (b) of § 1001.2001 states that with respect to such exclusions the individual or entity ''may submit, in addition to the information described in paragraph (a) of this subsection, a written request to present evidence or argument orally to an OIG official.'' Several commenters opposed the elimination of an opportunity for oral evidence and argument, and believed it was essential that providers be given full due process rights before the effective date of the exclusion and not after the exclusion has gone into effect. Commenters stated that failure to present information directly and in person presents a significant due process problem, and believed that a provider facing exclusion should be permitted the opportunity to present its case in person rather than just on paper. For example, one commenter, representing orthotic and prosthetic interests stated that since most people are not familiar with the fabrication or use of certain items or devices, a visual demonstration often easily clears up a misunderstanding that would continue were it to be based solely upon written information, and would enhance the possibility of resolving issues at an early stage. In addition, some commenters stated that although a provider still retains the ability to challenge the proposed exclusion, an exclusion by the OIG would remain in effect during the formal appeals process until overturned, thus potentially resulting in financial harm to that provider. As an example, one commenter stated that a successful appeal during a formal appeals process would be meaningless for a managed care organization that was excluded, had its contract terminated and had its Medicare and Medicaid members disenrolled or subsequently enrolled into other health plans.

*Response:* As we indicated in the preamble discussion of the proposed rule, the vast majority of cases involving a proposal to exclude are medical in nature, with the OIG relying on a Medicare intermediary or carrier, a peer review organization or other medical reviewer to provide medical review of a case prior to it being referred by the OIG. In addition to relying on this prior medical review, under the revised regulation the provider is still afforded an opportunity to submit any appropriate written material to the OIG for review and consideration. We believe this revised approach will usually be the most appropriate, efficient and timely use of resources for protecting the programs and its beneficiaries. However, we recognize that there may be situations where the OIG may, at its discretion, wish to hear oral argument prior to deciding whether to impose an exclusion. As a result, we will permit individuals and entities to request, in conjunction with their written submission, an opportunity to present oral argument to an OIG official. Regardless of whether oral argument is allowed, individuals and entities will still retain the ability to challenge in the administrative process any OIG proposed exclusion. The administrative process includes, among other things,

the right to call witnesses, the cross-examination of witnesses, and the presentation of evidence to an Administrative Law Judge, as set forth in 42 CFR part 1005.

*Section 1001.2005, Notice to State Licensing Agencies*

*Comment:* We proposed deleting § 1001.2005(b) and revising this section to indicate that while the Department will continue to notify State and local agencies of the circumstances leading to an exclusion, it would not be tied to a specific notification process. Commenters believed that whether or not the Department advocates specific State and local actions may significantly influence the actions generally taken by these agencies, and recommended that any revision to this section include guidelines regarding the OIG's intended position on notification of exclusions to these agencies and the designation of a general time frame within which the agencies may be notified of the exclusions.

*Response:* The statute obligates the Department to notify State and local agencies of any exclusion action taken by the OIG, but is not does not require us to delineate the precise methods as to when and how this notification will occur. We believe it would be an unnecessary paperwork burden to establish specific notification procedures to be used, and thus remained opposed to placing such internal procedures in regulations. We are, however, sensitive to the commenters concerns of keeping State and local agencies promptly and directly informed of any exclusion action taken by the OIG. As a result, in an effort to increase the effectiveness of the process and allow the use of alternative means of notification, we are reinserting paragraph (b) of this section, but will continue to reserve the right to alter this notification process to consider alternative, more efficient methods as appropriate.

*Section 1001.3001, Timing and Method of Request for Reinstatement*

*Comment:* We proposed to revise this section to permit submission of a request for reinstatement only after the full period of exclusion has expired. Commenters believed that this provision, as interpreted, would guarantee that the period of exclusion would exceed the period originally specified since it would also incorporate the amount of time taken by the OIG to process a reinstatement request. One commenter believed that this was especially problematic since the regulation does not impose constraints on the amount of time the OIG may take in processing such requests.

*Response:* We believe that commenters' concerns are valid and are agreeing to take no action in revising the existing regulatory language with regard to the time frames for reinstatement. We are also withdrawing the conforming change proposed in § 1001.3002(a). We are, however, clarifying in § 1001.3001(a) that obtaining a program provider number or equivalent, in and of itself, does not reinstate an individual's or entity's eligibility nor does it connote permission to bill the programs. Thus, merely obtaining a program provider number or equivalent from HCFA, a State agency or other Federal health care agency cannot vitiate an exclusion by the OIG; an exclusion will remain in effect until such time as the OIG formally reinstates the individual or entity.

*Section 1001.3002, Basis for Reinstatement*

*Comment:* A technical revision was proposed in § 1001.3002(a)(1)(ii) to delete the ''unwillingness and inability'' factor as a basis for consideration by the OIG in making a reinstatement determination. One commenter used this opportunity to take exception to the language in this paragraph that the OIG will make a determination that the types of actions that formed the basis for the original exclusion ''will not recur.'' The commenter believed that such a standard is impossible to prove, and provides too much discretion to the OIG in determining whether an individual or entity is to be reinstated in the programs. As a result, the commenter recommended that the term ''will not recur'' be deleted.

*Response:* Use and consideration of this term is specifically required by the statutory language set forth in section 1128(g)(2)(B) of the Act.

*Section 1002.3, Disclosure of Information*

*Comment:* One commenter recommended that we clarify the reporting requirements imposed on State Medicaid agencies in § 1002.3 with respect to actions taken to limit an individual's or entity's participation in a State program. Specifically, the commenter suggested that guidance be provided as to when a State agency is obligated to report ''suspension actions, settlement agreements and situations where an individual or entity voluntarily withdraws from the program in order to avoid a formal sanction.''

*Response:* Under section 1128(b)(5) of the Act, the OIG is authorized to exclude from program participation any individual or entity ''suspended or excluded from participation, or otherwise sanctioned * * *'' under a Federal or State health care program ''for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity'' (42 CFR 1001.601). Since 1992, § 1001.601(a)(2) of our regulations has defined the phrase ''otherwise sanctioned'' to cover ''all actions that limit the ability of a person to participate in the program at issue regardless of what such an action is called * * *,'' including where there is a voluntary withdrawal from program participation in order to avoid a formal sanction.[4] With respect to a State agency's obligation to report sanctions to the OIG, § 1002.3 sets forth and clarifies the circumstances under which a ''voluntary withdrawal'' should be reported.

The OIG is obligated under the statute to review providers who no longer qualify to participate in a State's Medicaid program, and relies on State Medicaid agencies to report on a timely and complete basis those cases where a provider has been sanctioned, including where an individual or entity voluntarily withdraws from a program to avoid a formal sanction.

Typically, when a State agency receives a complaint or allegation, or is made aware of other circumstances, regarding a physician or other health care provider that causes the State agency to open an investigation or review, the physician or provider is sent a letter and given an opportunity to respond. Under this scenario, withdrawal from the State program *after* notice and opportunity to respond, and *prior* to the completion of a formal proceeding, would subject the physician or provider to possible exclusion under section 1128(b)(5) of the Act.

Informal contacts with the provider, short of written notice, have been viewed as not constituting the start of a formal proceeding. If a provider withdraws from program participation at this early stage of an investigation or review prior to when formal charges or notification has been made, and the provider has not been offered an opportunity to respond, such a withdrawal would not be grounds for an exclusion. Under this situation, the State Medicaid agency is not required to report the matter to the OIG.

[4] Administrative decisions have upheld exclusions under section 1128(b)(5) of the Act based on a physician withdrawing from participation in a State Medicaid program in order to avoid a formal sanction under this language (see Hassan M. Ibrahim, M.D. DAB CR445 (1996)).

We wish to clarify that consistent with the first example, in those situations where a written notice of charges or allegations has been given by the State agency to a provider with an opportunity to respond, and he or she voluntarily withdraws from program participation in order to avoid formal sanction, the State Medicaid agency is obligated under § 1002.3(b)(3) to report the matter to the OIG for review and a determination by the OIG of whether an exclusion under section 1128(b)(5) of the Act is appropriate. We are revising the section heading to § 1002.3 to more accurately reflect the requirements of this section.

**IV. Technical Revisions**

We are including in these final regulations a number of technical revisions in parts 1001 and 1005.

- *Section 1001.2, Definitions:* We are clarifying the definition of the term ''patient'' in § 1001.2 to include residents receiving care in a facility described in 42 CFR part 483.
- *Section 1001.1007, Excessive claims or furnishing of unnecessary or substandard items or services:* We are making a technical revision to § 1001.701(d)(1), the regulations implementing section 1128(b)(6) of the Act. We incorrectly stated in the proposed rule that a minimum one-year period of exclusion would apply to violations of section 1128(b)(6)(A) of the Act (claims for excessive charges) and section 1128(b)(2)(B) of the Act (the furnishing of unnecessary or substandard items or services). However, section 1128(c)(3)(F) of the Act, enacted by HIPAA, mandated a minimum one-year period of exclusion only for individuals and entities excluded under section 1128(b)(6)(B) of the Act. As a result, we are clarifying § 1001.701(d)(1) to properly reflect the statutory language.
- *Section 1005.21, Appeals to the DAB:* We are revising the language in § 1005.21(k)(2) and (k)(3) by deleting the current reference to ''the Associate General Counsel, Inspector General Division, HHS,'' and by inserting the term ''Chief Counsel to the IG'' in its place. These changes reflect the recent consolidation of the IG Division of the Office of the General Counsel into the OIG (62 FR 30859, June 6, 1997).

**V. Regulatory Impact Statement**

*Executive Order 12866 and Regulatory Flexibility Act*

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small businesses the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule.

The provisions set forth in this final rule, for the most part, implement statutory requirements, and are designed to broaden the scope of the OIG's authority to exclude individuals and entities from the Medicare, Medicaid and all other Federal health care programs. As indicated above, these provisions implement the new statutory requirements regarding the period of exclusion for some individuals and entities by: (1) broadening the minimum 5-year mandatory exclusion authority to cover felony convictions under Federal, State or local law relating to health care fraud, and (2) establishing minimum periods of exclusion for certain permissive exclusions. We believe that the number of individuals and entities affected these statutory changes will be minimal in light of the fact that these felony convictions were previously subject to a permissive program exclusion in accordance with section 1128(b)(1) of the Act prior to the enactment of the HIPAA changes.

Further, while the provisions in this rule serve to clarify the OIG's sanction authorities by (1) establishing a new permissive exclusion applicable to individuals having major ownership interest in (or significant control over the operations of) an entity convicted of a program-related offense; (2) clarifying what would constitute patient abuse or neglect for purposes of exclusion; and (3) setting forth a definition for ''furnished'' that would apply to individuals and entities that provide or supply items or services directly or indirectly, we also believe the increase in the number of exclusion cases will be small in light of past experience with respect to imposing program exclusions under section 1128(b)(8) of the Act. Specifically, while the statutory requirement to impose exclusions in cases of certain types of convictions has been broadened in sections 1128 (a)(3) and (a)(4) of the Act, the process for excluding individuals and entities who are convicted in accordance with the new requirements remains essentially the same. Cases to be processed under the new mandatory provisions set forth in sections 1128 (a)(3) and (a)(4) for the minimum mandatory 5-year exclusion were previously processed under the permissive authority provisions in sections 1128 (b)(1) and (b)(3) of the Act, with a benchmark of 3 years. As a result, while there may be minor increases in the number of mandatory exclusions imposed, we see no significant increase or decrease in the number of these cases. Similarly, the clarification of what constitutes patient neglect or abuse should not result in a significant increase in the number of cases under section 1128(a)(2) of the Act, but merely support prior findings of abuse and neglect while delivering health care services.

In addition, we do not anticipate a significant workload resulting from the implementation of section 1128(b)(15) of the Act (in light of past experience with respect to section 1128(b)(8) of the Act), and § 1001.1051 of these regulations, as the requirements for effectuating this authority are rather stringent at the present time, and will limit the number of exclusions to be implemented under this authority.

Since the vast majority of individuals, organizations and entities addressed by these regulations do not engage in such prohibited activities and practices, we believe that any aggregate economic effect of these revised exclusion regulations will be minimal, affecting only those limited few who engage in prohibited behavior in violation of the statute. As such, this final rule should have no significant economic impact. Similarly, while some sanctions may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. We believe that the aggregate economic impact of this rulemaking should be minimal, affecting only those limited few who have chosen to engage in prohibited arrangements, schemes or practices in violation of statutory intent. Therefore, we have concluded that these final regulations should not have a significant economic impact on a number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

*Paperwork Reduction Act*

1. Reporting Requirements on State Medicaid Agencies in Accordance With § 1002.3

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for the information collection requirements with respect to § 1002.3 of these regulations is 0990–0218. Public reporting burden for this collection of information—that is, the burden on the State Medicaid agencies in preparing and submitting the notification to the OIG in accordance § 1002.3—is estimated to average of less than one-half hour per submitted notification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information.

2. Clarifying Definition of the Term ''Furnished''

With respect to the clarifying definition of the term ''furnished'' being set forth in these regulations, we do not believe there will be any new or significant administrative costs or burden requirements placed on direct providers, such as hospitals, nursing homes and physicians, for ensuring that claims are not submitted for items manufactured or supplied by excluded parties. Specifically, the mandatory exclusion of indirect providers is rare. On those exceptional and infrequent occasions that an indirect provider is convicted and subject to an exclusion, the OIG will quickly make this action known through posting this information on the OIG web site, as is done in the case of all OIG exclusions. Since direct providers are already required to keep themselves apprised of all exclusions (not only to ensure their claims are reimbursable, but also to ensure they are not subject to a CMP for contracting with or employing an individual or entity that has been excluded), we do not believe this clarifying definition places any significant new burdens on direct providers beyond the responsibility already existing to refrain from doing business with excluded parties.

Past OIG experience has indicated that the exclusion of indirect providers, such as in the case of a hospital administrator or a nurse aide in a nursing home setting, have created no significant administrative or cost burden problems to a direct provider. In the cases of a hospital administrator's exclusion or a nurse aide's exclusion, the hospital or nursing home was able to separate out the salaries of these individuals on their cost reports without added or significant burden to them. The vast majority of comments to the proposed rule did not allude to any additional administrative or cost burdens that they faced in this regard.

Further, as we have stated above in this preamble, it is our goal to implement program exclusions in a prudent manner that will minimize any inconveniences or hardship. As a result, we have indicated that, with respect to items in a direct provider's existing inventory which may be affected by the exclusion of a manufacturer, any health care items that a direct provider has in inventory from the excluded manufacturer prior to the effective date of the exclusion of the manufacturer will not be affected by the exclusion, and claims may be submitted for the furnishing of such items by the practitioner , provider or supplier. In addition, as indicated in the regulations, we are permitting payment for health care items that are ordered from an excluded manufacturer prior to the effective date of the exclusion and delivered up to 30 days (or 60 days for the first year from the effective date of this provision) *after* the effective date of such exclusion. We believe this will serve to more effectively protect direct providers from significant financial harm and lessen the impact of any administrative burden on direct providers as a result of an indirect provider's exclusion.

In addition, to provide reasonable assurance that no substantial, harm is encountered by direct providers, we have reiterated in the preamble of this final rule that, when appropriate and permitted under the existing statute, the OIG will entertain requests for waivers of program exclusion in appropriate cases. As a result, we do not anticipate any additional information collection and reporting burden requirements being imposed on direct providers as a result of the exclusion of an indirect provider.

**List of Subjects**

*42 Part 1001*

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

*42 Part 1002*

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping.

*42 Part 1005*

Administrative practice and procedure, Fraud, Penalties.

Accordingly, 42 Parts 1000, 1001, 1002 and 1005 are amended as set forth below:

## PART 1000—[AMENDED]

A. Part 1000 is amended as follows:

1. The authority citation for part 1000 continues to read as follows:

**Authority:** 42 U.S.C. 1320 and 1395hh.

2. Section 1000.10 is amended by republishing the introductory paragraph; by revising the definition for the term *Furnished*; and by adding, alphabetically, definitions for the terms *Directly* and *Indirectly* to read as follows:

**§ 1000.10 General definitions.**

In this chapter, unless the context indicates otherwise——

* * * * *

*Directly,* as used in the definition of ''furnished'' in this section, means the provision of items and services by individuals or entities (including items and services provided by them, but manufactured, ordered or prescribed by another individual or entity) who submit claims to Medicare, Medicaid or other Federal health care programs.

* * * * *

*Furnished* refers to items or services provided or supplied, directly or indirectly, by any individual or entity. This includes items and services manufactured, distributed or otherwise provided by individuals or entities that do not directly submit claims to Medicare, Medicaid or other Federal health care programs, but that supply items or services to providers, practitioners or suppliers who submit claims to these programs for such items or services.

* * * * *

*Indirectly,* as used in the definition of ''furnished'' in this section, means the provision of items and services manufactured, distributed or otherwise supplied by individuals or entities who do not directly submit claims to Medicare, Medicaid or other Federal health care programs, but that provide items and services to providers, practitioners or suppliers who submit claims to these programs for such items and services. This term does not include individuals and entities that submit claims directly to these programs for items and services ordered or prescribed by another individual or entity.

* * * * *

## PART 1001—[AMENDED]

B. Part 1001 is amended as follows:

1. The authority citation for part 1001 is revised to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.2 is amended by revising the definitions for the terms *Exclusion, Professionally recognized standards of health care,* and *Sole source of essential specialized services in the community;* and by adding definitions for the terms *Incarceration* and *Patient* to read as follows:

**§ 1001.2 Definitions.**

* * * * *

*Exclusion* means that items and services furnished, ordered or prescribed by a specified individual or entity will not be reimbursed under Medicare, Medicaid and all other Federal health care programs until the individual or entity is reinstated by the OIG.

* * * * *

*Incarceration* means imprisonment or any type of confinement with or without supervised release, including, but not limited to, community confinement, house arrest and home detention.

* * * * *

*Patient* means any individual who is receiving health care items or services, including any item or service provided to meet his or her physical, mental or emotional needs or well-being (including a resident receiving care in a facility as described in part 483 of this chapter), whether or not reimbursed under Medicare, Medicaid and any other Federal health care program and regardless of the location in which such item or service is provided.

* * * * *

*Professionally recognized standards of health care* are Statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within a State. When the Department has declared a treatment modality not to be safe and effective, practitioners who employ such a treatment modality will be deemed not to meet professionally recognized standards of health care. This definition will not be construed to mean that all other treatments meet professionally recognized standards.

* * * * *

*Sole source of essential specialized services in the community* means that an individual or entity—

(1) Is the only practitioner, supplier or provider furnishing specialized services in an area designated by the Health Resources Services Administration as a health professional shortage area for that medical specialty, as listed in 42 part 5, appendices B–F;

(2) Is a sole community hospital, as defined in § 412.92 of this title; or

(3) Is the only source of specialized services in a reasonably defined service area where services by a non-specialist could not be substituted for the source without jeopardizing the health or safety of beneficiaries.

* * * * *

3. Section 1001.101 is revised to read as follows:

**§ 1001.101 Basis for liability.**

The OIG will exclude any individual or entity that—

(a) Has been convicted of a criminal offense related to the delivery of an item or service under Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program;

(b) Has been convicted, under Federal or State law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the OIG concludes entailed, or resulted in, neglect or abuse of patients (the delivery of a health care item or service includes the provision of any item or service to an individual to meet his or her physical, mental or emotional needs or well-being, whether or not reimbursed under Medicare, Medicaid or any Federal health care program);

(c) Has been convicted, under Federal or State law, of a felony that occurred after August 21, 1996 relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other misconduct—

(1) In connection with the delivery of a health care item or service, including the performance of management or administrative services relating to the delivery of such items or services, or

(2) With respect to any act or omission in a health care program (other than Medicare and a State health care program) operated by, or financed in whole or in part, by any Federal, State or local government agency; or

(d) Has been convicted, under Federal or State law, of a felony that occurred after August 21, 1996 relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as defined under Federal or State law. This applies to any individual or entity that—

(1) Is, or has ever been, a health care practitioner, provider or supplier;

(2) Holds, or has held, a direct or indirect ownership or control interest (as defined in section 1124(a)(3) of the Act) in an entity that is a health care provider or supplier, or is, or has ever been, an officer, director, agent or managing employee (as defined in section 1126(b) of the Act) of such an entity; or

(3) Is, or has ever been, employed in any capacity in the health care industry.

4. Section 1001.102 is amended by revising paragraph (b); republishing introductory paragraph (c); and revising paragraph (c)(3) to read as follows:

**§ 1001.102 Length of exclusion.**

* * * * *

(b) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(1) The acts resulting in the conviction, or similar acts, resulted in financial loss to a government program or to one or more entities of $1,500 or more. (The entire amount of financial loss to such programs or entities, including any amounts resulting from similar acts not adjudicated, will be considered regardless of whether full or partial restitution has been made);

(2) The acts that resulted in the conviction, or similar acts, were committed over a period of one year or more;

(3) The acts that resulted in the conviction, or similar acts, had a significant adverse physical, mental or financial impact on one or more program beneficiaries or other individuals;

(4) In convictions involving patient abuse or neglect, the action that resulted in the conviction was premeditated, was part of a continuing pattern or behavior, or consisted of non-consensual sexual acts;

(5) The sentence imposed by the court included incarceration;

(6) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing;

(7) The individual or entity has at any time been overpaid a total of $1,500 or more by Medicare, Medicaid and all other Federal health care programs, or other third-party payers, as a result of improper billings; or

(8) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for imposition of the exclusion.

(c) Only if any of the aggravating factors set forth in paragraph (b) of this section justifies an exclusion longer than 5 years, may mitigating factors be considered as the basis for reducing the period of exclusion to no less than 5 years. Only the following factors may be considered mitigating—

* * * * *

(3) The individual's or entity's cooperation with Federal or State officials resulted in—

(i) Others being convicted or excluded from Medicare, Medicaid and all other Federal health care programs,

(ii) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(iii) The imposition against anyone of a civil money penalty or assessment under part 1003 of this chapter.

5. Section 1001.201 is amended by revising the section heading; revising paragraph (a); republishing introductory paragraph (b)(2), revising paragraphs (b)(2)(iv) and (v), and adding a new paragraph (b)(2)(vi); and by republishing introductory paragraph (b)(3) and revising paragraphs (b)(3)(i) and (b)(3)(iii) to read as follows:

**§ 1001.201 Conviction relating to fraud.**

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of—

(1) A misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) In connection with the delivery of any health care item or service, including the performance of management or administrative services relating to the delivery of such items or services, or

(ii) With respect to any act or omission in a health care program, other than Medicare and a State health care program, operated by, or financed in whole or in part by, any Federal, State or local government agency; or

(2) Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program, other than a health care program, operated by or financed in whole or in part by any Federal, State or local government agency.

(b) *Length of exclusion.* * * *

* * * * *

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iv) The sentence imposed by the court included incarceration;

(v) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(vi) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The individual or entity was convicted of 3 or fewer offenses, and the entire amount of financial loss to a government program or to other individuals or entities due to the acts that resulted in the conviction and similar acts is less than $1,500;

* * * * *

(iii) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare, Medicaid and all other Federal health care programs,

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(C) The imposition of a civil money penalty against others; or

* * * * *

6. Section 1001.301 is amended by republishing introductory paragraph (b)(2); revising paragraphs (b)(2)(iv) and (v); by adding a new paragraph (b)(2)(vi); by republishing introductory paragraph (b)(3); and by revising paragraph (b)(3)(ii) to read as follows:

**§ 1001.301 Conviction relating to obstruction of an investigation.**

* * * * *

(b) *Length of exclusion.* * * *

* * * * *

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iv) The sentence imposed by the court included incarceration;

(v) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(vi) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

* * * * *

(ii) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare, Medicaid and all other Federal health care programs,

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(C) The imposition of a civil money penalty against others; or

* * * * *

7. Section 1001.401 is amended by revising the section heading; revising paragraph (a); by republishing introductory paragraph (c)(2); by revising paragraphs (c)(2)(iii) and (iv); by adding a new paragraph (c)(2)(v); by republishing introductory paragraph (c)(3); and by revising paragraph (c)(3)(i) to read as follows:

**§ 1001.401 Misdemeanor conviction relating to controlled substances.**

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of a misdemeanor relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as defined under Federal or State law. This section applies to any individual or entity that—

(1) Is, or has ever been, a health care practitioner, provider or supplier;

(2) Holds or has held a direct or indirect ownership or control interest, as defined in section 1124(a)(3) of the Act, in an entity that is a health care provider or supplier, or is or has been an officer, director, agent or managing employee, as defined in section 1126(b) of the Act, of such an entity; or

(3) Is, or has ever been, employed in any capacity in the health care industry.

* * * * *

(c) *Length of exclusion.* * * *

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iii) The sentence imposed by the court included incarceration;

(iv) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(v) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any other Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only the following factors may be considered as mitigating and a basis for shortening the period of exclusion—

(i) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare, Medicaid and all other Federal health care programs,

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(C) The imposition of a civil money penalty against others; or

* * * * *

8. Section 1001.501 is amended by revising paragraph (b)(1); republishing introductory paragraph (b)(2), revising paragraphs (b)(2)(ii) and (iii), and adding a new paragraph (b)(2)(iv); by republishing introductory paragraph (b)(3) and revising paragraph (b)(3)(i); and by deleting paragraph (c) to read as follows:

**§ 1001.501 License revocation or suspension.**

* * * * *

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will not be for a period of time less than the period during which an individual's or entity's license is revoked, suspended or otherwise not in effect as a result of, or in connection with, a State licensing agency action.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period for exclusion—

* * * * *

(ii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing;

(iii) The acts, or similar acts, had or could have had a significant adverse impact on the financial integrity of the programs; or

(iv) The individual or entity has been the subject of any other adverse action by any other Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only if any of the aggravating factors listed in paragraph (b)(2) of this section justifies a longer exclusion may mitigating factors be considered as a basis for reducing the period of exclusion to a period not less than that set forth in paragraph (b)(1) of this section. Only the following factors may be considered mitigating—

(i) The individual's or entity's cooperation with a State licensing authority resulted in—

(A) The sanctioning of other individuals or entities, or

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses; or

* * * * *

9. Section 1001.601 is amended by revising paragraph (b) to read as follows:

**§ 1001.601 Exclusion or suspension under a Federal or State health care program.**

* * * * *

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will not be for a period of time less than the period during which the individual or entity is excluded or suspended from a Federal or State health care program.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The acts that resulted in the exclusion, suspension or other sanction under Medicare, Medicaid and all other Federal health care programs had, or could have had, a significant adverse impact on Federal or State health care programs or the beneficiaries of those programs or other individuals;

(ii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(iii) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only if any of the aggravating factors set forth in paragraph (b)(2) of this section justifies a longer exclusion may mitigating factors be considered as a basis for reducing the period of exclusion to a period not less than that set forth in paragraph (b)(1) of this section. Only the following factors may be considered mitigating—

(i) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) The sanctioning of other individuals or entities, or

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses; or

(ii) Alternative sources of the types of health care items or services furnished by the individual or entity are not available.

(4) If the individual or entity is eligible to apply for reinstatement in accordance with § 1001.3001 of this part, and the sole reason for the State denying reinstatement is the existing Medicare exclusion imposed by the OIG as a result of the original State action, the OIG will consider a request for reinstatement.

10. Section 1001.701 is amended by revising paragraph (d)(1); republishing introductory paragraph (d)(2), revising paragraphs (d)(2)(iii) and (iv), and adding paragraph (d)(2)(v) to read as follows:

**§ 1001.701 Excessive claims or furnishing of unnecessary or substandard items and services.**

* * * * *

(d) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors set forth in paragraphs (d)(2) and (d)(3) of this section form a basis for lengthening or shortening the period. In no case may the period be shorter than 1 year for any exclusion taken in accordance with paragraph (a)(2) of this section.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing;

(iv) The violation resulted in financial loss to Medicare, Medicaid and all other Federal health care programs of $1,500 or more; or

(v) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

* * * * *

11. Section 1001.801 is amended by revising paragraph (c)(1); and by republishing introductory paragraph (c)(2), revising paragraphs (c)(2)(iii) and (iv), and adding a new paragraph (c)(2)(v) to read as follows:

**§ 1001.801 Failure of HMOs and CMPs to furnish medically necessary items and services.**

* * * * *

(c) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors set forth in paragraphs (c)(2) and (c)(3) of this section form a basis for lengthening or shortening the period.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iii) The entity's failure to provide a necessary item or service that had or could have had a serious adverse effect;

(iv) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(v) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

* * * * *

12. Section 1001.901 is amended by republishing introductory paragraph (b), revising paragraph (b)(3), redesignating existing paragraph (b)(4) as (b)(5), and adding a new paragraph (b)(4) to read as follows:

**§ 1001.901 False or improper claims.**

* * * * *

(b) *Length of exclusion.* In determining the length of exclusion imposed in accordance with this section, the OIG will consider the following factors—

* * * * *

(3) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral);

(4) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion; or

* * * * *

13. Section 1001.951 is amended by republishing introductory paragraph (b)(1), revising paragraph (b)(1)(iii), redesignating existing paragraph (b)(1)(iv) as (b)(1)(v), and adding a new paragraph (b)(1)(iv) to read as follows:

**§ 1001.951 Fraud and kickbacks and other prohibited activities.**

* * * * *

(b) *Length of exclusion.* (1) The following factors will be considered in determining the length of exclusion in accordance with this section—

* * * * *

(iii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral);

(iv) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion; or

* * * * *

**§ 1001.953 [Removed]**

14. Section 1001.953 is removed.

15. A new section 1001.1051 is added to read as follows:

**§ 1001.1051 Exclusion of individuals with ownership or control interest in sanctioned entities.**

(a) *Circumstance for exclusion.* The OIG may exclude any individual who—

(1) Has a direct or indirect ownership or control interest in a sanctioned entity, and who knows or should know (as defined in section 1128A(i)(6) of the Act) of the action constituting the basis for the conviction or exclusion set forth in paragraph (b) of this section; or

(2) Is an officer or managing employee (as defined in section 1126(b) of the Act) of such an entity.

(b) For purposes of paragraph (a) of this section, the term ''sanctioned entity'' means an entity that—

(1) Has been convicted of any offense described in §§ 1001.101 through 1001.401 of this part; or

(2) Has been terminated or excluded from participation in Medicare, Medicaid and all other Federal health care programs.

(c) *Length of exclusion.* (1) If the entity has been excluded, the length of the individual's exclusion will be for the same period as that of the sanctioned entity with which the individual has the prohibited relationship.

(2) If the entity was not excluded, the length of the individual's exclusion will be determined by considering the factors that would have been considered if the entity had been excluded.

(3) An individual excluded under this section may apply for reinstatement in accordance with the procedures set forth in § 1001.3001.

16. Section 1001.1101 is amended by republishing the introductory text of (b) and revising paragraph (b)(3) to read as follows:

**§ 1001.1101 Failure to disclose certain information.**

* * * * *

(b) *Length of exclusion.* The following factors will be considered in determining the length of an exclusion under this section—

* * * * *

(3) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral);

* * * * *

17. Section 1001.1201 is amended by revising paragraph (b)(4) to read as follows:

**§ 1001.1201 Failure to provide payment information.**

* * * * *

(b) * * *

(4) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral); and

* * * * *

18. Section 1001.1301 is amended by revising paragraph (b)(2)(iv) to read as follows:

**§ 1001.1301 Failure to grant immediate access.**

* * * * *

(b) * * *

(2) * * *

(iv) Whether the entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral).

* * * * *

19. Section 1001.1401 is amended by revising paragraph (b)(5) to read as follows:

**§ 1001.1401 Violations of PPS corrective action.**

* * * * *

(b) *Length of exclusion.* * * *

(5) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral).

20. Section 1001.1601 is amended by revising paragraph (b)(1)(iv) to read as follows:

**§ 1001.1601 Violations of the limitations on physician charges.**

* * * * *

(b) *Length of exclusion.* (1) * * *

(iv) Whether the physician has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral); and

* * * * *

21. Section 1001.1701 is amended by revising paragraph (c)(1)(v) to read as follows:

**§ 1001.1701 Billing for services of assistant at surgery during cataract operations.**

* * * * *

(c) *Length of exclusion.* (1) * * *

(v) Whether the physician has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral); and

* * * * *

22. Section 1001.1901 is amended by revising paragraphs (b)(1), (b)(3) and (c)(3); (i) (ii) and (iii) redesignating (c)(4) as (c)(5) and revising paragraph (c)(5)(ii); and by adding a new paragraph (c)(4) to read as follows:

**§ 1001.1901 Scope and effect of exclusion.**

* * * * *

(b) *Effect of exclusion on excluded individuals and entities.* (1) Unless and until an individual or entity is reinstated into the Medicare program in accordance with subpart F of this part, no payment will be made by Medicare, Medicaid and all other Federal health care programs for any item or service furnished, on or after the effective date specified in the notice period, by an excluded individual or entity, or at the medical direction or on the prescription of a physician or other authorized individual who is excluded when the individual or entity furnishing such item or service knew, or had reason to know, of the exclusion. This section applies regardless of whether an individual or entity has obtained a program provider number or equivalent, either as an individual or as a member of a group, prior to being reinstated.

* * * * *

(3) An excluded individual or entity that submits, or causes to be submitted, claims for items or services furnished during the exclusion period is subject to civil money penalty liability under section 1128A(a)(1)(D) of the Act, and criminal liability under section 1128B(a)(3) of the Act and other provisions. In addition, submitting claims, or causing claims to be submitted or payments to be made for items or services furnished, ordered or prescribed, including administrative and management services or salary, may serve as the basis for denying reinstatement to the programs.

(c) *Exceptions to paragraph (b)(1) of this section.* * * *

(3) * * *

(i) Inpatient institutional services furnished to an individual who was admitted to an excluded institution before the date of the exclusion,

(ii) Home health services and hospice care furnished to an individual under a plan of care established before the effective date of the exclusion, and

(iii) Any health care items that are ordered by a practitioner, provider or supplier from an excluded manufacturer before the effective date of the exclusion and delivered within 30 days of the effective date of such exclusion. (For the period October 2, 1998 to October 4, 1999) payment may be made under Medicare or a State health care program for up to 60 days after the effective date of the exclusion for any health care items that are ordered by a practitioner, provider or supplier from an excluded manufacturer before the effective date of such exclusion and delivered within 60 days of the effect of the exclusion.)

(4) HCFA will not pay any claims submitted by, or for items or services ordered or prescribed by, an excluded provider for dates of service 15 days or more after the notice of the provider's exclusion was mailed to the supplier.

(5) * * *

(ii) Notwithstanding paragraph (c)(5)(i) of this section, no claim for emergency items or services will be payable if such items or services were provided by an excluded individual who, through an employment, contractual or any other arrangement, routinely provides emergency health care items or services.

23. Section 1001.2001 is revised to read as follows:

**§ 1001.2001 Notice of intent to exclude.**

(a) Except as provided in paragraph (b) of this section, if the OIG proposes to exclude an individual or entity in accordance with subpart C of this part, or in accordance with subpart B of this part where the exclusion is for a period exceeding 5 years, it will send written notice of its intent, the basis for the proposed exclusion and the potential effect of an exclusion. Within 30 days of receipt of notice, which will be deemed to be 5 days after the date on the notice, the individual or entity may submit documentary evidence and written argument concerning whether the exclusion is warranted and any related issues. In conjunction with this submission, an individual or entity may request an opportunity to present oral argument to an OIG official.

(b) Exception. If the OIG proposes to exclude an individual or entity under the provisions of §§ 1001.1301, 1001.1401 or 1001.1501 of this part, paragraph (a) of this section will not apply.

(c) If an entity has a provider agreement under section 1866 of the Act, and the OIG proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice provided for in paragraph (a) of this section will so state.

24. Section 1001.2002 is amended by adding a new paragraph (e) to read as follows:

**§ 1001.2002 Notice of exclusion.**

* * * * *

(e) No later than 15 days prior to the final exhibit exchanges required under § 1005.8 of this chapter, the OIG may amend its notice letter if information comes to light that justifies the imposition of a different period of exclusion other than the one proposed in the original notice letter.

25. Section 1001.2003 is amended by revising introductory paragraph (a) to read as follows:

**§ 1001.2003 Notice of proposal to exclude.**

(a) Except as provided in paragraph (c) of this section, if the OIG proposes to exclude an individual or entity in accordance with §§ 1001.901, 1001.951, 1001.1601 or 1001.1701, it will send written notice of this decision to the affected individual or entity. The written notice will provide the same information set forth in § 1001.2002(c). If an entity has a provider agreement under section 1866 of the Act, and the OIG also proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice will so indicate. The exclusion will be effective 60 days after the receipt of the notice (as defined in § 1005.2 of this chapter) unless, within that period, the individual or entity files a written request for a hearing in accordance with part 1005 of this chapter. Such request must set forth—

* * * * *

26. Section 1001.2006 is amended by republishing introductory paragraph (a); revising paragraphs (a)(1) and (a)(7); redesignating existing paragraph (a)(8) as (a)(9); and by adding a new paragraph (a)(8) to read as follows:

**§ 1001.2006 Notice to others regarding exclusion.**

(a) HHS will give notice of the exclusion and the effective date to the public, to beneficiaries (in accordance with § 1001.1901(c)), and, as appropriate, to—

(1) Any entity in which the excluded individual is known to be serving as an employee, administrator, operator, or in which the individual is serving in any other capacity and is receiving payment for providing services (The lack of this notice will not affect HCFA's ability to deny payment for services);

* * * * *

(7) The State and Area Agencies on Aging established under title III of the Older Americans Act;

(8) The National Practitioner Data Bank.

* * * * *

27. Section 1001.3001 is amended by revising paragraph (a)(1) to read as follows:

**§ 1001.3001 Timing and method of request for reinstatement.**

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section or in § 1001.501(b)(4) of this part, an excluded individual or entity (other than those excluded in accordance with §§ 1001.1001 and 1001.1501) may submit a written request for reinstatement to the OIG only after the date specified in the notice of exclusion. Obtaining a program provider number or equivalent does not reinstate eligibility.

* * * * *

28. Section 1001.3002 is amended by revising paragraph (a); republishing introductory paragraph (b), revising paragraphs (b)(3) and (4) and deleting paragraph (b)(5); and by revising introductory paragraph (c) and paragraph (d) to read as follows:

**§ 1001.3002 Basis for reinstatement.**

(a)(1) The OIG will authorize reinstatement if it determines that—

(i) The period of exclusion has expired;

(ii) There are reasonable assurances that the types of actions that formed the basis for the original exclusion have not recurred and will not recur; and

(iii) There is no additional basis under sections 1128(a) or (b) or 1128A of the Act for continuation of the exclusion.

(2) Submitting claims or causing claims to be submitted or payments to be made by the programs for items or services furnished, ordered or prescribed, including administrative and management services or salary, may serve as the basis for denying reinstatement. This section applies regardless of whether an individual or entity has obtained a program provider number or equivalent, either as an individual or as a member of a group, prior to being reinstated.

(b) In making the reinstatement determination, the OIG will consider—

* * * * *

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to Medicare, Medicaid and all other Federal health care programs, have been paid or satisfactory arrangements have been made to fulfill these obligations; and

(4) Whether HCFA has determined that the individual or entity complies with, or has made satisfactory arrangements to fulfill, all of the applicable conditions of participation or supplier conditions for coverage under the statutes and regulations.

(c) If the OIG determines that the criteria in paragraphs (a)(1)(ii) and (iii) of this section have been met, an entity excluded in accordance with § 1001.1001 will be reinstated upon a determination by the OIG that the individual whose conviction, exclusion or civil money penalty was the basis for the entity's exclusion—

* * * * *

(d) Reinstatement will not be effective until the OIG grants the request and provides notice under § 1001.3003(a) of this part. Reinstatement will be effective as provided in the notice.

* * * * *

## PART 1002—[AMENDED]

C. Part 1002 is amended as follows:

1. The authority citation for part 1002 continues to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396(a)(4)(A), 1396(p)(1), 1396a(30), 1396a(39), 1396b(a)(6), 1396b(b)(3), 1396b(i)(2) and 1396b(q).

2. Section 1002.3 is amended by revising the section heading and paragraph (b)(2), and by adding a new paragraph (b)(3) to read as follows:

**§ 1002.3 Disclosure by providers and State Medicaid agencies.**

* * * * *

(b) *Notification to Inspector General.*

* * * * *

(2) The agency must promptly notify the Inspector General of any action it takes on the provider's application for participation in the program.

(3) The agency must also promptly notify the Inspector General of any action it takes to limit the ability of an individual or entity to participate in its program, regardless of what such an action is called. This includes, but is not limited to, suspension actions, settlement agreements and situations where an individual or entity voluntarily withdraws from the program to avoid a formal sanction.

* * * * *

3. Section 1002.203 is amended by revising paragraph (a) to read as follows:

**§ 1002.203 Mandatory exclusion.**

(a) The State agency, in order to receive Federal financial participation (FFP), must provide that it will exclude from participation any HMO, or entity furnishing services under a waiver approved under section 1915(b)(1) of the Act, if such organization or entity—

(1) Could be excluded under § 1001.1001 or § 1001.1051 of this chapter, or

(2) Has, directly or indirectly, a substantial contractual relationship with an individual or entity that could be excluded under § 1001.1001 or § 1001.1051 of this chapter.

* * * * *

4. Section 1002.211 is amended by revising paragraph (a) to read as follows:

**§ 1002.211 Effect of exclusion.**

(a) *Denial of payment.* Except as provided for in § 1001.1901(c)(3), (c)(4) and (c)(5)(i) of this chapter, no payment may be made by the State agency for any item or service furnished on or after the effective date specified in the notice by an excluded individual or entity, or at the medical direction or on the prescription of a physician who is excluded when a person furnishing such item or service knew, or had reason to know, of the exclusion.

* * * * *

## PART 1005—[AMENDED]

D. Part 1005 is amended as follows:

1. The authority citation for part 1005 continues to read as follows:

**Authority:** 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.15 is amended by revising introductory paragraph (f)(1) to read as follows:

**§ 1005.15 The hearing and burden of proof.**

* * * * *

(f)(1) A hearing under this part is not limited to specific items and information set forth in the notice letter to the petitioner or respondent. Subject to the 15-day requirement under § 1005.8, additional items and information, including aggravating or mitigating circumstances that arose or became known subsequent to the issuance of the notice letter, may be introduced by either party during its case-in-chief unless such information or items are—

* * * * *

3. Section 1005.21 is amended by revising paragraphs (k)(2) and (3) to read as follows:

**§ 1005.21, Appeal to DAB.**

* * * * *

(k) * * *

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of

the DAB will be sent by certified mail, return receipt requested, to the Chief Counsel to the IG. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the Chief Counsel to the IG receives two or more petitions within 10 days after the DAB issues its decision, the Chief Counsel to the IG will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

Dated: March 11, 1998.

**June Gibbs Brown,**

*Inspector General, Department of Health and Human Services.*

Approved: April 13, 1998.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 98–23462 Filed 8–28–98; 4:23pm]

**BILLING CODE 4150–04–P**

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 195

**[Docket No. PS–117; Amdt. 195–64]**

**RIN 2137–AC87**

## Low-Stress Hazardous Liquid Pipelines Serving Plants and Terminals

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule excludes from RSPA's safety standards for hazardous liquid pipelines low-stress pipelines regulated for safety by the U.S. Coast Guard and low-stress pipelines less than 1 mile long that serve certain plants and transportation terminals without crossing an offshore area or a waterway currently used for commercial navigation. RSPA previously stayed enforcement of the standards against these pipelines to mitigate compliance difficulties that did not appear warranted by the safety risk. The rule change conforms the standards with this enforcement policy and eliminates duplicative and unnecessarily burdensome regulation.

**EFFECTIVE DATE:** October 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** L.M. Furrow at (202)366–4559 or furrowl@rspa.dot.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1994, in response to a new pipeline safety law (49 U.S.C. 60102(k)), RSPA amended the hazardous liquid pipeline safety standards in 49 CFR Part 195 to cover certain low-stress pipelines (59 FR 35465; July 12, 1994). A low-stress pipeline is a pipeline that operates in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe (§ 195.3). Except for onshore rural gathering lines and gravity-powered lines, the following categories of low-stress pipelines were brought under the standards: (1) Offshore pipelines; (2) onshore pipelines that transport highly volatile liquids; (3) onshore pipelines located outside rural areas; and (4) onshore pipelines located in waterways currently used for commercial navigation (§ 195.1(b)(3)).

Interfacility transfer lines comprised the largest percentage of low-stress pipelines brought under Part 195. These lines move hazardous liquids for short distances between truck, rail, and vessel transportation terminals, manufacturing plants (including petrochemical plants), and oil refineries, or between these facilities and associated storage or long-distance pipeline transportation.

Information in the rulemaking docket showed that bringing interfacility transfer lines into full compliance with Part 195 would be difficult for many operators. The primary difficulty was that transfer lines are not customarily installed and operated according to Part 195 standards. For example, considering their short length and low operating stress, additional pipe wall thickness is often used to resist expected corrosion instead of cathodic protection as Part 195 requires. Because of this and other disparities, operators were allowed to delay compliance of their existing lines until July 12, 1996 (§ 195.1(c)).

Before the compliance deadline, interfacility transfer line operators and their Washington representatives continued to argue that meeting Part 195 requirements would not bring commensurate safety benefits. The operators were particularly concerned about the strain on resources and potential adverse effects of having to meet the separate federal regulatory regimes of RSPA, the Occupational Safety and Health Administration (OSHA), and the U.S. Coast Guard.

The operators explained that segments of interfacility transfer lines on facility grounds are subject to OSHA's Process Safety Management standards (29 CFR 1910.119). Compliance with these standards affects operation of the off-grounds segments that come under Part 195. Similarly, compliance with Part 195 on off-grounds segments would affect operation of the on-grounds segments. Operators said this overlapping effect would result in analogous administrative costs for records, procedures, and manuals. Worse yet it would create opportunities for mistakes when operating personnel have to meet different requirements with similar objectives. In addition, for transfer lines between vessels and marine transportation-related facilities, the U.S. Coast Guard safety regulations (33 CFR Parts 154 and 156) would compound the overlap problem. Not only would applying Part 195 to these marine terminal transfer lines duplicate agency efforts within DOT, it also would leave the industry uncertain which DOT safety standards apply in particular instances.

At the same time, we began to realize that carrying out adequate compliance inspections on interfacility transfer lines would require a significant increase in resources. We estimated that about 11,000 miles of low-stress pipelines were brought under Part 195, with over a third of the mileage composed of short interfacility transfer lines. Just the job of finding and educating the many operators of these short lines would likely be a major, protracted effort.

In consideration of these industry and government compliance difficulties and the limited public risk involved, we concluded that the potential benefits of complying with Part 195 did not justify the expense for certain short interfacility transfer lines and lines regulated by the Coast Guard. Consequently, we announced a stay of enforcement of Part 195 against these lines (61 FR 24245; May 14, 1996). The stay applied to low-stress pipelines that are regulated by the Coast Guard or that extend less than 1 mile outside plant or terminal grounds without crossing an offshore area or any waterway used for commercial navigation.

Following the stay of enforcement, we published a direct final rule that excluded from Part 195 interfacility transfer lines covered by the stay (62 FR 31364; June 9, 1997). However, because we received a written adverse comment on this action, we withdrew the direct final rule before it took effect (62 FR 52511; October 8, 1997).

Later, based on the direct final rule and comments we had received on it, we again sought to remove the lines from Part 195 by issuing a notice of proposed rulemaking (63 FR 9993; February 27, 1998). Four persons submitted comments on this notice: the Chemical Manufacturers Association, the Independent Liquid Terminals Association, the Independent Fuel Terminal Operators Association, and the American Petroleum Institute. Each of

the commenters supported the proposed action. The commenters agreed with our assessment that the limited safety and environmental risk of the lines does not warrant applying Part 195 standards on top of the existing regulatory coverage by OSHA and the Coast Guard.

**Advisory Committee Review**

We presented the proposed rule change, including risk assessment and supporting analyses, for consideration by the Technical Hazardous Liquid Pipeline Safety Standards Committee at a meeting in Washington, D. C. on May 6, 1998. This statutory advisory committee reviews all safety rules RSPA proposes for hazardous liquid pipelines. The Committee comprises 15 members, representing industry, government, and the public, who are qualified to evaluate hazardous liquid pipeline safety standards. The Committee voted to recommend adoption of the proposed rule without change. The Committee's report on the matter is available in the docket of this proceeding.

**Regulatory Analyses and Notices**

*A. Executive Order 12866 and DOT Policies and Procedures*

The Office of Management and Budget (OMB) does not consider this action to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this final rule document. DOT does not consider this action significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA prepared a study of the costs and benefits of the Final Rule that extended Part 195 to cover certain low-stress pipelines (Final Regulatory Evaluation, Docket No. PS–117). That study, which encompassed short or Coast Guard regulated interfacility transfer lines, showed that the Final Rule would result in net benefits to society, with a benefit to cost ratio of 1.5.

The Final Regulatory Evaluation determined costs and benefits of the Final Rule on a mileage basis. But while costs were evenly distributed, most of the expected benefits were projected from accident data that did not involve short or Coast Guard regulated interfacility transfer lines. Since the present action affects only these lines, it is reasonable to believe the action will reduce more costs than benefits. Thus, the present action should enhance the net benefits of the Final Rule. Because of this likely economic effect, a further regulatory evaluation of the Final Rule in Docket No. PS–117 or of the present action is not warranted.

*B. Regulatory Flexibility Act*

Low stress interfacility transfer lines covered by the present action are associated primarily with the operation of refineries, petrochemical and other industrial plants, and materials transportation terminals. In general, these facilities are not operated by small entities. Nonetheless, even if small entities operate low-stress interfacility transfer lines, their costs will be lower because this action reduces compliance burdens. Therefore, based on the facts available about the anticipated impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

*C. Executive Orders 13083 and 13084*

This rule will not have a substantial direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government, and also would not significantly or uniquely affect Indian tribal governments. Therefore, the consultation requirements of Executive Orders 13083 (''Federalism'') and 13084 (''Consultation and Coordination with Indian Tribal Governments'') do not apply. Nevertheless, because states with hazardous liquid pipeline safety programs ultimately monitor the compliance of intrastate pipelines with the rule, RSPA routinely consults with state pipeline safety representatives during early stages of rulemaking.

*D. Paperwork Reduction Act*

This action reduces the pipeline mileage and number of operators subject to Part 195. Consequently, it reduces the information collection burden of Part 195 that is subject to review by OMB under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of Part 195 through May 31, 1999 (OMB No. 2137–0047).

*E. Unfunded Mandates Reform Act of 1995*

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

**List of Subjects in 49 CFR Part 195**

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR Part 195 as follows:

1. The authority citation for Part 195 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) is republished, and paragraph (b)(3) is revised to read as follows:

**§ 195.1 Applicability.**

* * * * *

(b) This part does not apply to—

* * * * *

(3) Transportation through any of the following low-stress pipelines:

(i) An onshore pipeline or pipeline segment that—

(A) Does not transport HVL;

(B) Is located in a rural area; and

(C) Is located outside a waterway currently used for commercial navigation;

(ii) A pipeline subject to safety regulations of the U.S. Coast Guard; or

(iii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1 mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

* * * * *

Issued in Washington, D.C. on August 28, 1998.

**Kelley S. Coyner,**

*Administrator.*

[FR Doc. 98–23661 Filed 9–1–98; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 226

**[Docket No. 971124276–8202–02; I.D. No. 110797B]**

**RIN 0648–AH88**

## Designated Critical Habitat; Green and Hawksbill Sea Turtles

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Endangered Species Act of 1973 (ESA), NMFS is

designating critical habitat for the threatened green sea turtle (*Chelonia mydas*) to include coastal waters surrounding Culebra Island, Puerto Rico, and the endangered hawksbill sea turtle (*Eretmochelys imbricata*) to include coastal waters surrounding Mona and Monito Islands, Puerto Rico. This designation of critical habitat provides explicit notice to Federal agencies and to the public that these areas and features are vital to the conservation of the species.

**DATES:** Effective October 2, 1998.

**ADDRESSES:** Requests for copies of this final rule and/or the Environmental Assessment (EA) should be addressed to Barbara Schroeder, National Sea Turtle Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Michelle Rogers, 301–713–1401 or Colleen Coogan, 727–570–5312.

**SUPPLEMENTARY INFORMATION:**

## Background

Green and hawksbill turtles are largely restricted to tropical and subtropical waters. Once abundant throughout the Caribbean, green and hawksbill turtle populations have diminished significantly from historic levels. In response to this decline, the green turtle was listed as threatened under the ESA, except for the Florida and Pacific coast of Mexico breeding populations, which are listed as endangered, on July 28, 1978 (43 FR 32800), and the hawksbill turtle was listed as endangered throughout its range on June 2, 1970 (35 FR 8495).

Green and hawksbill turtles, as well as other marine turtle species, are also protected internationally under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Without these protections, it is highly unlikely that either species, traditionally highly prized in the Caribbean for their flesh, fat, eggs, and shell, would exist today.

On February 14, 1997, NMFS announced the receipt of a petition presenting substantial information to warrant a review (62 FR 6934) to designate critical habitat for green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) turtles to include the coastal waters surrounding the islands of the Culebra Archipelago. At that time, NMFS also requested additional information concerning other areas in the U.S. Caribbean where the designation of critical habitat for listed sea turtles may be warranted.

On December 19, 1997, NMFS published a proposed rule (62 FR 66584) to designate critical habitat for the green turtle to include coastal waters out to 3 nautical miles (nm) surrounding Culebra Island, Puerto Rico, and for the hawksbill turtle to include coastal waters out to 3 nm surrounding Mona and Monito Islands, Puerto Rico.

NMFS also completed an EA, pursuant to the National Environmental Policy Act, to evaluate both the environmental and economic impacts of the proposed critical habitat designation. The EA resulted in a finding of no significant impact for the proposed action.

The proposed rule provided for a 60-day public comment period. During the comment period, public hearings were held in Mayaguez, Puerto Rico, on January 26, 1998, in San Juan, Puerto Rico, on January 27, 1998, and in Culebra, Puerto Rico, on January 29, 1998. After consideration of the public comments, NMFS is designating critical habitat for green and hawksbill turtles as described in the proposed rule (see Proposed Critical Habitat; Geographic Extent section of this rule).

In accordance with the July 18, 1977, Memorandum of Understanding between NMFS and the U.S. Fish and Wildlife Service (USFWS), NMFS was given responsibility for sea turtles while in the marine environment. Such responsibility includes proposing and designating critical habitat. The designation of critical habitat for sea turtles while on land is the jurisdiction of the USFWS; therefore, this rule includes only marine areas.

## Critical Habitat of the Green Turtle

Biological information for listed green turtles can be found in the Recovery Plan for U.S. Population of Atlantic Green Turtle (NMFS and USFWS, 1991), the most recent green turtle status review (NMFS in prep.), and the **Federal Register** documents of proposed and final listing determination (see 40 FR 21982, May 20, 1975; 43 FR 32800, July 28, 1978). These documents include information on the status of the species, its life history characteristics and habitat requirements, as well as projects, activities, and other factors affecting the species.

Green turtles are primarily restricted to tropical and subtropical waters. In U.S. Atlantic and Gulf of Mexico waters, green turtles are found from Massachusetts to Texas and in the U.S. Virgin Islands and Puerto Rico. Caribbean populations of green turtles have diminished significantly from historical levels, primarily due to the directed turtle fishery that existed prior to their listing under the ESA. Additionally, researchers have documented that habitat loss is a primary factor slowing the recovery of the species throughout its range. Degradation of seagrass beds has slowed recovery of green turtles in the Caribbean due to reduced carrying capacity of seagrass meadows (Williams, 1988). Therefore, the extent of habitat required for foraging green turtles is likely to be increasing due to the reduced productivity of remaining seagrass beds.

Seagrasses are the principal dietary component of juvenile and adult green turtles throughout the Wider Caribbean region (Bjorndal, 1995). The seagrass beds of Culebra consist primarily of turtle grass (*Thalassia testudinum*). While seagrasses are distributed throughout temperate and tropical latitudes, turtle grass beds are a tropical phenomenon. In the Caribbean, turtle grass beds consist primarily of turtle grass, but may include other species of seagrass, such as manatee grass (*Syringodium filiforme*), shoal grass (*Halodule wrightii*), and sea vine (*Halophila decipiens*), as well as several species of algae including green algae of the genera *Halimeda*, *Caulerpa*, and *Udotea*.

The natal beaches of Culebra's juvenile green turtles have not yet been identified. After emerging from nests on natal beaches, post-hatchlings may move into offshore convergence zones for an undetermined length of time (Carr, 1986). Upon reaching approximately 25 to 35 cm carapace length, juvenile green turtles enter benthic feeding grounds in relatively shallow, protected waters (Collazo *et al.*, 1992).

The importance of the Culebra archipelago as green turtle developmental habitat has been well documented. Researchers have established that Culebra coastal waters support juvenile and subadult green turtle populations and have confirmed the presence of a small population of adults (Collazo *et al.*, 1992). These findings, together with information obtained from studies conducted in the U.S. Virgin Islands, have reaffirmed the importance of developmental habitats throughout the eastern portion of the Puerto Rican Bank (Collazo *et al.*, 1992). Additionally, the coral reefs and other topographic features within these waters provide green turtles with shelter during interforaging periods that serve as refuge from predators.

The coastal waters of Culebra also provide habitat for hawksbill and leatherback turtles. Hawksbill turtles forage extensively on the nearby reefs, and both hawksbills and leatherbacks use Culebra's coastal waters to access

nesting beaches. Culebra and St. Croix beaches have the greatest density of leatherback nests within U.S. waters.

Culebra seagrasses provide foraging habitat for many valuable species. In addition to green turtles, the commercially important queen conch (*Strombus gigas*) and coral reef bony fishes (Class Osteichthyes), such as parrotfish (*Sparisoma spp.*), grunts (*Haemulon spp.*), porgies or sea breams (*Archosargus rhomboidalis*), and others, utilize this important habitat. Culebra's seagrass beds also provide habitat for the endangered west Indian manatee (*Trichechus manatus*) and several species of cartilaginous fishes (Class Chondrichthyes). Additionally, seagrass beds beneficially modify the physical, chemical, and geological properties of coastal areas. They provide nutrients, primary energy, and habitats that help sustain coastal fisheries resources while enhancing biological diversity and wildlife (Vicente and Tallevast, 1992).

**Critical Habitat of the Hawksbill Turtle**

Biological information for listed hawksbill turtles can be found in the Recovery Plan for the Hawksbill Turtle in the U.S. Caribbean, Atlantic and Gulf of Mexico (NMFS and USFWS, 1993), the Hawksbill Turtle Status Review (NMFS, 1995), and the **Federal Register** document of final listing determination (see 35 FR 8495, June 2, 1970). These documents include information on the status of the species, its life history characteristics and habitat requirements, as well as projects, activities, and other factors affecting the species.

The hawksbill turtle occurs in tropical and subtropical waters of the Atlantic, Pacific, and Indian Oceans. The species is widely distributed in the Caribbean Sea and western Atlantic Ocean. Within the United States, hawksbills are most common in Puerto Rico and its associated islands, the U.S. Virgin Islands, and Florida.

International commerce in hawksbill shell, or ''bekko,'' is considered the most significant factor endangering hawksbill turtle populations around the world. Despite international trade protections under CITES, illegal trade in hawksbill shell continues. The illegal take of hawksbills at sea has not yet been fully quantified, but it is a continuing and serious problem.

Juvenile hawksbills are thought to lead a pelagic existence before recruiting to benthic feeding grounds at a size of approximately 25 cm straight carapace length (Meylan and Carr, 1982). Coral reefs, like those found in the waters surrounding Mona and Monito Islands, are widely recognized as the primary foraging habitat of juvenile, subadult, and adult hawksbill turtles. This habitat association is directly related to the species' highly specific diet of sponges (Meylan, 1988). Gut content analysis conducted on hawksbills collected from the Caribbean suggests that a few types of sponges make up the major component of their diet, despite the prevalence of other sponges on the coral reefs where hawksbills are found (Meylan, 1984). Vicente (1993) observed similar feeding habits in hawksbills foraging specifically in Puerto Rico. Additionally, the ledges and caves of the reef provide shelter for resting and refuge from predators.

Hawksbills depend on coral reefs for food and shelter; therefore, the condition of reefs directly affects the hawksbill's well-being. Destruction of coral reefs due to deteriorating water quality and vessel anchoring, striking, or grounding is a growing problem.

Mona and Monito Islands are uninhabited natural reserves managed by the Puerto Rico Department of Natural and Environmental Resources. The coral reefs of Mona and Monito Islands are among the few known remaining locations in the Caribbean where hawksbill turtles occur with considerable density (Diez and van Dam, 1996). Researchers have shown that the large juvenile population of hawksbill turtles around Mona and Monito are long-term residents, exhibiting strong site fidelity for periods of at least several years (Diez, 1996). Recent genetic studies indicate that this resident population comprises individuals from multiple nesting populations in the Wider Caribbean. These data indicate that the conservation of the juvenile population of hawksbill turtles at Mona can contribute to sustaining healthy nesting populations throughout the Caribbean Region (Bowen *et al.*, 1996). Additionally, data on hawksbill turtle diet composition and foraging behavior suggest that this high-density hawksbill population may play a significant role in maintaining sponge species diversity in the nearshore benthic communities of Mona and Monito Islands (van Dam and Diez, 1997).

Hawksbills utilize both low- and high-energy nesting beaches in tropical oceans of the world. Both insular and mainland nesting sites are known. Hawksbills will nest on small pocket beaches and, because of their small body size and great agility, can traverse fringing reefs that limit access to other species.

Nesting within the southeastern United States occurs principally in Puerto Rico and in the U.S. Virgin Islands, with the most important sites being Mona Island in Puerto Rico and Buck Island Reef National Monument in the U.S. Virgin Islands. Mona Island supports the largest population of nesting hawksbill turtles in the U.S. Caribbean. Considerable nesting also occurs on the beaches of Culebra, Vieques, and mainland Puerto Rico, as well as St. Croix, St. John, and St. Thomas.

The waters surrounding Mona Island also support a small green turtle population, which possibly is surviving only because of Mona's remoteness and the full-time presence of Puerto Rico Department of Natural and Environmental Resources fisheries/wildlife enforcement personnel. Limited green turtle nesting still occurs on Mona Island.

**Definition of Critical Habitat**

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.'' (see 16 U.S.C. 1532(5)(A)). The term ''conservation,'' as defined in section 3(3) of the ESA, means ''* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' (see 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS must consider the requirements of the species, including (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species (see 50 CFR 424.12(b)).

In addition to these factors, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management

considerations or protection. These essential features may include, but are not limited to, breeding/nesting areas, food resources, water quality and quantity, and vegetation and soil types (see 50 CFR 424.12(b)).

**Need for Special Management Considerations or Protection**

In order to assure that the essential areas and features described in previous sections are maintained or restored, special management measures may be needed. Activities that may require special management considerations for listed green and hawksbill turtle foraging and developmental habitats include, but are not limited to, the following:

(1) Vessel traffic—Propeller dredging and anchor mooring severely disrupt benthic habitats by crushing coral, breaking seagrass root systems, and severing rhizomes. Propeller dredging and anchor mooring in shallow areas are major disturbances to even the most robust seagrasses. Trampling of seagrass beds and live bottom, a secondary effect of recreational boating, also disturbs seagrasses and coral.

(2) Coastal construction—The development of marinas and private or commercial docks in inshore waters can negatively impact turtles through destruction or degradation of foraging habitat. Additionally, this type of development leads to increased boat and vessel traffic, which may result in higher incidences of propeller- and collision-related mortality.

(3) Point and non-point source pollution—Highly colored, low salinity sewage discharges may provoke physiological stress upon seagrass beds and coral communities and may reduce the amount of sunlight below levels necessary for photosynthesis. Nutrient over-enrichment caused by inorganic and organic nitrogen and phosphorous from urban and agricultural run-off and sewage can also stimulate algal growth that can smother corals and seagrasses, shade rooted vegetation, and diminish the oxygen content of the water.

(4) Fishing activities—Incidental catch during commercial and recreational fishing operations is a significant source of sea turtle mortality. Additionally, the increased vessel traffic associated with fishing activities can result in the destruction of habitat due to propeller dredging and anchor mooring.

(5) Dredge and fill activities—Dredging activities result in direct destruction or degradation of habitat as well as incidental take of turtles. Channelization of inshore and nearshore habitat and the disposal of dredged material in the marine environment can destroy or disturb seagrass beds and coral reefs.

(6) Habitat restoration—Habitat restoration may be required to mitigate the destruction or degradation of habitat that can occur as a result of the activities previously discussed. Additionally, habitat degradation resulting from such episodic natural stresses as hurricanes and tropical storms may require special mitigation measures.

**Activities That May Affect Critical Habitat**

A wide range of activities funded, authorized, or carried out by Federal agencies may affect the critical habitat requirements of listed green and hawksbill turtles. These include, but are not limited to, authorization by the U.S. Army Corps of Engineers for beach renourishment, dredge and fill activities, coastal construction such as the construction of docks and marinas, and installation of submerged pipeline; actions by the U.S. Environmental Protection Agency (EPA) to manage freshwater discharges into waterways; regulation of vessel traffic by the U.S. Coast Guard; U.S. Navy activities; authorization of oil and gas exploration by the Minerals Management Service (MMS); authorization of changes to state coastal zone management plans by NOAA's National Ocean Service; and management of commercial fishing and protected species by NMFS.

The Federal agencies that will most likely be affected by this critical habitat designation include the U.S. Army Corps of Engineers, the EPA, the U.S. Coast Guard, the U.S. Navy, the MMS, and NOAA. This designation provides clear notification to these agencies, private entities, and the public of the existence of marine critical habitat for listed green and hawksbill turtles in the U.S. Caribbean, the boundaries of that habitat, and the protection provided for that habitat by the interagency consultation process, pursuant to section 7 of the ESA. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed green and hawksbill turtles and their critical habitat and in determining when consultation with NMFS would be appropriate.

**Significance of Designating Critical Habitat**

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery action. A critical habitat designation contributes to species conservation primarily by identifying critically important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and does not affect exclusively state or private activities.

Under the section 7 provisions, a critical habitat designation requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to adversely modify or destroy the designated critical habitat. Activities that adversely modify or destroy critical habitat are defined as those actions that ''appreciably diminish the value of critical habitat for both the survival and recovery'' of the species (see 50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that ''reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery'' of the species (see 50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat may also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision.

A designation of critical habitat, in addition to emphasizing and alerting public and private entities to the critical importance of said habitat to listed species, provides a clear indication to Federal agencies regarding when section 7 consultation is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists Federal action agencies in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area). For example, discharge of sewage or disposal of waste material, or construction activities that could lead to soil erosion and increased sedimentation in waters in, or adjacent

to, a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation also assists Federal agencies in planning future actions since the designation establishes, in advance, those habitats that will be given special consideration during section 7 consultations. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of a critical habitat designation is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of those proposed regulations and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

**Consideration of Economic, Environmental, and Other Factors**

The economic, environmental, and other impacts of a critical habitat designation have been considered and evaluated. NMFS identified present and anticipated activities that (1) may adversely modify the areas being considered for designation and/or (2) may be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (see 16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts specifically resulting from the critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this final rule). In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the ''take'' prohibitions contained in section 9 of the ESA and in associated regulations. ''Take,'' as defined in the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (see 16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether designated as critical or not) that significantly impairs essential behaviors, including breeding, feeding, or sheltering.

**Expected Economic Impacts of Designating Critical Habitat**

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of Economic, Environmental and Other Factors section of this final rule). Incremental impacts result from special management activities in areas outside the present distribution of the listed species that have been determined to be essential to the conservation of the species. However, NMFS has determined that the present range of both species contains sufficient habitat for their conservation. Therefore, NMFS finds that there are no incremental economic impacts associated with this critical habitat designation.

**Summary of Comments Received in Response to the Proposed Rule**

NMFS solicited information and comments from the public (62 FR 6934, February 14, 1997 and 62 FR 66584, December 19, 1997), and considered all comments received during the public comment period (ending on February 17, 1998) to make this final determination.

During the comment period, NMFS held three public hearings on the proposed rule. During the public hearings, five oral testimonies and nine written comments were received from private citizens, government officials and environmental organizations. No comments were received on the proposed rule outside the realm of the public hearings.

The testimony and comments received during the public hearings generally fell into one of the following categories: (1) Those who were in favor of the designation as proposed; (2) those who were in favor of the designation as proposed, but recommended that additional areas be considered for designation; and (3) those who were in favor of the designation, but concerned about the possibility of future use restrictions in the designated areas. Comments are addressed by category as follows:

*Category 1:* Those who were in favor of the designation as proposed. Several comments supported the designation as proposed, discussing the importance of habitat protection in the proposed areas.

*Response:* NMFS agrees that habitat protection is vital to the recovery and conservation of listed species and is, therefore, designating critical habitat for green and hawksbill turtles as proposed.

*Category 2:* Those who were in favor of the designation as proposed, but recommended that additional areas be considered for designation. Several commenters recommended that, in addition to the areas proposed for designation, other areas in Puerto Rico and the Caribbean should be considered for critical habitat designation as well. One commenter recommended that Culebra, Mona, and Monito islands be designated for both green and hawksbill turtles rather than as proposed, and another commenter asked why NMFS had not considered protection for Vieques Island, located approximately 9 miles south of Culebra.

*Response:* NMFS was originally petitioned to designate critical habitat to include only the waters surrounding the Islands of the Culebra Archipelago for both green and hawksbill turtles. In the **Federal Register** document announcing receipt of the petition (62 FR 6934, February 14, 1997), NMFS requested additional information regarding other areas in the Caribbean where the designation of critical habitat for listed sea turtle species may be warranted. During review of the petition, NMFS determined that there were not enough data to support the inclusion of Culebra as critical habitat for hawksbill turtles; however, NMFS determined that there was substantial information, from other sources, to conclude that Mona and Monito Islands warranted designation as critical habitat for this species.

NMFS does not have information to support the inclusion of other areas in Puerto Rico and the Caribbean in this critical habitat designation. However, when NMFS acquires information to support the designation of critical habitat for green and hawksbill turtles in areas not covered by this designation, that information will be considered and, if warranted, NMFS will propose a modification to this designation.

*Category 3:* Those who were in favor of the designation, but concerned about

the possibility of future use restrictions in the designated areas. One commenter expressed concern that future use of the designated areas by the public, fisherman, and the tourism industry may be restricted.

*Response:* NMFS has not proposed any special management actions for the designated critical habitat areas. If NMFS determines that certain management considerations, such as those listed in the Need for Special Management Considerations or Protections section of this final rule, are necessary to sufficiently protect the designated habitat areas, NMFS will propose a separate regulation, which will include a public comment period and public hearings.

**Critical Habitat; Geographic Extent**

NMFS is designating the waters surrounding Culebra, Mona, and Monito Islands, Puerto Rico, as critical habitat necessary for the continued survival and recovery of green and hawksbill turtles in the region. Critical habitat for listed green turtles includes waters extending seaward 3 nm (5.6 km) from the mean high water line of Culebra Island, Puerto Rico. These waters include Culebra's outlying Keys, including Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven (see Figure 1). Culebra Island lies approximately 16 nm (29.7 km) east of the northeast coast of mainland Puerto Rico. The area in general is bounded north to south by 18°24′ North to 18°14′ North and east to west by 65°11′ West and 65°25′ West.

Critical habitat for listed hawksbill turtles includes waters extending seaward 3 nm (5.6 km) from the mean high water line of Mona and Monito Islands, Puerto Rico. (see Figure 2). Mona Island lies approximately 39 nm (72 km) west of the southwest coast of mainland Puerto Rico. The area in general is bounded north to south by 18°13′ North to 18°00′ North and east to west by 67°48′ West and 68°01′ West.

**Note:** Figures 1 and 2 will not be published in the Code of Federal Regulations.

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**Figure 1—Critical Habitat for Green Turtles. Critical Habitat Includes Waters Extending Seaward 3 nm (5.6 km) From the Mean High Water Line of Isla de Culebra (Culebra Island), Puerto Rico**

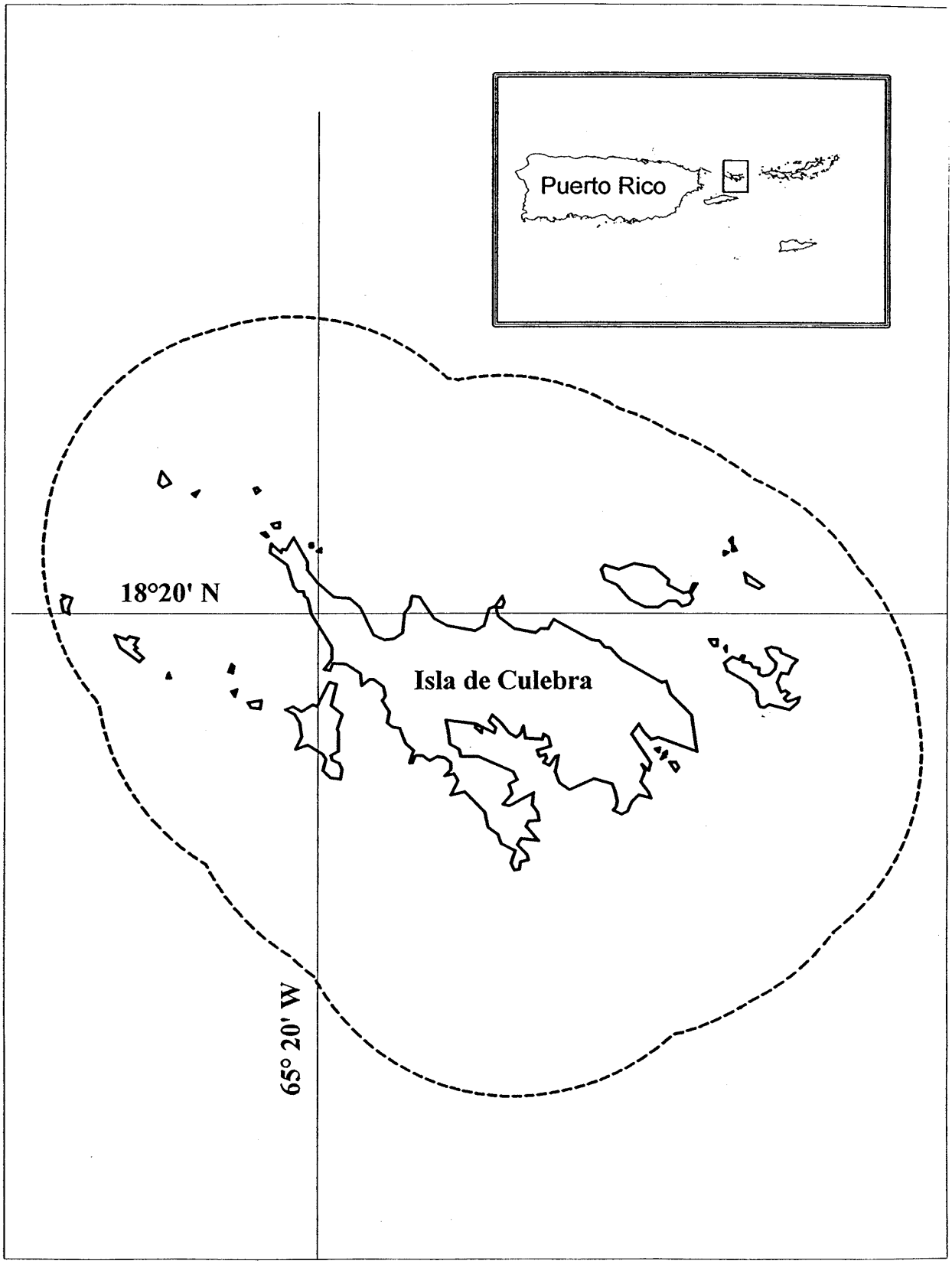
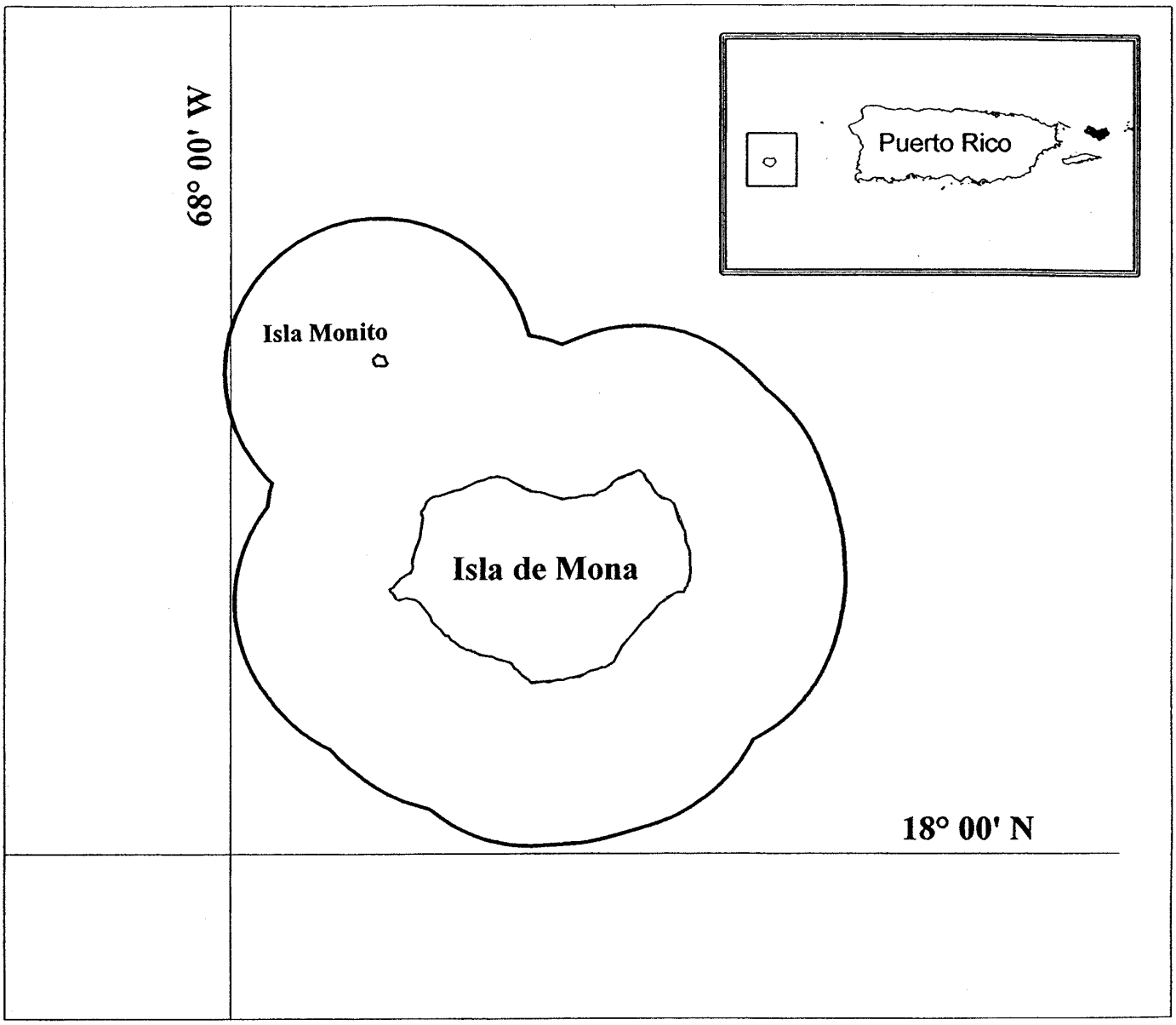


**Figure 2—Critical Habitat for Hawksbill Turtles. Critical Habitat Includes Waters Extending Seaward 3 nm (5.6 km) From the Mean High Water Line of Isla de Mona (Mona Island) and Isla Monito (Monito Island), Puerto Rico**

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### Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS is designating only areas within the current range of these sea turtle species as critical habitat; therefore, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (ESA § 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside either species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact of a substantial number of small entities, as described in the Regulatory Flexibility Act. No comments were received regarding this certification. As a result, no regulatory flexibility analysis was prepared.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA are categorically excluded from the requirement to prepare an EA or an environmental impact statement. However, in order to more clearly evaluate the impacts of the critical habitat designation, NMFS prepared an EA. Copies of the assessment are available upon request (see **ADDRESSES**).

### References

The complete citations for the references used in this document can be obtained by contacting Michelle Rogers, NMFS (see **FOR FURTHER INFORMATION CONTACT**).

### List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 26, 1998.

**Rolland A. Schmitten,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

## PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1533.

2. Sections 226.72 and 226.73 are added to subpart D to read as follows:

#### § 226.72 Green Sea Turtle (Chelonia mydas).

(a) Culebra Island, Puerto Rico—Waters surrounding the island of Culebra from the mean high water line seaward to 3 nautical miles (5.6 km). These waters include Culebra's outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven.

(b) [Reserved]

#### § 226.73 Hawksbill Sea Turtle (Eretmochelys imbricata).

(a) Mona and Monito Islands, Puerto Rico—Waters surrounding the islands of Mona and Monito, from the mean high water line seaward to 3 nautical miles (5.6 km).

(b) [Reserved].

[FR Doc. 98–23533 Filed 9–1–98; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 980429110–8110–01; I.D. 081998A]**

## Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closures of the Ocean Recreational Salmon Fisheries From Cape Alava to Queets River, Washington, and Leadbetter Point, Washington, to Cape Falcon, Oregon

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

**ACTION:** Closures; request for comments.

**SUMMARY:** NMFS announces the closures of the ocean recreational salmon fisheries from Cape Alava to Queets River, Washington, and Leadbetter Point, Washington, to Cape Falcon, Oregon, that were effective at midnight, August 9, 1998. This action was necessary to conform to the 1998 management measures and was intended to ensure conservation of coho and chinook salmon as well as to maximize the harvest of coho and chinook salmon without exceeding the ocean share allocated to the recreational fishery in these subareas.

**DATES:** Closures effective 2400 hours local time, August 9, 1998. Comments will be accepted through September 16, 1998.

**ADDRESSES:** Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., Building 1, Seattle, WA 98115–0070. Information relevant to this document is available for public review during business hours at the same office.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, the Secretary will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1998 management measures for ocean salmon fisheries (63 FR 24973, May 6, 1998), NMFS announced that the recreational fishery in the area from Cape Alava to Queets River opened for all salmon on August 3, 1998, through the earlier of September 24 or 600 coho subarea quota, with an inseason management guideline of 100 chinook, and Leadbetter Point to Cape Falcon opened for all salmon on August 3, 1998, through earlier of September 24, 1998, or 7,000 coho subarea quota, with an inseason management guideline of 1,050 chinook.

The best available information on August 7, 1998, indicated that the catch and effort data and projections

supported closure of the recreational fisheries in these subareas at midnight, August 9, 1998, in order to prevent the catch in each subarea from exceeding its subarea quota.

The projected catch for Cape Alava to Queets River, Washington through August 9, 1998, was 50–100 fish over the 600 coho quota. However, recreational representatives from the Queets River to Leadbetter Point, Washington subarea, whose coho quota had not been reached, agreed to a transfer of a portion of this subarea's allotment to cover any overage in the Cape Alava to Queets River 600 coho quota. After closure, the estimated catch reported through August 9, 1998, was 596 coho salmon, a transfer of quota unnecessary.

The estimated catch through August 9 for Leadbetter Point, Washington to Cape Falcon, Oregon was 6,109 fish compared to the 7,000 coho quota. The catch was close enough to the quota that all parties agreed not to add another day of fishing to capture the 891 coho remaining in the quota because of the potential to exceed the 7,000 fish quota due to potential higher weekend fishing effort on August 9. There is the potential in this subarea for an extra day of fishing if the subarea to the north, Queets River to Leadbetter Point, Washington, does not meet it's 7,400 coho quota. Any reopening will be announced through the inseason action procedure of the Coast Guard broadcast and telephone hotline listed here.

As required by 50 CFR 660.409(b), the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife and the Oregon Department of Fish and Wildlife. The States of Washington and Oregon manage the recreational fisheries in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason action procedures of 50 CFR 660.411, actual notice to fishermen of these actions was given prior to 2400 hours local time, August 9, 1998, for the closures by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to manage the fishery to achieve but not exceed the quota, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

## Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: August 27, 1998.

**Bruce Morehead,**

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

[FR Doc. 98–23660 Filed 9–1–98; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 63, No. 170
Wednesday, September 2, 1998

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

### Federal Crop Insurance Corporation

### 7 CFR Part 400

**RIN 0563–AB66**

### General Administrative Regulations; Nonstandard Underwriting Classification System

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to remove and reserve Subpart O of the General Administrative Regulations, effective for the 2000 (2001 for Texas and Arizona and California Citrus) and succeeding crop years. This proposed action is intended to eliminate the unintended adverse effects of the Nonstandard Underwriting Classification System (NCS), simplify and update program underwriting rules consistent with the program's current and future anticipated experience, and to ensure that crop insurance premiums are applied to all producers in a fair and consistent manner.

**DATES:** Written comments and opinions on this proposed rule and related preliminary cost-benefit analysis will be accepted until close of business October 19, 1998 and will be considered when the rule and cost-benefit analysis are to be made final.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Claims and Underwriting Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, S.W., STOP 0803, room 6749–S, Washington, D.C., 20250–0803. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., EDT, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information and a copy of the preliminary cost-benefit analysis to the General Administrative Regulations; Nonstandard Underwriting Classification System, contact Michael F. Hand, Director, Claims and Underwriting Services Division, Risk Management Agency, at the Washington, D.C. address listed above, telephone (202) 720–3439.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be economically significant and, therefore, this rule has been reviewed by OMB.

#### Cost-Benefit Analysis

A preliminary cost-benefit analysis has been completed and is available to interested persons at the address listed above. The preliminary cost-benefit analysis summarizes the impact of the rule in the following manner:

(1) NCS first was established in 1991 as an effort to control losses attributed to persons whose insurance experience differed materially from the norm for an area. For a number of reasons, it has come under criticism;

(2) A review of the current NCS process determined that it cannot meet desired performance goals under any circumstances. Therefore, a replacement is needed;

(3) Recent actuarial research and premium rate models developed for other products indicate that the current actuarial processes used by FCIC do not produce an adequate premium rate for yields lower than the county average in many situations, especially when the county average premium rate is relatively low. A simulation of the effects of higher premium rates at the lower yields indicates that the NCS-rated premiums paid by the few NCS individuals who chose to insure can be replaced. In addition, additional premiums will be collected from persons who have not yet been detected by the NCS, thereby reducing the number of persons who might qualify even if NCS were continued;

(4) This analysis concludes that the benefits of the current NCS are extremely small in terms of recovering accrued losses paid by individuals who are selected under it. It is a labor-intensive system that requires substantial resources, both computer and human, to operate. It adds complexity to the delivery of the crop insurance product. In the aggregate, the benefits are small compared to the resources expended for its operation; and

(5) The proposed alternative process is consistent with the mandates of the Federal Crop Insurance Act that require simplification of the program to the maximum extent while assuring actuarial soundness. More producers will be affected in any year under the alternative, but many of these producers ultimately may have been selected under the NCS after 3 or more losses had occurred. The alternative targets specific units that may be the primary cause of losses rather than affecting the entire operation of individuals. It does not create the stigma currently associated with the NCS. The alternative is demonstrated to be actuarially sound, with the effect of reducing excess losses currently carried in the baseline. This reduction in excess losses offsets additional subsidies to producers and insurance providers that result from the change. The additional cost to producers occurs solely because those persons selected for the NCS now overwhelmingly elect to cancel insurance coverage rather than pay the sharply higher premiums that are imposed under it.

FCIC encourages and welcomes any comments you may have with respect to the preliminary cost-benefit analysis findings. Before publishing the final rule, FCIC will complete a final cost-benefit analysis and your comments will be taken into consideration in developing that final cost-benefit analysis.

#### Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or

the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 12612**

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

**Regulatory Flexibility Act**

This regulation will not have a significant economic impact on a substantial number of small entities. NCS program determinations are applied equally to all producers on a county basis and affect only a small number of policyholders (approximately 1–2 percent of all policyholders nationwide). Further, since this rule proposes to eliminate the NCS program, the burden on the insurance providers will be significantly reduced. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

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

**Executive Order 12372**

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

**Executive Order 12988**

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

**Environmental Evaluation**

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

**Background**

FCIC proposes to remove and reserve the General Administrative Regulations (7 CFR part 400, subpart O; Nonstandard Underwriting Classification System) effective for the 2000 (2001 for Texas and Arizona and California Citrus) and succeeding crop years.

NCS began as an underwriting process in 1991 to identify those insureds who were collecting a disproportionate percentage of all crop insurance indemnities and individually adjust their coverages and rates to offset their higher risk. NCS has been used to avoid inequitable, across-the-board rate increases which would otherwise be required to achieve actuarial sufficiency.

Under NCS, rate increases can be substantial, and coverage reductions severe, depending upon an insured's loss experience. Insureds selected may request a reconsideration, followed by two levels of appeal. The insured also retains recourse to formal litigation.

Insureds are selected for NCS based on loss frequency and loss severity as compared with general crop insurance experience in the area. An insured must have at least three years of insurance experience in which indemnities exceed the annual premiums paid by the producer. Loss years also must represent 60 percent or more of the years the person was insured during the 10-year base period. To meet the loss severity requirement, the insured generally must have an ''adjusted loss ratio'' (a loss ratio adjusted to account for different premium rate levels) of 2.0 or greater. Loss severity requirements are established by crop and region to recognize different premium rate levels between different crops and regions.

The NCS process is standardized to ensure equitable treatment of all insureds. Disaster adjustment procedures have been developed to recognize catastrophic conditions affecting crop production. Under this process, the loss history of the insured is adjusted when area-wide disasters affect crop production. For years in which the county yield deviates greatly from the long-term county average, a factor is determined to reduce the amount of indemnity which is used for NCS purposes for that crop year, thus mitigating the effect of widespread crop disasters.

NCS has been criticized by producers and their representatives for several years and became a major issue with the repetitive floods in the Upper Midwest and multi-year droughts in the Southwest. Complaints have included claims that the current NCS procedures: (1) do not adequately exclude widespread causes of loss (disaster adjustment) as intended; (2) fail to recognize diverse conditions within a county; (3) unfairly impact new or marginally profitable insureds caught by repetitive disasters; (4) set too high a premium for those insureds listed; and (5) are applied unfairly to non-NCS insureds through share arrangements with insureds selected for NCS. Additionally, the current NCS process can be complicated to explain to the insureds and their agents who service crop insurance policies. The NCS process is also labor intensive for RMA and insurance providers at a time of increasingly smaller budgets and reduced resources. Reducing or eliminating program regulations that provide little benefit or can be accomplished through other more appropriate or cost efficient means is consistent with the Federal Crop Insurance Act requirement for simplification and the Administration's emphasis for regulatory reduction.

On Wednesday, September 17, 1997, FCIC published an Advanced Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 62 FR 48798 to announce a public comment period and to seek comments from the public on options to improve NCS. Following publication of the ANPR, the public was afforded 30 days to submit written comments and opinions. Twenty-two comments were received from crop insurance agents, producers, insurance providers, and producer associations in response to the ANPR.

Three comments received from a crop insurance agent and insurance provider were substantive and contained proposals that were considered in the review process. The proposals included using a yield floor surcharge as a means of increasing rates for producers with below average production histories and a recommendation to reinstate experience tables, which had been used in the past to surcharge insurance premiums on the basis of the producer's loss ratio. Additionally, nine comments recommended that NCS be eliminated altogether, six suggested that a moratorium be imposed while further study was conducted, four noted that the current actual production history (APH) program sufficiently addresses adverse crop insurance loss experience, and one did not address NCS specifically, advocating a production expense insurance plan in place of the current crop insurance program.

FCIC stated in the advanced notice that if NCS were eliminated, with no additional action taken for adverse loss experience, the average policy premium would have to increase by $78 to offset NCS losses not currently used to calculate premium rates. FCIC's objective has been to derive an alternative that would result in an equitable process to charge appropriate premiums for insureds with adverse experience, but not to the extent of the premium increases that can result under the current NCS program.

The current APH process assesses higher premiums on insureds with lower than average yields. Three comments suggested that the APH process could be used to offset the increased rates that would be necessary if NCS were abolished. RMA analyses conducted during the development of the Revenue Assurance crop insurance program, and separately in a study conducted by Millman and Robertson (a consulting actuarial firm), indicate a need to raise the rates for insureds with lower than average yields. RMA has reviewed its current APH program and developed an alternative rating methodology to adjust premium rates for below average yields to compensate for the additional risk associated with adverse loss experience. RMA recognizes that further analysis and study had to be completed of NCS producers and their adverse experience to determine the impact on the crop insurance program.

A recommendation from the ANPR relating to yield floor surcharges suggested that rates should be increased based on the number of times producers fall below the yield floor. For the major crops, premium rates are calculated on the actual APH yield, recognizing the risk for that yield (for other crops, there are procedures that apply a 5 percent surcharge to the applicable rates found on the actuarial table in order to accomplish the same result). The comment to the ANPR suggested that for every succeeding year a producer falls below the floor, the premium surcharge would be raised to recognize the increased risk associated with lower actual yields.

RMA examined increasing premium rates based on the producer's lower APH yields and using a yield floor surcharge to determine if this process would adequately address the need for increased premiums to account for adverse loss histories based on the frequency and severity of losses. Surcharges based on the frequency with which floor yields apply are not effective because they would not serve to simplify administration of the crop insurance program and could penalize insureds under prolonged and unfavorable growing conditions. The administrative complexities of this suggestion outweighed the expected program benefits.

By February 1998, RMA had completed the final review of the NCS program. The results indicated that modifying the existing NCS regulations would not address most of the criticism. The review also confirmed that the overall impact of NCS was relatively small. For the 1997 crop year, NCS was applied to approximately 50,000 crop policies, equaling 1–2 percent of the total crop policies nationwide. NCS included approximately $2.2 billion (about 2 percent of the total) in liability and $0.9 billion (nearly 10 percent of the total ) in losses during the life of the program.

The review indicated that NCS had been applied to only a small percentage of the total number of insureds who had collected at least three losses, had adverse loss ratios, and were responsible for a significant share of the losses paid. The analysis also indicated that the number of active NCS policies had declined 52 percent from 1996 to 1997 (4,800 to 2,300) and that the liability associated with NCS policies declined from $37 million in 1996 to only $20 million in 1997.

The results indicated that many insureds selected for NCS canceled their insurance policies because, in general, NCS was applied after losses had reached a point where the cost was too high for these insureds to continue to participate in the program. The conclusion was that any replacement to NCS must intervene more quickly before losses are too great to expect recovery.

The Federal Crop Insurance Act, as amended, directs the premium rate to be adequate to cover anticipated losses and a reasonable reserve. Program improvements, including revised APH procedures, improved policy underwriting, updated T-yields, other actuarial modifications, and improved producer tracking implemented since 1991 have corrected many of the problem areas that created the need for NCS.

In order to correct the identified NCS deficiencies, RMA determined that any rate adjustment must fit the existing actuarial structure, avoid excessive operational changes, and promote simplification, as mandated by the Federal Crop Insurance Act.

When the existing NCS regulation is removed, RMA will replace NCS with an alternative rating system that increases the rate for insureds with lower than average yields in recognition of the additional risk associated with these insureds. This change in the rating process will be more proactive in recognizing situations which may result in adverse loss experience and determining a rate appropriate for these situations.

By using an alternative that simply requires adjustment to the current rating methodology as a replacement for NCS, the proposed removal of the NCS regulation can be implemented beginning with crops planted in the fall of 1998. The general financial impact on insureds will be variable (but generally moderate) rate increases for those units with lower than average yields. More specific details on the financial impact of this action can be found in the ''cost-benefit analysis'.

By implementing this alternative rating process, RMA will: (1) eliminate the ''lag'' year currently included in the process; (2) make adjustments automatic, thereby improving the process for insureds, agents, and RMA; (3) incorporate the adjustments into the actuarial tables, which will eliminate the currently maintained lists and required notification requirements; (4) calculate adjustments on a unit rather than policyholder basis; and (5) increase premiums less abruptly once adjustments are triggered.

**List of Subjects in 7 CFR Part 400**

Crop insurance, Nonstandard Underwriting Classification System.

**Proposed Rule**

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR part 400, subpart O, as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

## Subpart O—Nonstandard Underwriting Classification System; Regulations for the 1991 and Succeeding Crop Years

1. The authority citation for 7 CFR part 400, subpart O, is revised to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(p).

**§§ 400.301–400.309 (Subpart D) [Removed and Reserved]**

2. In part 400, subpart O is removed and reserved.

**John Zirschky,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 98–23523 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–08–P Department

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

## Common Crop Insurance Regulations; Grape Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Grape Crop Insurance Provisions to: (1) allow grape producers in Idaho, Oregon, and Washington to select one price election and one coverage level for each varietal group specified in the Special Provisions; and (2) provide year-round coverage in California, Idaho, Mississippi, Oregon, Texas, and Washington for insureds with no break in coverage from the prior crop year. The intended effect of this action is to provide policy changes to better meet the needs of the insured.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business October 2, 1998 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 2, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hoy, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

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

### Paperwork Reduction Act of 1995

This rule proposes to amend the information collection requirements previously approved by OMB under OMB control number 0563–0053 through October 31, 2000. This rule proposes to: (1) allow grape producers in Idaho, Oregon, and Washington to select one price election and one coverage level for each varietal group specified in the Special Provisions, and (2) provide year-round crop insurance coverage for grapes in California, Idaho, Mississippi, Oregon, Texas, and Washington. All of the forms cleared under OMB control number 0563–0053 represent the minimum information necessary to determine eligibility and losses qualifying for a payment due to grape coverage.

Revised reporting estimates and requirements for usage of OMB control number 0563–0053 will be submitted to OMB for approval under the provisions of 44 U.S.C. chapter 35. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 2, 1998.

The FCIC is seeking comments on the following information collection request (ICR).

*Title:* Multiple Peril Crop Insurance.

*Respondents/Affected Entities:* Parties affected by the information collection requirements included in this rule are grape producers.

*Abstract:* This rule improves the existing grape policy by: (1) allowing grape producers in Idaho, Oregon, and Washington to select one price election and one coverage level for each varietal group specified in the Special Provisions, and (2) providing crop insurance coverage in California, Idaho, Mississippi, Oregon, Texas, and Washington during the period when no coverage currently exists. FCIC believes the proposed policy will provide better crop insurance coverage to grape producers.

*Estimate of Burden:* Public reporting burden for the collection of information on all forms for the insurance of grapes is estimated at 51.1 minutes per participant because of the high degree of automation associated with the data collection.

*Respondents:* Grape producers.

*Estimated Number of Respondents:* 11,201.

*Estimated Number of Responses Per Respondent:* 2.5.

*Estimated Total Annual Burden on Respondents:* 3,842 hours.

FCIC is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the rule.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

### Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation

does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

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

**Executive Order 12372**

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

**Executive Order 12988**

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

**Environmental Evaluation**

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

**Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.138 effective for the 2000 and succeeding crop years. The principal changes to the provisions for insuring grapes are as follows:

1. Section 3—Add provisions to allow grape producers in Idaho, Oregon, and Washington to select one coverage level and one price election for each varietal group designated in the Special Provisions. Previously, the Special Provisions for these states did not always allow different price elections or coverage levels by varietal group, in which case the coverage level and price election designated by the insured applied to all grapes in the county. In addition, a provision is added to specify that, in California, Idaho, Mississippi, Oregon, Texas, and Washington, the insured's elected or assigned coverage level or the ratio of the insured's price election to the maximum price election offered may not be increased after coverage begins if a cause of loss that could or will reduce the yield of the insured crop is evident prior to the time that the change in coverage is requested. This limitation will preclude insureds with continuous coverage from increasing the liability on their insured acreage following a cause of loss that could or will reduce the yield of the crop.

2. Section 9—Specify that, in California, Idaho, Mississippi, Oregon, Texas, and Washington, for each subsequent crop year this policy remains continuously in force (policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage), coverage begins on the day immediately following the end of the insurance period for the prior crop year. According to the Common Crop Insurance Policy, the insurance period ends on the earliest of: (1) total destruction of the insured crop on the unit; (2) harvest of the unit; (3) the calendar date contained in the Crop Provisions for the end of the insurance period; (4) abandonment of the crop on the unit; or (5) as otherwise specified in the crop provisions. The current Grape Crop Provisions specify calendar dates for the beginning and end of the insurance period, thereby establishing a minimum time period during which no insurance coverage exists between crop years in California, Idaho, Mississippi, Oregon, Texas, and Washington. This rule proposes to eliminate any lapse in insurance coverage between crop years regardless of when insurance coverage ends for the crop year.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Grape.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

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

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

2. Section 457.138 is revised by amending the introductory text to read as follows:

**§ 457.138 Grape Crop Insurance Provisions.**

The grape crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

3. In § 457.138, sections 3(b) and 3(c) are amended and a new section 3(f) is added to read as follows:

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

* * * * *

(b) In Idaho, Oregon, and Washington, you may select only one price election and only one coverage level for each varietal group specified in the Special Provisions.

(c) In all states except California, Idaho, Oregon, and Washington, you may select only one price election and only one coverage level for all the grapes in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

(d) * * *

(e) * * *

(f) In California, Idaho, Mississippi, Oregon, Texas, and Washington, you may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer after coverage begins if a cause of loss that could or will reduce the yield of the insured crop is evident prior to the time that you request a change in coverage.

* * * * *

4. In § 457.138, section 9(a)(2) is redesignated as 9(a)(3) and a new section 9(a)(2) is added to read as follows:

9. Insurance Period.

(a) * * *

(1) * * *

(2) In California, Idaho, Mississippi, Oregon, Texas, and Washington, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance

period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

* * * * *

Signed in Washington, D.C., on July 16, 1998.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 98–23522 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 905

**[Docket No. FV98–905–5 PR]**

### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Regulation of Fallglo Variety Tangerines

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the addition of Fallglo tangerines to the varieties of citrus fruit regulated under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule would add Fallglo tangerines to the varieties covered under the order. It would also establish minimum grade and size requirements for the Fallglo variety. This rule is intended to assure that the Fallglo tangerines entering fresh market channels are of a size and quality acceptable to consumers. This proposed rule is in the interest of producers, shippers, and consumers.

**DATES:** Comments must be received by September 22, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632; or E-mail: moabdocketclerk@usda.gov. 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:** William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, 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) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 the date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

This proposed rule would add Fallglo tangerines to the citrus varieties covered under the order. It would also establish minimum grade and size requirements for the Fallglo variety. This rule is designed to help assure that the size and quality of Fallglo tangerines entering fresh market channels are acceptable to consumers. This action was unanimously recommended by the committee at its meeting on May 22, 1998.

Section 905.5 of the order defines the varieties of fruit regulated under the order and authorizes the addition of other varieties as specified in § 905.4, as recommended by the committee and approved by the Secretary. Section 905.105 contains the changes in varieties that have been made using this authority. This proposal would add Fallglo tangerines to the varieties of citrus fruit regulated under the order by modifying § 905.105.

Fallglo tangerines are a relatively new variety coming into significant commercial production. The committee has been following the production statistics for Fallglo tangerines. During the last four years this variety has experienced rapid production growth. The committee uses a level of a million cartons of production as a measure in considering a variety's commercial significance. In the 1997–98 season, total utilization of Fallglo tangerines approximated 1,157,624 cartons (⅘ bushel). This compares to 465,876 (⅘ bushel) cartons utilized during the 1994–95 season.

Another indicator of commercial significance is the market share held by the variety. For the 1997–98 season, Fallglo tangerines shipped fresh totaled approximately 874,000 cartons (⅘ bushel), or approximately 23 percent of the early tangerine market. As the trees of this variety reach full bearing age and additional plantings begin to bear fruit, the committee expects shipments of Fallglo tangerines to continue to increase and comprise a larger share of the early tangerine market.

The committee believes that the current level of production and shipments is significant enough to

warrant the addition of Fallglo tangerines to the varieties covered under the order. This rule would also establish minimum grade and size requirements for Fallglo tangerines. Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 of the order's rules and regulations specifies minimum grade and size requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

This rule would amend § 905.306 to add the Fallglo tangerine variety to the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). A minimum grade of U.S. No. 1 as specified in the U.S. Standards for Grades of Florida Tangerines (7 CFR 51.1810 through 51.1837), and a minimum size of 2⁶⁄₁₆ inches diameter would be established for Fallglo tangerines for both domestic and export shipments.

The committee recommended the minimum size of 2⁶⁄₁₆ inches diameter for Fallglo tangerines because this variety of tangerine tends to grow larger than the other tangerine varieties regulated at the 2⁴⁄₁₆ inch minimum diameter, and it can easily attain the larger size. The minimum grade of U.S. No. 1 was recommended by the committee for this variety because tangerines meeting the requirements of this grade are mature, and, while having more cosmetic defects than the higher grades specified in the standards, the defects do not materially detract from the appearance, or the edible or marketing quality of the fruit. All regulated varieties of Florida tangerines, except Honey tangerines, have a minimum U.S. No. 1 grade. Honey tangerines are not regulated at U.S. No. 1 because their skin possesses excessive amounts of green coloring which causes them to exceed the tolerances for that grade defect. Honey tangerines must be at least Florida No. 1 grade, which permits more green coloring than U.S. No. 1. According to the committee, almost all of the Fallglo tangerines shipped fresh in 1997–98 would have met the proposed requirements had they been in effect.

Minimum grade and size requirements for domestic and export shipments of tangerines are designed to prevent shipments of low grade, immature, small sized, or otherwise unsatisfactory fruit from entering fresh market channels. Preventing such shipments helps create buyer confidence in the marketplace and helps foster stable marketing conditions in the interest of producers.

The committee noted that fresh shipments of Fallglo tangerines had increased from 381,990 cartons (⅘ bushel) in 1994–95 to 874,076 cartons (⅘ bushel) in 1997–98. Total utilization had increased from 465,876 ⅘ bushel cartons in 1994–95 to 1,157,624 ⅘ bushel cartons in 1997–98. In the 1997–98 season, approximately 76 percent of the Fallglo tangerine crop was shipped in fresh market channels, representing approximately 23 percent of the early tangerine crop. The committee believes that the current market share and shipment levels justify establishing minimum grade and size requirements for Fallglo tangerines and that these requirements are needed to help assure and maintain acceptable shipments.

The committee further believes that the addition of this variety to those regulated under the order and the establishment of minimum grade and size requirements for Fallglo tangerines will become increasingly important as production and market share increase. The establishment of such requirements for this tangerine variety is expected to help ensure that only fresh fruit of acceptable size and quality reaches consumers in the interest of producers, handlers, and consumers. Experience has shown that providing uniform quality and size acceptable to consumers helps stabilize the market, improves grower returns, and fosters market growth.

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 75 tangerine handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) 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 (13 CFR 121.601).

Based on industry and committee data for the 1997–98 season, the average annual free-on-board price for fresh Florida tangerines during the 1997–98 season was around $12.51 per ⅘ bushel carton, and total fresh shipments of early tangerines for the 1997–98 season are estimated at 3.8 million cartons.

Approximately 40 percent of all handlers handled 80 percent of Florida tangerine shipments. In addition, many of these handlers ship other citrus fruit and products that would contribute further to handler receipts. About 80 percent of citrus handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida citrus handlers, and growers may be classified as small entities.

Under § 905.5 the committee has the authority to recommend to the Secretary the addition of other citrus varieties to those covered under the order. Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to the Secretary. Pursuant to this authority, minimum grade and size requirements for domestic and export shipments are specified for numerous citrus varieties covered under the order. Currently, Fallglo tangerines are not included under the order and no minimum grade and size requirements are established for this variety.

This rule would make changes to §§ 905.105 and 905.306 of the rules and regulations concerning covered varieties and minimum grade and size requirements, respectively. This rule would add Fallglo tangerines to the varieties covered under the order. It would also establish a minimum grade and size requirement for Fallglo tangerines. The establishment of such requirements for this variety would help stabilize the market and improve grower returns by providing uniform quality and size acceptable to consumers.

This regulation would have a positive impact on affected entities. This action is intended to maintain and improve quality. The purpose of this rule would be to improve the quality of fruit entering fresh market channels in the interest of producers, shippers, and consumers. Minimum grade and size requirements for domestic and export shipments of tangerines are designed to prevent shipments of low grade, immature, small sized, or otherwise *unsatisfactory fruit from entering fresh market channels.*

While this rule would establish a minimum grade and size requirement

for Fallglo tangerines, many handlers in the industry have been using these requirements voluntarily. According to the committee, almost all of the Fallglo tangerines shipped fresh in 1997–98 (874,076 4/5 bushel cartons) would have met the requirements proposed in this rule (i.e., U.S. No. 1 and 2 6/16 inches in diameter) had they been in effect. Therefore, this rule should not be overtly restrictive, and the overall effect on costs is expected to be minimal in relation to the benefits expected.

Regarding expected handler inspection costs, three inspection and certification options are being used by Florida citrus handlers regulated under the order. The options are Partners in Quality (PIQ), continuous in-line, and lot inspection. The PIQ inspection option is an audit based quality assurance program between inspection officials of the Fresh Products Branch, F&V, AMS, USDA, and officials from the individual packinghouses. Under PIQ, the packinghouse and inspection officials develop a system of checks along the processing/packing line which demonstrate and document their ability to pack product that meets all applicable requirements. The effectiveness of PIQ is verified through periodic, unannounced audits of each packer's system by USDA-approved auditors. Under the latter two inspection options, the commodity is inspected by Federal or Federal-State inspection officials as packaged product, rather than before packaging by packinghouse officials as with PIQ, and the results are certified. Current costs are $0.04 cents per carton for PIQ type inspection, $0.07 cents per carton for continuous in-line inspection, and $39.00 per hour for lot inspection.

By not setting minimum quality and size regulations, a quantity of poor quality, small sized fruit may reach the retail market, resulting in consumer dissatisfaction and product substitution. Such a lapse in quality and/or size could result in a price reduction. Preventing such shipments helps create a buyer confidence in the marketplace and helps foster stable marketing conditions in the interest of producers.

A stabilized market that returns a fair price would be beneficial to both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all Fallglo tangerine growers and handlers regardless of their size of operation.

This action would not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports, and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. However, tangerines must meet the requirements as specified in the U.S. Standards for Grades of Florida Tangerines (7 CFR 51.1810 through 51.1837) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the May 22, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because handlers are expected to begin shipping Fallglo tangerines in early October and any changes to the regulation implemented as a result of this action should be announced as soon as possible so producers and handlers can plan accordingly. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 905**

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 905.105, paragraph (b) is revised to read as follows:

**§ 905.105 Tangerine and grapefruit classifications.**

* * * * *

(b) Pursuant to § 905.5(m), the term ''variety'' or ''varieties'' includes Sunburst and Fallglo tangerines.

3. Section 905.306 is amended by adding a new entry for Fallglo tangerines in paragraph (a), Table I, and in paragraph (b), Table II, to read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulations.**

(a) * * *

TABLE I

| Variety | Regulation period | Minimum Grade | Minimum diameter (inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| * * * | * * * | * * * | * * * |
| Tangerines | | | |
| * * * | * * * | * * * | * * * |
| Fallglo | On and after 10/1/98 | U.S. No. 1 | 2 6/16 |
| * * * | * * * | * * * | * * * |

(b) * * *

TABLE II

| Variety | Regulation period | Minimum Grade | Minimum diameter (Inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| * * * | * * * | * * * | * |
| Tangerines | | | |
| * * * | * * * | * * * | * |
| Fallglo | On and after 10/1/98 | U.S. No. 1 | 2 6/16 |
| * * * | * * * | * * * | * |

* * * * *

Dated: August 26, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–23513 Filed 9–1–98; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–CE–34–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Model 2000 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 2000 airplanes (commonly referred to as Beech Model 2000 airplanes). The proposed AD would require inspecting the stainless steel fuel line, part number (P/N) 3035737, for chafing against the power lever bracket, P/N 122–940028–1. The proposed AD is the result of a routine inspection of an in-service airplane where chafing on the stainless steel fuel line was noted. Inspections of other aircraft revealed similar chafing. The actions specified by the proposed AD are intended to prevent fuel line chafing caused by interference with the power lever bracket, which could result in fuel leakage and cause a fire in the engine compartment.

**DATES:** Comments must be received on or before October 30, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Griffith, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4145; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–34–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA received a field report that a Raytheon Model 2000 airplane had chafed fuel lines. The chafing is caused by the fuel line rubbing against the power lever bracket on each engine. Inspection of other aircraft revealed similar chafing.

### Relevant Service Information

Raytheon has issued Mandatory Service Bulletin SB.28–3104, Issued: September, 1997, which specifies procedures for inspecting the stainless steel fuel line for chafing and proper clearance between the fuel line and the power lever bracket. If there are signs of chafing, the service bulletin specifies replacing the fuel line and modifying the power lever bracket to provide the necessary clearance to prevent chafing.

### The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined

that AD action should be taken to prevent fuel line chafing caused by interference with the power lever bracket, which could result in fuel leakage and cause a fire in the engine compartment.

### Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Model 2000 airplanes of the same type design, the proposed AD would require inspecting each engine fuel line, part number (P/N) 3035737, for chafing and correct clearance between the fuel line and the power lever bracket, P/N 122–940028–1. If chafing is found, the proposed AD would require replacing the fuel line with a new fuel line and modifying the power lever bracket to provide the clearance needed between the fuel line and the power lever bracket to prevent chafing.

### Cost Impact

The FAA estimates that 49 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action and that the average labor rate is approximately $60 an hour. Parts cost approximately $465 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $34,545, or $705 per airplane.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Raytheon Aircraft Company (Type Certificate No. A38CE formerly held by the Beech Aircraft Corporation):** Docket No. 98–CE–34–AD.

*Applicability:* Model 2000 airplanes, serial numbers NC–4 through NC–53, certificated in any category.

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

*Compliance:* Required as indicated in the body of this AD, unless already accomplished.

To prevent fuel line chafing caused by interference with the power lever bracket, which could result in fuel leakage and cause a fire in the engine compartment, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the engine stainless steel fuel line, part number (P/N) 3035737, for evidence of chafing and a minimum clearance of .06-inch between the fuel line and power lever bracket, P/N 122–940028–1. Accomplish this inspection in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

(b) If chafing is evident on the fuel line, prior to further flight, replace the fuel line with a new fuel line and modify the power lever bracket in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

(c) If the clearance between the fuel line and the power lever bracket is less than .06-inch, prior to further flight, modify the power lever bracket in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 27, 1998.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98–23618 Filed 9–1–98; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–ANE–57]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT9D series turbofan engines, that currently requires installing an improved design turbine exhaust case (TEC) with a thicker containment wall,

modifying the existing TEC to incorporate a containment shield, or modifying the existing TEC to replace the ''P'' flange and case wall. This proposal is prompted by the need to add additional affected TEC assemblies eligible for modification, and to add an additional TEC modification compliance option. The actions specified by the proposed AD are intended to prevent release of uncontained debris from the TEC following an internal engine failure, which can result in damage to the aircraft.

**DATES:** Comments must be received by November 2, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–57.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

On December 4, 1996, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 96–25–10, Amendment 39–9853 (61 FR 66892, December 19, 1996), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, to require installing an improved design turbine exhaust case (TEC) with a thicker containment wall, modifying the existing TEC to incorporate a containment shield, or modifying the existing TEC to replace the ''P'' flange and case wall. That action was prompted by reports of 64 uncontained engine failures since 1972. That condition, if not corrected, could result in release of uncontained debris from the TEC following an internal engine failure, which can result in damage to the aircraft.

Since the issuance of that AD, PW has issued Service Bulletin (SB) No. 6157, Revision 2, dated January 28, 1998, that lists by part number additional affected TEC assemblies that are eligible for modification. This superseding AD references this revised SB. In addition, this proposed rule adds an additional TEC modification compliance option described in PW SB No. 6320, dated February 5, 1998.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–25–10 to add additional affected TEC assemblies that are eligible for modification, and to add an additional TEC modification compliance option. The actions are required to be accomplished in accordance with the SBs described previously.

There are approximately 566 engines of the affected design in the worldwide fleet. The FAA estimates that 157 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately zero additional work hours per engine to accomplish the proposed actions when done at complete disassembly/assembly, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,705 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,052,685.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9853 (61 FR 66892, December 19, 1996) and by adding a new airworthiness directive to read as follows:

**Pratt & Whitney:** Docket No. 95–ANE–57. Supersedes AD 96–25–10, Amendment 39–9853.

*Applicability:* Pratt & Whitney (PW) JT9D–3, –7, –20, –59A, –70A, –7Q, and –7R4 series turbofan engines, installed on but not limited to Airbus A300 and A310 series; Boeing 747 and 767 series; and McDonnell Douglas DC–10 series aircraft.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent release of uncontained debris from the turbine exhaust case (TEC) following an internal engine failure, which can result in damage to the aircraft, accomplish the following:

(a) At the next removal of the TEC from the low pressure turbine case ''P'' flange during a shop visit, but not later than 48 months after the effective date of this AD, accomplish the following:

(1) For PW JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J series turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with part numbers (P/N's) listed in PW service bulletin (SB) No. 6113, dated April 13, 1993, as applicable; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6118, Revision 3, dated January 10, 1996, or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy Supplemental Type Certificate (STC) SE00047AT–D, dated October 15, 1996; or

(v) Install a modified TEC that incorporates replacement or modified outer case detail in accordance with PW SB No. 6320, dated February 5, 1998.

(2) For PW JT9D–7Q and –7Q3 series turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. 5977, dated December 14, 1990; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6157, Revision 2, dated January 28, 1998; or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00047AT–D, dated October 15, 1996; or

(v) Install a modified TEC that incorporates replacement or modified outer case detail in accordance with PW SB No. 6320, dated February 5, 1998.

(3) For PW JT9D–59A and –70A series turbofan engines, accomplish one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. 6243, dated February 1, 1996; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable;

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6157, Revision 2, dated January 28, 1998; or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00047AT–D, dated October 15, 1996; or

(v) Install a modified TEC that incorporates replacement or modified outer case detail in accordance with PW SB No. 6320, dated February 5, 1998.

(4) For PW JT9D–7R4D (BG–700 series) turbofan engines, accomplish one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. JT9D–7R4–72–479, Revision 1, dated November 12, 1993; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. JT9D–7R4-72–407, Revision 1, dated August 16, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00047AT–D, dated October 15, 1996.

(5) For PW JT9D–7R4D (BG–800 series), –7R4D (BG–900 series), –7R4D1 (AI–500 series), –7R4E (BG–800 series), –7R4E (BG–900 series), –7R4E1 (AI–500 series), –7R4E1 (AI–600 series), –7R4E4 (BG–900 series), –7R4G2 (BG–300 series), and –7R4H1 (AI–600 series) turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. JT9D–7R4–72–534, dated October 18, 1996; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. JT9D–7R4–72–466, Revision 2, dated May 10, 1996; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. JT9D–7R4–72–534, dated October 18, 1996; or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00054AT–D, dated October 19, 1994.

(6) For PW JT9D–7R4D (BG–800 series), –7R4D (BG–900 series), –7R4D1 (AI–500 series), –7R4E (BG–800 series), –7R4E (BG–900 series), –7R4E1 (AI–500 series), –7R4E1 (AI–600 series), –7R4E4 (BG–900 series), –7R4G2 (BG–300 series), and –7R4H1 (AI–600 series) turbofan engines, with TECs that have been modified to incorporate a replacement ''P'' flange and case wall, in accordance with PW SB No. JT9D–7R4–72–513, Revision 3, dated November 13, 1996, or previous revisions, perform heat treatment of the TECs in accordance with the Accomplishment Instructions of PW SB No. JT9D–7R4–72–534, dated October 18, 1996.

(b) For the purpose of this AD, a shop visit is defined as induction of an engine into the shop for scheduled maintenance.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall forward their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on August 26, 1998.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 98–23617 Filed 9–1–98; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–CE–72–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Burkhart GROB Luft-und Raumfahrt GmbH Model G 109B Gliders

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive

(AD) that would apply to all Burkhart GROB Luft-und Raumfahrt GmbH (Grob) Model G 109B gliders. The proposed AD would require inspecting the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing); and repairing any paint scratches, and repairing or replacing any engine mounting frame that is found damaged. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect and correct damage to the engine mounting frame, which could result in failure of the engine mount structure with consequent loss of the engine.

**DATES:** Comments must be received on or before October 6, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–72–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Grob G 109B gliders. The LBA reports several incidents of paint scratches and damage (abrasions, notches, or chafing) on the above-referenced gliders. This damage is parallel to tube #3 of the engine mounting frame. The steel spiral of the warm air duct that is running from the heat exchanger to the left-hand carburetor is rubbing on the engine mounting frame and causing this damage.

This condition, if not detected and corrected, could result in failure of the engine mount structure with consequent loss of the engine.

### Relevant Service Information

Grob has issued Service Bulletin TM 817–45, dated July 27, 1995, which specifies procedures for inspecting the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing). This service bulletin also specifies repairing paint scratches; and sending any engine mounting frame that is damaged to the manufacturer for repair.

The LBA classified this service bulletin as mandatory and issued German AD 95–362 Grob, dated September 27, 1995, in order to assure the continued airworthiness of these gliders in Germany.

### The FAA's Determination

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G 109B gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing); and repairing any paint scratches, and repairing or replacing any engine mounting frame that is found damaged. Accomplishment of the proposed actions would be required in accordance with Grob Service Bulletin TM 817–45, dated July 27, 1995.

### Cost Impact

The FAA estimates that 29 gliders in the U.S. registry would be affected by the proposed inspection, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $3,480, or $120 per glider.

If damage is found on the engine mounting frame that is beyond certain limits specified in the service information, the FAA estimates that it would take approximately 13 workhours per glider to accomplish the proposed repair or replacement, at an average labor rate of approximately $60 an hour. Parts cost $200 for repair and $750 for replacement. Based on these figures, the total cost impact of the proposed repair, if necessary, is estimated to be $980 per glider. The total cost impact of the proposed replacement, if necessary, is estimated to be $1,530 per glider.

### Compliance Time of This AD

Although damage to the engine mounting frame occurs during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation

occurring is the same for a glider with 10 hours time-in-service (TIS) as it would be for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Burkhart GROB Luft-und Raumfahrt GMBH:** Docket No. 98–CE–72–AD.

*Applicability:* Model G 109B gliders, all serial numbers, certificated in any category.

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

*Compliance:* Required as indicated in the body of this AD, unless already accomplished.

To detect and correct damage to the engine mounting frame, which could result in failure of the engine mount structure with consequent loss of the engine, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, inspect the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing) in accordance with the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995.

(b) If a paint scratch(es) is found during the inspection required by paragraph (a) of this AD, prior to further flight, remove all flakes and dust from the area, degrease the tube and apply a protective anti-corrosion coat, and shorten the warm air duct or replace it if damaged. Accomplish the warm air duct modification or replacement in accordance with the maintenance manual.

(c) If damage (abrasions, notches, or chafing) is found during the inspection required by paragraph (a) of this AD, and the damage is 0.7 millimeters (mm) or less in depth as specified in paragraph 3(b) of the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995, prior to further flight, degrease the tube and apply a protective anti-corrosion coat, and shorten the warm air duct or replace it if damaged. Accomplish the warm air duct modification or replacement in accordance with the maintenance manual. Within 6 calendar months after the inspection required by paragraph (a) of this AD, accomplish one of the following:

(1) Send the engine mounting frame to the manufacturer for repair at the address specified in paragraph (g) of this AD and accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD. Do not operate the glider until the part is repaired, sent back, and re-installed on the glider; or

(2) Replace the engine mounting frame with a new part of the same design, or an FAA-approved part that has been inspected in accordance with the requirements of paragraph (a) of this AD and is found free of damage.

(d) If damage (abrasions, notches, or chafing) is found during the inspection required by paragraph (a) of this AD, and the damage is more than 0.7 mm in depth as specified in paragraph 3(c) of the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995, prior to further flight, accomplish one of the following:

(1) Send the engine mounting frame to the manufacturer for repair at the address specified in paragraph (g) of this AD and accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD. Do not operate the glider until the part is repaired, sent back, and re-installed on the glider; or

(2) Replace the engine mounting frame with a new part of the same design, or an FAA-approved part that has been inspected in accordance with the requirements of paragraph (a) of this AD and is found free of damage. Accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD

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

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to Grob Service Bulletin TM 817–45, dated July 27, 1995, should be directed to Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Note 3:** The subject of this AD is addressed in German AD 95–362 Grob, dated September 27, 1995.

Issued in Kansas City, Missouri, on August 27, 1998.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98–23616 Filed 9–1–98; 8:45 am]

**BILLING CODE 4910–13–U**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 201

**[Release No. 34–40364; File No. S7–23–98]**

### Rules of Practice

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission is proposing for public comment amendments to its Rules of Practice, Rules 210 and 221. Rule 210 currently prohibits any person from intervening or participating on a limited basis as a party or non-party in an enforcement proceeding, a disciplinary proceeding, or a proceeding to review a self-regulatory organization determination. The Commission is proposing to amend Rule 210 to permit representatives of any federal, state, or local criminal prosecutorial authority limited participation for the purpose of requesting a stay, in order to support efforts to bring criminal prosecutions arising out of securities violations. Rule 221 currently requires that parties generally participate in both an initial and a final prehearing conference. The Commission proposes requiring only one prehearing conference, in order to streamline the administrative process and conserve the parties' and the Commission's resources.

**DATES:** Comments must be submitted on or before October 2, 1998.

**ADDRESSES:** Interested persons should submit three copies of their written comments to: Jonathan G. Katz, Secretary; U.S. Securities and Exchange Commission; 450 Fifth Street, N.W., Washington, D.C. 20549. *Comments also may be submitted electronically at the following E-mail address:* rulecomments@sec.gov. All comment letters should refer to File No. S7–23–98. This file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Joan L. Loizeaux, Principal Assistant General Counsel, or Kathleen O'Mara, Senior Counsel, Office of General Counsel, (202) 942–0950, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–6, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:**

## I. Discussion

The Commission adopted, after notice and comment, comprehensive revisions to its Rules of Practice that became effective on July 24, 1995.[1] These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report.[2] The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements more completely, in a format easier to use, and to streamline procedures that had become burdensome.

In November 1997, the Commission's Inspector General issued a report evaluating the Commission's Administrative Proceedings Process in an attempt to assess the impact of the new Rules of Practice. The Inspector General recommended, among other things, that the Commission review Rules 210 and 221. The Commission has reviewed these rules and proposes that the rules be changed as discussed below (and reflected in the text of the rules).

Rule 210 currently prohibits intervention or limited participation in Commission enforcement or in disciplinary proceedings to review self-regulatory organization determinations.[3] This prohibition exists due to the distinct issues raised by enforcement proceedings, in which the government seeks to impose sanctions upon named persons. The Commission believed that the only parties should be those specified by the Commission in the order instituting proceedings, and no one else, should be granted status as a limited or non-party participant. In addition, prohibiting intervention or participation in Commission cases served the purpose of preventing extraneous issues from diverting proceedings and promoted timely and efficient resolution of particular matters before the Commission.

In recent years, the Commission has received requests from representatives of various federal and local criminal prosecutors to enter an appearance in order to request a stay of the Commission's proceedings during the pendency of a criminal investigation or prosecution based on the same or related underlying conduct. These authorities typically assert that substantial prejudice could result to a criminal prosecution if an administrative proceeding is not postponed.

The Commission supports efforts to bring criminal prosecutions arising out of securities violations. Accordingly, the Commission proposes that Rule 210 be amended to allow authorized representatives of the United States Department of Justice, including any United States Attorney's Office, and of state and local prosecutors to seek leave to participate in a Commission proceeding for the limited purpose of requesting a stay in that proceeding. The process of considering such requests for postponements will be facilitated if those seeking them are permitted to present their views to the hearing officer. The hearing officer can then evaluate that request in light of the hearing's status. Any postponement of an administrative proceeding, however, should be based on a showing of good cause and be limited to a reasonable period of time, balancing the need for delay against the need to bring the administrative proceeding to a timely resolution, consistent with the public interest.

In addition, the Commission proposes to amend Rule 221 to require a single prehearing conference, instead of the two prehearing conferences currently required. The Commission's experience with this Rule indicates that, as a routine practice, two conferences are not always necessary. Accordingly, in order to streamline the administrative process, conserving the parties', as well as the Commission's, resources, the Commission proposes requiring only one prehearing conference. Rule 221 would continue to permit the hearing officer in his or her discretion to order additional prehearing conferences on his or her own motion or at the request of a party.

## II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply. Nonetheless, the Commission has determined it would be useful to publish these proposed rule changes for notice and comment, before adoption.

[1] Final Rules of Practice, Exchange Act Release No. 35833, 60 FR 32738 (June 23, 1995).

[2] Task Force on Administrative Proceedings, Securities and Exchange Commission, Fair and Efficient Administrative Proceedings: Report of the Task Force (Feb. 1993).

[3] Rule 210(f) does, however, allow the Commission or a hearing officer to modify the provisions of Rule 210 to impose such terms and conditions on participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

### III. Statutory Basis and Text of Proposed Amendment

The proposed Rule amendments would be promulgated pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Exchange Act, 15 U.S.C. 78w; section 20 of the PUHCA, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

**List of Subjects 17 CFR Part 201**

Administrative practice and procedure.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 201—SUBPART D—RULES OF PRACTICE

1. The authority citation for Part 201, Subpart D, continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12 unless otherwise noted.

2. Section 201.210 is amended by revising paragraph (a)(1) and the introductory text of paragraph (c) and adding paragraph (c)(3) to read as follows:

**§ 201.210 Parties, limited participants and amici curiae.**

(a) *Parties in an enforcement or disciplinary proceeding or a proceeding to review a self-regulatory organization determination*—(1) *Generally.* No person shall be granted leave to become a party or non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, except as authorized by paragraph (c) of this section.

* * * * *

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, or a proceeding to review a self-regulatory organization determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests. In any enforcement proceeding or disciplinary proceeding, an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State may seek leave to participate on a limited basis as a non-party participant as provided in paragraph (c)(3) of this section.

* * * * *

(3) *Leave to participate in certain Commission proceedings by a representative of the United States Department of Justice, a United States Attorney's Office, or a criminal prosecutorial authority of any State or any political subdivision of a State.* The Commission or the hearing officer may grant leave to participate on a limited basis to an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, or an authorized representative of any criminal prosecutorial authority of any State or any political subdivision of a State for the purpose of requesting a stay during the pendency of a criminal investigation or prosecution arising out of the same or similar facts that are at issue in the pending Commission enforcement or disciplinary proceeding. Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for stay shall be favored. A stay granted under this paragraph (c)(3) may be granted for such a period and upon such conditions as the Commission or the hearing officer deems appropriate.

* * * * *

3. Section 201.221 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

**§ 201.221 Prehearing conference.**

(a) *Purposes of conference.* The purposes of a prehearing conference include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the hearing officer; and

(3) Improving the quality of the hearing through more thorough preparation.

* * * * *

(d) *Required prehearing conference.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, at least one prehearing conference should be held.

* * * * *

By the Commission.

Dated: August 26, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–23610 Filed 9–1–98; 8:45 am]

BILLING CODE 8010–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 3, 5, 10, 20, 207, 310, 312, 316, 600, 601, 607, 610, 640, and 660

**[Docket No. 98N–0144]**

**RIN 0910–AB29**

## Biological Products Regulated Under Section 351 of the Public Health Services Act; Implementation of Biologics License; Elimination of Establishment License and Product License; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of July 31, 1998 (63 FR 40858). The document proposed to amend the biologics regulations to eliminate references to establishment licenses and product licenses for all products regulated under the Publish Health Services Act. The document published with an incorrect address. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 98–20427, appearing on page 40858, in the **Federal Register** of Friday, July 31, 1998, the following correction is made: On page 40858, in the second column, under the ''**ADDRESSES**'' caption, in line four, ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'', is corrected to read ''5600 Fishers Lane, rm. 1061, Rockville, MD 20852''.

Dated: August 26, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–23586 Filed 9–1–98; 8:45 am]

BILLING CODE 4160–01–F

## POSTAL SERVICE

## 39 CFR Parts 111 and 502

## Manufacture, Distribution, and Use of Postal Security Devices and Information-Based Indicia

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would add new sections to the Domestic Mail Manual (DMM) and title 39, Code of Federal Regulations (CFR), to reflect policies and regulations pertaining to the Information-Based Indicia Program (IBIP). The proposed policies and regulations were originally published for public review and comment in the March 28, 1997, **Federal Register** (62 FR 14833). As a result of comments received on that original proposal, the regulations have been revised to reflect two significant changes. The first is that the proposed regulations only address ''open'' systems. It is the intent of the Postal Service to address ''closed'' systems at a future date. The second is a clarification on refund procedures. In addition, the March 3, 1998, **Federal Register** (63 FR 10419) provided information regarding potential alternative approaches to the physical nature and location of a security device. The proposed regulations have been amended to reflect these alternatives. These proposed IBIP policies and regulations are interim and may be revised after experience has been gained with the testing and implementation of the first of the Information-Based Indicia (IBI) systems.

**DATES:** Comments must be received on or before November 2, 1998.

**ADDRESSES:** Written comments should be mailed or delivered to the Manager, Metering Technology Management, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Nicholas S. Stankosky, (202) 268–5311.

**SUPPLEMENTARY INFORMATION:** The Information-Based Indicia Program (IBIP) involves the development of new technology to produce forms of postage evidencing through the use of two-dimensional barcodes, human-readable information, and cryptographic services to produce postage evidence from personal computers. This technology will support Postal Service efforts to reduce fraud, provide a convenient access to postage, and provide an opportunity for customer defined ''value added'' services.

There are five primary elements to an IBI. The indicia includes:

- Town circle information.
- Postage amount applied.
- Device identifier.
- Two-dimensional barcode.
- Optional advertising art.

The Postal Service has classified potential IBIP PC Postage products into four major categories:

1. Stand-alone system products.
2. Local Area Network (LAN) system products.
3. Wide Area Network (WAN) system products, and
4. Hybrid system products.

The proposed regulations pertain to current IBI stand-alone system performance criteria and will also be applied to the other potential categories as Providers present their systems for evaluation and approval.

Core security functions, such as digital signature generation and verification and the management of registers, are performed on a stand-alone system by a physical Postal Security Device (PSD). On all other systems these functions are performed remotely through another form of logical security element. Some customer and Provider requirements may differ according to each alternative system. The host system controls the customer infrastructure in system authorization, system audits, postage resetting and production of the indicia.

The IBIP key management component employs a public-key certificate-based digital signature that features a data integrity service and provides the means to validate the indicia. Finally, the product/service Provider infrastructure provides support for all IBIP functions including licensing, PSD production, maintenance of other logical security elements, and life cycle support, and provides an interface with both the customer and the Postal Service infrastructure. The Postal Service interface involves the issuance of licenses, updating licensee information, product/device inventory and tracking, resetting support and account reconciliation, lost and stolen/irregularity monitoring, and the assignment of digital certificates.

The following is a summary of the Postal Service's position on the general interest IBIP policy issues. In this document, the USPS will only address ''open'' systems. ''Closed'' systems will be addressed separately at a future date.

- Any proposed open system product or device must be submitted for approval under proposed ''Metering Technology Management Metering Product Submission Procedures'' (September 1, 1998 **Federal Register**). These procedures include specifics on letters of intent, nondisclosure agreements, the Provider's concept of operations and infrastructure, documentation requirements, product submissions, and most testing activities.
- In an attempt to use the existing Postal Service infrastructure as much as possible, customer licensing and product/device tracking will be included in the Centralized Meter Licensing System (CMLS). A license must be obtained prior to the use of a device. A customer already licensed to use postage meters will not have to apply again for an additional license. The Postal Service will simply update the customer's file.
- All IBIP-specific system components must be leased.
- Until the Postal Service has captured historical data on reliability and security, the total amount of postage in a descending register will be limited to a maximum of $500. Ascending registers must show all postage printed over time.
- Authorized Providers must keep records of the distribution, control, and maintenance of all IBIP systems throughout the complete lifecycle of the product. This includes tracking of all PSDs, including newly manufactured PSDs, active leased PSDs and inactive unleased PSDs, as well as lost and stolen PSDs.
- Indicia produced from the IBIP system may be used to indicate postage for single-piece rate First-Class Mail (including Priority Mail), Express Mail, and Standard Mail classes. Mail bearing the indicia is entitled to all privileges and subject to all conditions applying to these classes of mail.
- Providers are responsible for audit functions. The Postal Service will not take over this function but may at times participate in or review the audit process. PSDs and other logical security elements must be audited at least once every 3 months.
- Providers must perform an analysis of each submitted customer mailpiece as part of the Provider's Mailpiece Quality Assurance program to ensure the quality and readability of the indicia. The Provider must notify the customer and the Postal Service of any deficiencies.
- All postage downloads or settings will be made under the provisions of the Computerized Remote Meter Resetting System (CMRS). The Postal Service will conduct periodic audits of a Provider's resetting system to ensure that the system is operating correctly and that postal revenues are protected.

- Physical inspections of PSDs will be made at the time of submission for approval and if there is a subsequent suspicion of a security problem.
- The Postal Service will provide refunds for unused postage, for any balance remaining on a PSD or other logical security element, and for any balance remaining in the licensee's CMRS account.
- All approved systems must have the capability to update postage rates efficiently when such changes are announced.
- There are provisions in the IBIP regulations for the correction of postage and dates. These are similar to those used for metered postage. For date correction, the facing identification mark (FIM) and barcode will be suppressed; for postage correction, the FIM will be suppressed.
- Cautionary labels such as those affixed to postage meters will not be affixed to PSDs. However, Providers must make their customers aware of this information through their supplied software, and documentation.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rule-making by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

**List of Subjects in 39 CFR Parts 111 and Part 502**

Administrative practice and procedure, Postal Service.

Accordingly, Parts 111 and 502 of title 39, CFR are amended as follows:

## PART 111—[AMENDED]

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

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

2. Add the following sections to the Domestic Mail Manual as set forth below:

### P050 Information-Based Indicia

1.0 BASIC INFORMATION

#### 1.1 Description of IBI

The IBI system prints an authorized USPS Information-Based Indicia that shows evidence of postage. The indicia consists of a USPS-approved two-dimensional barcode and certain human-readable information such as city and state, 5-digit ZIP Code of licensing post office, device ID number, date, and amount of postage. The IBI system includes as a primary component a physical Postal Security Device (PSD), or another form (e.g., remote) of logical security element depending on the installed IBI system version, that provides critical functionality for accounting for postage with a computer-based host system. The security device and host system interact to generate the indicia. The security device is remotely set and requires the customer to have funds on deposit with the USPS before initial setting or resetting.

#### 1.2 Provider Responsibilities

The IBI system is available only through a lease agreement from a USPS-authorized Provider. The USPS holds Providers responsible for the life cycle, control, operation, maintenance, and replacement of their IBIP products and devices.

#### 1.3 Possession

A customer must have a USPS-issued license and a valid lease agreement to use the IBI system.

#### 1.4 Classes of Mail

Indicia produced from the IBI system may be used to indicate postage for single-piece rate First-Class Mail (including Priority Mail), Express Mail, and Standard Mail classes.

#### 1.5 Amount of Postage

The value of the IBIP indicia affixed to each mailpiece must equal or exceed the exact amount due for the piece when mailed.

#### 1.6 Additional Postage

An indicia showing additional postage may be placed on a shortpaid mailpiece under 4.9, Postage Correction.

2.0 LICENSE

#### 2.1 Procedures

The application and the license are processed through the Centralized Meter Licensing System (CMLS). An applicant must provide all applicable data for Form 3601-A, Application for a License to Lease and Use Postage Meters, to the Provider. The application must state the post office where the applicant intends to deposit mail produced using their IBI system. The Provider electronically transmits the information requested on Form 3601-A to CMLS in the USPS-specified format. When a Provider transmits the application on behalf of the applicant, the USPS notifies the Provider when a license is issued. A single license covers all IBI systems to the same applicant by the same post office, but a separate application must be submitted for each post office where the applicant wants to deposit IBI mail. There is no fee for the application and license. After approving an application, the USPS issues a Postage Meter License (Form 3601-B). A customer will not have to apply for a license to use an IBI system if the customer already possesses a valid postage meter license.

#### 2.2 Refusal to Issue License

The USPS may refuse to issue a license for the following reasons: the applicant submitted false or fictitious information on the license application; the applicant violated any standard for the care or use of an IBI or product/device that resulted in the revocation of that applicant's license within 5 years preceding submission of the application; or there is sufficient reason to believe that the product/device is to be used in violation of the applicable standards. The USPS sends the licensee written notice when an application for a license is refused. The USPS notifies the Provider if the license is refused. Any applicant refused a license may appeal the decision under 2.4.

#### 2.3 Revocation of License

A license is subject to revocation for any of the following reasons:

a. An IBI product/device is used for any illegal scheme or enterprise or there is probable cause to believe that the product/device is to be used in violation of the applicable standards.

b. The IBI product/device is not reset or audited within a 3-month period.

c. Sufficient control of an IBI product/device is not exercised or the standards for its care or use are not followed.

d. The IBI product/device is kept or used outside the boundaries of the United States or those U.S. territories and possessions without USPS approval.

e. IBI mail is deposited at other than the licensing post office (except as permitted by 5.0 or D072).

f. Failure to forward mailpieces to the Provider for quality assurance as required by 2.5h.

The USPS sends written notice to the licensee and the licensee's Provider of any revocation.

#### 2.4 Appeals

An applicant who is refused a license, or a licensee whose license is revoked, may file a written appeal with the Manager of Metering Technology Management (MTM), USPS Headquarters, within 10 calendar days of receipt of the decision.

### 2.5 Licensee Responsibilities

The licensee's responsibilities for the care and use of an IBI product/device include the following:

a. After a PSD supporting a stand-alone system is delivered to a licensee, it must remain in the licensee's custody until it is returned to the authorized Provider.

b. The licensee must, upon request, make the PSD in the licensee's custody and corresponding records on transactions immediately available for review and audit to the Provider or the USPS.

c. The licensee must remote-set security devices at least once every 3 months.

d. The licensee must immediately notify the Provider of any change in the licensee's name, address, telephone number, the location of the product/device, or any other information on the Form 3601-A.

e. The USPS issues a revised license based on the transmission of updated information from the Provider. The licensee must verify and update license information on a periodic basis. If a licensee changes the post office where IBI mail is to be deposited, the PSD or other logical security element must be checked out of service by the authorized Provider. The customer must be relicensed at the new post office before the Provider can issue and reset a replacement PSD or other logical security element.

f. The licensee must report a misregistering or otherwise defective IBI product/device to the Provider under 2.7 and must ensure that the defective IBI product/device is not used.

g. The licensee must maintain address quality by updating the USPS AMS CD-ROM disk at least once every 6 months.

h. The licensee must forward a mailpiece produced by the IBI product/device to the Provider at least once every 6 months after initialization for quality assurance.

i. The customer must enter into a signed lease agreement with the Provider that includes a financial agreement for resetting the IBI product/device with postage.

### 2.6 Custody of Suspect PSDs

The Postal Service may conduct unannounced, on-site examinations of IBI product/devices reasonably suspected of being manipulated or otherwise defective. An inspector may also immediately withdraw a suspect IBI product/device from service for physical and/or laboratory examination. The inspector issues the licensee a receipt for the IBI product/device, forwards a copy to the Provider, and, if necessary, assists in obtaining a replacement IBI product/device. Where possible, the Inspection Service gives advance notice that an IBI product/device is to be inspected. Unless there is reason to believe that the IBI product/device is fraudulently set with postage, existing postage in the IBI product/device to be examined is transferred to the replacement PSD.

### 2.7 Defective PSD or Other Logical Security Element

The licensee must immediately report any defective PSD or other logical security element to the Provider. The Provider must retrieve any defective PSD within 3 business days of notification by the licensee and notify the USPS. A faulty PSD or other logical security element may not be used under any circumstance. Faulty PSDs must be returned to the Provider. The Provider will supply the licensee with a replacement PSD or will correct the logical security element, as applicable.

### 2.8 Missing PSD

The licensee must immediately report to the Provider and licensing post office the loss or theft of any PSD or the recovery of any missing PSD. Reports must include the PSD identification number and/or serial number; the date, location, and details of the loss, theft, or recovery; and a copy of any police report. The Provider must report all details of the incident to the Manager, MTM.

### 2.9 Returning a PSD

After a PSD is delivered to a licensee, the PSD must be kept in the licensee's custody until returned to the authorized Provider. A licensee with a faulty or misregistering PSD or who no longer wants to keep a PSD must return the PSD to the Provider to be checked out of service. PSDs must be shipped by Priority Mail Returned Receipt for Merchandise unless the Manager, MTM, USPS Headquarters, gives written permission to ship at another rate or special service.

## 3.0 SETTING

### 3.1 Initial Setting of PSD or Other Logical Security Element

Before the licensee is issued a PSD or is granted access to another form of logical security element, the device must be initialized and authorized by the Provider. The customer must enter into a lease agreement with the Provider that includes a financial agreement for resetting the device with postage. Settings are made according to the provisions of the USPS Computerized Remote Postage Meter Resetting System (CMRS).

### 3.2 Payment for Postage

Payment must be made for postage before the IBI product/device is set. The customer is permitted to make payment in accordance with Treasury Handbook, F–3, section 2–11.

### 3.3 Postage Transfers and Refunds

Postage losses due to malfunctions are the responsibility of the Provider. The Postal Service will provide refunds for unused postage, for any balance remaining on a PSD or other logical security element, and for any balance remaining in the licensee's CMRS account.

- For unused postage, refunds will only be granted for mailpieces that are 30 days old or less. The mailpieces and a completed PS Form 3533, Application and Voucher for Refund of Postage and Fees, must be forwarded to the Provider for indicia verification and processing. Refunds will be credited to the licensee's CMRS account.
- Upon the return of a PSD, the Provider will verify the remaining balance. The refund will be credited to the licensee's CMRS account.
- Refunds from other logical security elements will be verified by the Provider and credited to the licensee's CMRS account.
- Licensees must notify the Provider in writing to request the closing of a CMRS account. After the request has been processed the licensee will receive a check for the balance.

### 3.4 Periodic Examinations

PSDs or other logical security elements must be reset at least once every 3 months. The Provider's update of the watchdog timer/device audit satisfies this requirement. The USPS reserves the right to examine security devices by remote access or otherwise.

### 3.5 Resetting

In addition to the conditions in Part B, Postal Security Device, of the ''Performance Criteria for Information-Based Indicia and Security Architecture for IBI Postage Metering Systems (PCIBISAIBIPMS),'' the following conditions must be met to reset a PSD or other logical security element:

a. The licensee's account must have sufficient funds to cover the desired postage increment, or the Provider must agree to advance funds to the USPS on behalf of the licensee. The USPS encourages the Providers to recommend the use of the following payment forms by order of preference:

1. ACH Debit

2. ACH Credit
3. Wire Transfer
4. Debit Card Optional
5. Credit Card Optional
6. Check

b. As part of the resetting procedure, the licensee must provide identification information according to the Provider's resetting specifications.

c. After a PSD or other logical security element is reset, the Provider supplies the licensee with documentation of the transaction and the balance remaining in the licensee's account, unless the Provider gives a monthly statement to the licensees documenting all transactions for the period and the balance after each transaction.

**3.6 Amount of Postage**

The descending register of the PSD or other logical security element is programmed not to exceed $500 for a given user at any time.

4.0 INDICIA

**4.1 Design**

The indicia designs (types, sizes, and styles) must be those the Provider specified when the IBI product/device was approved by the USPS for manufacture and distribution.

**4.2 Legibility**

The indicia must be legible. An illegible indicia is not acceptable when determining postage paid. Minimal standards for acceptable reflectance measurements of the indicia and the background material are in the Uniform Symbology Specifications PDF417 and DMM Section C840.5. The facing identification mark (FIM) must meet the dimensions and print quality specified in DMM C810. The address and POSTNET barcode must meet the specifications listed in the DMM C840.

**4.3 On an Adhesive Label**

The USPS-approved label must be used when IBI indicia are to be printed on a label. Labels are subject to corresponding standards in DMM C810 and must be approved by the Manager, MTM.

**4.4 Position**

The indicia must be printed or applied in the upper right corner of the envelope, address label, or tag. The indicia must be at least ¼ inch from the right edge of the mailpiece and ¼ inch from the top edge of the mailpiece. The indicia barcode must be horizontally oriented. The indicia must not infringe on the areas reserved for the FIM, POSTNET barcode, or optical character reader (OCR) clear zone. These apply to pieces meeting the dimensions specified in DMM C800.

**4.5 Content**

In usage, the indicia must consist of human-readable information and two-dimensional barcoded information unless specified otherwise. The human-readable information must show, as a minimum, the city, state, and 5-digit ZIP Code of the licensing post office, the device ID, date of mailing, rate category, and the amount of postage. On approval of the licensing post office, the indicia may contain the name and state designation of its local classified branch. This authorization does not apply to classified stations or to contract stations or branches. Alternatively, the indicia may show the ZIP Code rather than the city and state designation. In this case, the words ''Mailed From ZIP Code'' and the mailer's delivery address ZIP Code must appear in place of the city and state, respectively. When it is necessary to print multidenomination IBI product/device indicia on more than one tape, the human-readable information showing the post office must be on each adhesive label.

**4.6 Complete Date**

The month, day, and year must be shown in the indicia on all First-Class Mail. On Standard Mail the day may be omitted. Mailpieces bearing an indicia with only the month and year may be accepted during the month shown. They may also be accepted through the third day of the following month if the postmaster finds that the mailing was unavoidably delayed before deposit with the USPS.

**4.7 Date Accuracy**

The date shown in the indicia must be the actual date of deposit. Mail deposited after the day's last scheduled collection may bear the date of the next scheduled collection.

**4.8 Date Correction**

If date correction is required, an indicia showing actual date of mail and the word ''REDATE'' instead of the postage amount may be used. The indicia must be placed on the nonaddress side at least 20mm from the bottom edge of the mailpiece. The indicia impression must not bear the FIM or the two-dimensional barcode.

**4.9 Postage Correction**

An indicia for additional postage may be placed on a shortpaid mailpiece to correct postage. The corrected indicia must be printed on the nonaddress side at least 20mm from the bottom edge of the piece and not on an envelope flap. The impression on the nonaddress side must contain all the indicia elements except for the FIM. To meet two-dimensional barcode readability requirements, an indicia may be printed on a USPS-approved tape/label.

**4.10 Other Matter Printed**

Advertising matter, slogans, return addresses, and the postal markings specified in 4.11 may be printed with the indicia within space limitations. A licensee must obtain the content for printing this matter from the authorized Provider. Advertising art messages must include the mailer's name or words such as ''Mailer's Message.'' The advertising art must not be obscene, defamatory of any person or group, or deceptive and it must not advocate any unlawful action. The Provider must obtain prior approval for all advertising matter.

**4.11 Postal Markings**

Postal markings related to the class or category of mail are required. If placed in the advertising art area, only the postal marking may be printed, and it must fill the advertising art area as much as possible. All words must be in bold capital letters at least ¼ inch high (18-point type) and legible at 2 feet. Exceptions are not made for small advertising art that cannot accommodate a permissible marking.

**4.12 FIM**

The mailpiece generated by IBI product/device must bear a USPS-approved FIM D unless the envelope is courtesy reply with a FIM A or the piece is not a letter or a flat. The location of the FIM applies to pieces meeting the dimensions specified in DMM C800.

5.0 MAILINGS

**5.1 Preparation of IBI**

Mail is subject to the preparation standards that apply to the class of mail and rate claimed.

**5.2 Combination**

IBI mail may be combined in the same mailing with mail paid with other methods only if authorized by the USPS.

**5.3 Where to Deposit**

Single-piece rate First-Class Mail may be deposited in any street collection box or such other place where mail is accepted and that is served by the licensing post office. Limited quantities (i.e., a handful) of single-piece rate First-Class Mail may be deposited at offices other than the licensing post office to expedite dispatch.

6.0 AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE IBI SYSTEMS

Title 39, Code of Federal Regulations, part 502, contains information about the authorization to manufacture and distribute IBI product/devices; the suspension and revocation of such authorization; performance standards, test plans, testing, and approval; required manufacturing security measures; and standards for distribution and maintenance. Further information may be obtained from MTM, USPS Headquarters.

3. Part 502 is added to read as follows:

## PART 502—AUTHORITY TO MANUFACTURE AND DISTRIBUTE INFORMATION BASED INDICIA SYSTEMS

Sec.



**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App 3.

### § 502.1 Provider qualifications.

A potential Provider wanting authorization to lease or otherwise distribute an Information-Based Indicia (IBI) system, as approved by the Postal Service, for use by licensees under Domestic Mail Manual P050.1.2 must:

(a) Satisfy the Postal Service of its integrity and financial responsibility;

(b) Obtain approval of at least one prototype incorporating all the features and safeguards specified in § 502.9;

(c) Have, or establish, and keep under its supervision and control adequate manufacturing facilities suitable to carry out the provisions of §§ 502.18 through 502.21 to the satisfaction of the Postal Service (such facilities must be subject to unannounced inspection by representatives of the Postal Service); and

(d) Have, or establish, and retain adequate facilities for the control, distribution, and maintenance of IBI systems and their replacement when necessary.

### § 502.2 Provider authorization.

Upon qualification and approval, the applicant is authorized in writing to manufacture IBI products/devices and to lease them to persons licensed by the Postal Service.

### § 502.3 Changes in ownership or control.

Any person or concern wanting to acquire ownership or control of an authorized Provider must provide the Postal Service with satisfactory evidence of that person's or concern's integrity and financial responsibility.

### § 502.4 Burden of proof standard.

The burden of proof is on the Postal Service in the adjudication of suspensions and revocations under §§ 502.5 and 502.14 and administrative sanctions under §§ 502.16 and 502.22. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance of evidence standard.

### § 502.5 Suspension and revocation of authorization.

(a) The Postal Service may suspend and/or revoke authorization to provide and/or distribute any or all of a Provider's IBI systems if the Provider engages in any unlawful scheme or enterprise, fails to comply with any provision in this part 502, or fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over the IBI product/device programs.

(b) The decision to suspend or revoke a Provider's authorization shall be based on the nature and circumstances of the violation (e.g., whether the violation was willful, whether the Provider voluntarily admitted to the violation, whether the Provider cooperated with the Postal Service, whether the Provider implemented successful remedial measures) and on the Provider's performance history. Before determining whether a Provider's authorization to manufacture and/or distribute IBI systems should be revoked, the procedures in paragraph (c) of this section shall be followed.

(c) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a Provider is in violation of the provisions in this part 502, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension or authorization to provide IBI systems may be imposed under paragraph (c) (2) of this section. Except in cases of willful violation, the Provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the Provider has failed to correct cited deficiencies within the specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) If, upon consideration of the defense as provided in paragraph (e) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (c)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the Provider to correct the problem;

(ii) Make a determination to revoke authorization to provide and/or distribute the Provider's products/devices in part or in whole; or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Provider suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the Provider's solution and implementation are satisfactory.

(d) The Provider may present the Postal Service with a written determination within 30 calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and specify the reasons for which the order should not be imposed.

(e) After receipt and consideration of the defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it. The decision

shall be effective on receipt unless it provides otherwise. The decision shall also advise the Provider that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter period is deemed necessary), as specified therein. The appeal must include all supporting evidence and specify the reasons the Provider believes that the decision is erroneous.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.6 Description of the IBIP.**

The IBI product/device prints an authorized USPS Information-Based Indicia that shows evidence of postage. The indicia consists of a USPS-approved two-dimensional barcode and certain human-readable information such as city and state, 5-digit ZIP Code of licensing post office, Device ID number, date, and amount of postage. The IBI product/device includes as a primary component a physical Postal Security Device (PSD), or a remote logical security element depending on the installed IBI system version, that provides critical functionality for accounting postage with a computer-based host system. The security device and host system interact to generate the indicia. The PSD or other logical security element is remotely set with postage value and requires the licensee to have funds on deposit with the Postal Service prior to initial setting or resetting. IBIP PC Postage products are classified into four major categories.

1. Stand-alone system products.
2. Local Area Network (LAN) system products.
3. Wide Area Network (WAN) system products, and
4. Hybrid system products.

Core security functions such as digital signature generation and verification and the management of registers are performed on a stand-alone system by a physical PSD. On all other systems these functions are performed remotely through another form of logical security element. Customer and Provider requirements may differ according to each alternative system.

**§ 502.7 Product/device Provider.**

The IBI system is available to licensees only through a lease agreement from a USPS authorized Provider. The host is envisioned to operate on personal computers.

**§ 502.8 IBIP performance criteria.**

The IBIP performance criteria describe system elements that include Postal Service infrastructure, Provider infrastructure, and customer infrastructure. The existing Postal Service infrastructure supports customer authorization, product audit, postage resetting reporting, total population management, key management support, financial reconciliation, product lifecycle tracking, and lost and stolen/irregularity management functions. The Provider infrastructure will support all IBIP functions. The customer infrastructure will consist of the applicable security device and host system. The Postal Service will evaluate and test IBIP systems for compliance with this infrastructure.

(a) The indicia data content is described in Part A, Indicium, of the ''Performance Criteria for Information-Based Indicia and Security Architecture for IBI Postage Metering Systems (PCIBISAIBIPMS).'' Contact the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444 for these requirements.

(b) The PSD implements digital signature technology for the creation and verification of digital signatures. Postal Security Device performance criteria are described in Part B, Postal Security Devices, of the PCIBISAIBIPMS. Contact the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444 for these requirements.

(c) Indicia design must comply with the requirements in Domestic Mail Manual (DMM) P050.

(d) Host System Functional Requirements are contained Part C, Host System, of the PCIBISAIBIPMS. Contact the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444 for these requirements.

(e) Key Management functional requirements are contained in Part D, Key Management Plan, of the PCIBISAIBIPMS. Contact the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444 for these requirements.

**§ 502.9 Test plans.**

Each IBI system that is submitted for USPS approval should be submitted in accordance with the provisions contained in the ''Metering Technology Management Metering Product Submission Procedures.'' Contact the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444 for these requirements.

**§ 502.10 Security testing.**

The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any IBI system submitted to the Postal Service for approval or previously approved by the Postal Service.

**§ 502.11 IBI system approval.**

As provided in § 502.14, the Provider has a duty to report security weaknesses to the Postal Service to ensure that each IBI system protects the Postal Service against loss of revenue at all times. An approval of a system does not constitute an irrevocable determination that the Postal Service is satisfied with its revenue-protection capabilities. After approval is granted to an IBI system, no change affecting the features or safeguards may be made except as authorized or ordered by the Postal Service in writing.

**§ 502.12 Conditions for approval.**

(a) The Postal Service may require at any time that approved production systems of IBI products/devices, as well as the design, user manuals, and specifications applicable to such IBI systems and any revisions thereof, be submitted to the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444.

(b) Upon request by the Postal Service, additional IBI systems must be submitted to the Postal Service for testing, at the expense of the Provider.

(c) All product/device submissions should adhere to the requirements contained in the ''Metering Technology Management Metering Product Submission Procedures.'' Particular attention should be given to the requirement to simultaneously submit an identical IBI system to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for FIPS 140–1 certification.

**§ 502.13 Suspension and revocation of approval.**

(a) The Postal Service may suspend an IBI system if the Postal Service believes that an IBI system poses an unreasonable risk to postal revenue.

(b) Suspension procedures:

(1) Upon determination by the Postal Service that an IBI system poses an unreasonable risk to postal revenue, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension may be imposed under paragraph (b)(2) of this section. The Provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit

corresponding to the potential risk to postal revenue.

(2) If the Postal Service determines that the Provider has failed to correct cited deficiencies within the specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (c) of this section.

(3) If, upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (b)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the Provider to correct the problem;

(ii) Make a determination to revoke the approval of the Provider's IBI system or class and/or version, or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Provider suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the Provider's solution and implementation are satisfactory.

(c) The Provider may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and specify the reasons for which the order should not be imposed.

(d) After receipt and consideration of the written defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it states otherwise. The decision shall also advise the Provider that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter period is deemed necessary), as specified therein. The appeal must include all supporting evidence and the reasons that the Provider believes that the decision is erroneous.

(e) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.14 Reporting.**

(a) For purposes of this section, ''Provider'' refers to authorized Provider in § 502.1 and its foreign or domestic affiliates, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each authorized Provider in § 502.1 must submit a preliminary report to notify the Postal Service promptly (in no event more than 21 calendar days of discovery) of the following:

(1) All findings or results of any testing known to the Provider concerning the security or revenue protection features, capabilities, or failings of any IBI system distributed by the Provider that has been approved for distribution by the Postal Service or any foreign postal administration; or have been submitted for approval by the Provider to the Postal Service or a foreign postal administration.

(2) All potential security weaknesses or methods of IBI system tampering that the Provider distributes of which the Provider knows or should know, and the IBI system or model subject to each method. All potential security weaknesses include but are not limited to suspected equipment defects, suspected abuse by an IBI licensee or Provider employee, suspected security breaches of the Computerized Remote Postage Meter Resetting System, cryptographic key compromises, occurrences outside normal performance, or any repeatable deviation from normal IBI system performance (within the same model family and/or by the same licensee).

(c) Within 45 days of the preliminary notification to the Postal Service under § 502.15(b), the Provider must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The Provider must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The Provider must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses. The Provider is required to submit a copy of internal reporting procedures and instructions to the Postal Service for review.

**§ 502.15 Administrative sanction on reporting.**

(a) Notwithstanding any act, admission, or omission by the Postal Service, an authorized Provider may be subject to an administrative sanction for failing to comply with § 502.14.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the Provider knew, or should have known, of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any IBI System for which the Provider failed to comply with any provision in § 502.14. The Postal Service may recover from the Provider any and all such costs and losses (net of any amount collected by the Postal Service from the licensees or users) with interest by issuing a written notice to the Provider setting forth the facts and reasons on which the determination to impose the sanction is based. The notice shall advise the Provider of the date that the action takes effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(c) The Provider may present the Postal Service with a written defense to the proposed action within 30 calendar days of receipt. The defense must include all supporting evidence and specify the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it states otherwise. The decision shall also advise the Provider that it may, within 30 calendar days of receiving written notice, appeal that determination as specified therein.

(e) The Provider may submit a written appeal to the Postal Service within 30 calendar days of receipt of the decision. The appeal must include all supporting evidence and specify the reasons that the Provider believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(f) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.16 Materials and workmanship.**

All IBI systems must adhere to the quality in materials and workmanship of the approved prototype.

**§ 502.17 Destruction of product/device indicia.**

All IBIP indicia created in the process of testing the IBI system by the Provider,

or its agent, must be collected and destroyed daily.

**§ 502.18 Inspection of new IBI systems.**

All new IBI systems must be inspected carefully prior to distribution.

**§ 502.19 Distribution facilities.**

An authorized Provider must keep adequate facilities for and records of the distribution, control, and maintenance of IBI systems. All such facilities and records are subject to inspection by Postal Service representatives.

**§ 502.20 Distribution controls.**

Each authorized Provider must do the following:

(a) Hold title permanently to all leased systems except those purchased by the Postal Service.

(b) On behalf of applicants, electronically transmit copies of completed PS Forms 3601–A, Application for a License to Lease and Use Postage Meters, to the designated Postal Service central processing facility.

(c) Lease systems only to parties that have valid licenses issued by the Postal Service.

(d) Supply the host system with slogan or advertising art that meets the Postal Service requirements for suitable quality and content. The Provider must obtain prior approval for all advertising matter for IBI systems.

(e) Unless otherwise authorized by the Postal Service, the Provider must immediately obtain and check out of service PSDs, if the licensee no longer wants the PSD or if the PSD is to be removed from service for any other reason. If a logical security element resides in the Provider's server, it must be immediately disabled. If it resides at the Licensee's site, all resetting requests must be denied. The Provider must keep in its possession for at least 1 year the licensee's PS Form 3601–C, Postage Meter Activity Report.

(f) Retrieve any misregistering, faulty, or defective PSD to be checked out of service within 3 business days of being notified by the licensee of the defect. After examining the PSD withdrawn for apparent faulty operation affecting registration, the Provider must compile a report explaining the malfunction to MTM, USPS Headquarters.

(g) Report promptly the loss or theft of any IBI system or component. The Provider must provide notification to the Postal Service by completing a standardized lost and stolen incident report and filing it with the Postal Service within 30 days of the Provider's determination of a loss, theft, or recovery. The Provider must complete all preliminary location activities specified in § 502.24 before submitting this report to the Postal Service.

(h) Cancel a lease agreement with any lessee whose license is revoked by the Postal Service, remove the PSD within 15 calendar days, and have the PSD checked out of service.

(i) Promptly remove from service any PSD or other logical security element that the Postal Service indicates should be removed from service. When a license is canceled, all PSDs or other logical security elements in use by the licensee must be removed from service.

(j) Examine each IBI system withdrawn from service for failure to record its operations correctly and accurately, and report to the Postal Service the failure or fault that caused the failure.

(k) Provide MTM monthly with a compatible computer file of lost or stolen PSDs. The file is due on the first of each month (for the preceding month's activity).

(l) Take reasonable precautions in the transportation and storage of PSDs to prevent use by unauthorized individuals. Providers must ship all PSDs by Postal Service Registered Mail unless given written permission by the Postal Service to use another carrier. The Provider must demonstrate that the alternative delivery carrier employs security procedures equivalent to those for Registered mail.

(m) Submit a daily financial transaction for each postage value download or postage refill according to established CMRS procedures.

**§ 502.21 Administrative sanction.**

The Postal Service holds Providers responsible for the life cycle, control, operation, maintenance, and replacement of their products/devices.

(a) For purposes of this section, an IBI system is defined as a system that is manufactured by an authorized Provider under § 502.1 that is not owned or leased by the Postal Service.

(b) An authorized Provider that, without just cause, fails to conduct or perform adequately any of the controls in § 502.20, to follow standardized lost and stolen incident reporting in § 502.24, or to conduct any of the inspections required by § 502.23 in a timely fashion is subject to an administrative sanction based on the investigative and administrative costs and documented revenue losses (net of any amount collected by the Postal Service from the licensee or user). Interest per occurrence measured from the date on which the cost and/or loss occurred, as determined by the Postal Service. Sanctions shall be based on the costs and revenue losses that result from the Provider's failure to comply with these requirements.

(c) The Postal Service may impose an administrative sanction under this section by issuing a written notice to the Provider setting forth the facts and reasons on which the determination to impose the sanction is based. The Postal Service shall determine all costs and losses. The notice shall advise the Provider of the date that the action shall take effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(d) The Provider may present to the Postal Service a written defense to the proposed action within 30 calendar days of receipt of the notice. The defense must include all supporting evidence and specify the reasons for which the sanction should not be imposed.

(e) After receipt and consideration of the written defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it states otherwise.

(f) The Provider may submit a written appeal of the decision with 30 calendar days of receiving the decision, addressed to the Manager of MTM, Postal Service Headquarters. The appeal must include all supporting evidence and specify the reasons that the Provider believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(g) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.22 IBI system replacement.**

(a) The Provider must keep its IBI systems in proper operating condition for licensees by replacing them when necessary or desirable to prevent electronic failure, malfunction, clock/timer/battery life expiration, or mechanical breakdown.

(b) The Provider must provide the licensees with modifications reflecting rate changes.

**§ 502.23 Inspection of PSDs or other logical security elements in use.**

The Provider must conduct audits of PSDs or other logical security elements at least once every 3 months in conjunction with the postage value resetting requirements in § 502.26. In general, the primary role of the PSD in

the device audit function is to create device audit messages and pass those messages to the host system for transmission to the Postal Service.

**§ 502.24 PSDs not located.**

Upon learning that one or more of its PSDs in service cannot be located, the Provider must undertake reasonable efforts to locate the PSD by following a series of Postal Service-specified actions designed to locate the PSDs. If these efforts are unsuccessful and a PSD is determined to be lost or stolen, the Provider must notify the Postal Service within 30 days by submitting a Lost and Stolen PSD Incident Report.

(a) If a licensee cannot be located, the Provider must, at a minimum, complete the following actions:

(1) Call directory assistance for the licensee's new telephone number.

(2) Contact the licensee's local post office for current change of address information.

(3) Contact the CMLS site and the local MATS coordinator to verify the location of the PSD or licensee currently maintained in those Postal Service records.

(4) Contact the rental agency responsible for the property where the licensee was located, if applicable.

(5) Visit the licensee's last known address to see whether the building superintendent or a neighbor knows the licensee's new address.

(6) Mail a certified letter with return receipt to the licensee at the last known address with the endorsement ''Forwarding and Address Correction Requested.''

(7) If new address information is obtained during these steps, any scheduled PSD inspection must be completed promptly.

(b) If a PSD is reported to be lost or stolen by the licensee, the Provider must, at a minimum, complete the following actions:

(1) Ensure that the licensee has filed a police report and that copies have been provided to the appropriate Inspection Service Contraband Postage Identification Program (CPIP) specialist.

(2) Withhold issuance of a replacement PSD until the missing PSD has been properly reported to the police and to the appropriate Inspection Service CPIP specialist.

(c) If the Provider later learns that the PSD has been located and/or recovered, the Provider must update lost and stolen PSD activity records, inspect the PSD promptly, initiate a postage adjustment or transfer, if appropriate, and check the PSD out of service if a replacement PSD has been supplied to the licensee.

(d) If a PSD reported to the Postal Service as lost or stolen is later located, the Provider is responsible for submitting a new Lost and Stolen PSD Incident Report that references the initial report and outlines the details of how the PSD was recovered. This report must be submitted to the Postal Service within 30 days of recovery of the PSD. The Provider is also responsible for purging lost and stolen PSD reports that are provided on a periodic basis to the Postal Service for those PSDs that have been recovered.

(e) Any authorized Provider that fails to comply with standardized lost and stolen reporting procedures and instructions is subject to an administrative sanction under § 502.21, as determined by the Postal Service.

**§ 502.25 Computerized remote resetting.**

(a) *Description.* The Computerized Remote Meter Resetting System (CMRS) permits postal licensees to reset PSDs or other logical security elements at their places of business and/or homes via modem and/or network interface. To reset a PSD, the licensee must connect to the Provider and provide identifying data and device audit data. Before proceeding with the setting transaction, the Provider must verify all the data (including conducting the product audit) and ascertain from its own files whether the licensee has sufficient funds on deposit with the Postal Service. If the funds are available and the product audit was successful, the Provider may complete the setting transaction.

(b) *Revenue protection.* The Postal Service shall conduct periodic assessments of the revenue protection safeguards of each Provider system and shall reserve the right to revoke a Provider's authorization if the CMRS system does not meet all requirements set forth by the Postal Service. The Provider must make its facilities that handle the operation of the computerized resetting system and all records about the operation of the system available for inspection by representatives of the Postal Service at all reasonable times.

(c) *Deposits with the Postal Service.* (1) A CMRS licensee is required to have funds available on deposit with the Postal Service before resetting a PSD or the Provider may opt to provide a funds advance in accordance with The Cash Management Operating Specifications for the Computerized Remote Postage Meter Resetting System. Contact the Treasurer's Office of the United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–5130 for this document. The details of this deposit requirement are covered within the Acknowledgment of Deposit Requirement document. By signing this document, the licensee agrees to transfer funds to the Postal Service through a lockbox bank, as specified by the Provider, for the purpose of prepayment of postage. The Provider representative must provide all new CMRS licensees with this document when a new account is established. The document must be completed and signed by the licensee and sent to the Minneapolis Accounting Service Center by the Provider.

(2) The licensee is required to incorporate the following language into its IBI rental agreements:

**Acknowledgement of Deposit Requirement**

See the Cash Management Operating Specifications for the Computerized Remote Postage Meter Resetting System. Contact the Treasurer's Office of the United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–5130 for this document.

**§ 502.26 Indicia quality assurance.**

The licensee is required to forward a mailpiece to the Provider at least once every 6 months for evaluation. If the licensee fails to comply with this requirement, the Provider must notify the licensee that, all future postage value resettings will be denied. The Provider must notify the Postal Service of all noncomplying licensees, so that license revocations can be initiated. The Provider is required to provide guidance to the licensee to correct any deficiencies that are discovered.

**§ 502.27 IBI system refunds.**

Postage losses due to malfunctions are the responsibility of the Provider. The Postal Service will provide refunds for unused postage, for any balance remaining on a PSD or other logical security element, and for any balance remaining in the licensee's CMRS account. The following procedures must be followed, depending on the type of refund requested:

(a) Unused Postage

(1) Postage refunds will be granted only for pieces that are 30 days old or less. The licensee will complete a PS Form 3533, Application and Voucher for Refund of Postage and Fees. This form may be supplied electronically to the licensee by the Provider. The licensee must supply refund details in Part IV of the form which shows the number of pieces grouped by postage value, the total postage value for each group, and the total postage for all listed groups.

(2) The unused mailpieces and the completed Form 3533 will be sent to the Provider for indicia verification and refund processing.

(3) The Provider will scan the indicia to ensure that they are valid. Part IV of the Form 3533 must be annotated to show corrections for nonqualifying pieces.

(4) An individual authorized by the Provider must certify the amount of the refund by signing Part IV below where the details of the mailpieces are shown.

(5) The Provider will send the Form 3533 to the MATS coordinator at the appropriate Postal Service District office for further refund processing.

(6) The District MATS coordinator will arrange for the amount of refunded postage to be credited to the licensee's CMRS account.

(7) The unused envelopes must be retained by the Provider for 45 days after the Form 3533 has been sent to the District. During this period the Postal Service reserves the right to audit the pieces and the Providers processing of the refund request.

(b) PSD or Other Logical Security Element Balance

(1) The Provider must verify the remaining balance in a returned PSD or other logical security element. This balance must be reconciled with the descending balance as noted by the Provider when the licensee notified the Provider that the PSD or other logical security element was to be taken out of service.

(2) The validated refund amount must be noted in section F of the completed Form 3601–C and the Providers representative must sign Section G.

(3) The completed Form 3601–C will be sent to the appropriate District MATS coordinator.

(4) The District MATS coordinator will arrange for the amount of refunded postage to be credited to the licensee's CMRS account.

(c) CMRS Account

(1) The licensee must notify the Provider in writing that the licensee's CMRS account is to be closed.

(2) The Provider will notify the Minneapolis Accounting Service Center of the closing of the account, according to CMRS procedures as administered by USPS Treasury Management.

(3) The Minneapolis Accounting Service Center will notify the lockbox bank to issue a refund check to the licensee.

**§ 502.28 Key management requirements.**

These requirements are contained in Part D, Key Management Plan, of the PCIBISAIBIPMS. Contact the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–2444 for these requirements.

**§ 502.29 Provider infrastructure.**

The Provider must establish and maintain an interface to USPS systems as specified in CMRS and CMLS documentation. CMRS documentation may be obtained from Corporate Treasury, USPS HQ, 475 L'Enfant Plaza SW, Room 8118, Washington, DC 20260–5130. CMLS documentation may be obtain from the Manager, MTM, USPS, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–2444.

**Neva R. Watson,**

*Acting Chief Counsel, Legislative.*

[FR Doc. 98–23559 Filed 8–28–98; 3:59 pm]

BILLING CODE 7710–12–P

## POSTAL SERVICE

## 39 CFR Parts 501 and 502

## Metering Product Submission Procedures

**AGENCY:** Postal Service.

**ACTION:** Proposed Procedure.

**SUMMARY:** The **Federal Register** dated January 7, 1997, reflected proposed interim product submission procedures for the Information-Based Indicia Program (IBIP). This revises, clarifies, and expands those proposed submission procedures to include all postage metering products, applications, and systems. The terms ''manufacturer'' and ''vendor'' are no longer referenced in these procedures and have been replaced by the more appropriate term ''Provider.'' Also, since the meter program administration office title has changed, all references to ''Retail Systems and Equipment'' have been deleted and replaced by ''Metering Technology Management.''

**DATES:** Comments must be received on or before November 2, 1998.

**ADDRESSES:** Written comments should be mailed or delivered to the Manager, Metering Technology Management, Room 8430, 475 L'Enfant Plaza SW, Washington, DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Nicholas S. Stankosky, (202) 268–5311.

**SUPPLEMENTARY INFORMATION:** With the increase of potential postage application methods and technologies it is essential that submission procedures be clearly stated and defined. The Postal Service evaluation process can be effective and efficient if these procedures are followed explicitly by all suppliers. In this way secure and convenient technology will be made available to the mailing public with minimal delay and with the complete assurance that all Postal Service technical, quality, and security requirements have been met. These procedures apply to all proposed products and systems, whether the Provider is new or is currently authorized by the USPS.

39 Code of Federal Regulations Section 501.9, Security Testing, currently states that ''The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.'' When the Postal Service elects to retest a previously approved product, the Provider will be required to resubmit the product for evaluation according to part or all of the proposed procedures. Full or partial compliance will be determined by the Postal Service prior to resubmission by the Provider.

The proposed submission procedures will be referenced in 39 CFR Parts 501 and 502 but will be published as a separate document as follows:

**Metering Technology Management**

*Metering Product Submission Procedures*

In submitting a metering product for Postal Service evaluation, the proposed Provider must provide detailed documentation in the following areas:

- Letter of Intent.
- Nondisclosure Agreements.
- Concept of Operations (CONOPS).
- Software and Documentation Requirements.
- Provider Infrastructure Plan.
- USPS Address Matching System (AMS) CD–ROM Integration.
- Product Submission/Testing.
- Provider Infrastructure Testing.
- Field Test (Beta) Approval (Limited Distribution).
- Provider/Product Approval (Full Distribution).

These sections must be completed in sequential order as detailed below:

1. Letter of Intent

A. The Provider must submit a Letter of Intent to the Manager, Metering Technology Management (MTM), United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444.

The Letter of Intent must include:

(1) Date of correspondence.

(2) Name and address of all parties involved in the proposal: In addition to the Provider, those responsible for

assembly, distribution, management of the product/device, hardware/software development, testing, and other organizations involved (or expected to be involved) with the product.

(3) Name and phone number of official point of contact for each company identified.

(4) Proposed Provider's business qualifications (i.e., proof of financial viability, certifications and representations, proof of ability to be responsive and responsible).

(5) Product/device concept narrative

(6) Provider infrastructure concept narrative.

(7) Narrative that identifies the internal resources knowledgeable of current USPS policies, procedures, performance criteria, and technical specifications, to be used to develop security, audit, and control features of the proposed product, and

(8) The target Postal Service market segment the proposed product is envisioned to serve.

B. The Provider must submit with the Letter of Intent a proposed product development plan of actions and milestones (POA&M) with a start date coinciding with the date of the Letter of Intent. Reasonable progress must be shown against these stated milestones.

C. The Manager, Metering Technology Management, will acknowledge in writing the receipt of the Provider's Letter of Intent and will designate a Postal Service point-of-contact. Upon receipt of this acknowledgment, the Provider may continue with the sequential requirements of the product submission process.

2. Nondisclosure Agreements

These agreements are intended to ensure confidentiality and fairness in business. The Postal Service is not obligated to provide product submission status to any parties not identified in the Letter of Intent. After obtaining signed nondisclosure agreements, the Provider may continue with the sequential requirements of the product submission process.

3. Concept of Operations (CONOPS)

A. The Provider must submit a Concept of Operations (CONOPS) that discusses at a moderate level of detail the features and usage conditions for the proposed product. The Provider should submit 10 serialized hard copies and one electronic copy of a PC-formatted 3.5″ floppy disk. Additionally, the Provider must also submit a detailed process model, supporting each CONOPS section. Note: The Postal Service will not be obligated to provide consulting guidance on any current Postal Service policy, procedure, performance criteria, or specification beyond publicly available publications.

B. The CONOPS should cover the following areas at a minimum:

(1) System Overview.

(a) Concept overview/business model.

(b) Concept of production/maintenance administration.

(c) For Information-Based Indicia (IBI) products, a PC Postage system design.

(i) Postal Security Device (PSD) implementation (stand-alone, LAN, WAN, Hybrid).

(ii) Features.

(iii) Components including the digital signature algorithm.

(d) Product lifecycle overview.

(e) Adherence to industry standards such as FIPS 140–1, as determined by the USPS.

(2) For Proposed IBI PC Postage Product-Details.

(a) PSD features and functions.

(b) Host system features and functions.

(c) Other components required for normal use conditions.

(3) Product Lifecycle.

(a) Manufacture.

(b) USPS certification of product/device.

(c) Production.

(d) Distribution.

(e) Product/device licensing and registration.

(f) Initialization.

(g) Product authorization and installation.

(h) Postage Value Download (PVD) process.

(i) Product and support system audits.

(j) Inspections.

(k) Product withdrawal/replacement.

(i) Overall process.

(ii) Product failure/malfunction procedures.

(l) Scrapped product process.

(4) Finance Overview.

(a) Customer account management.

(i) Payment methods.

(ii) Statement of account.

(iii) Refund.

(b) Individual product finance account management.

(i) PVD.

(ii) Refund.

(c) Daily account reconciliation.

(i) Provider reconciliation.

(ii) USPS-detailed transaction reporting.

(d) Periodic summaries.

(i) Monthly reconciliation.

(ii) Other reporting as required by the Postal Service.

(5) Interfaces.

(a) Communications and message interfaces with postal infrastructure.

(i) PVDs.

(ii) Refunds.

(iii) Inspections.

(iv) Product audits.

v) Lost or stolen product procedures.

(b) Communications and message interfaces with applicable USPS financial functions.

(i) Postage settings including those done remotely.

(ii) Daily account reconciliation.

(iii) Refunds.

(c) Communication and message interfaces with Customer Infrastructure.

(i) Key management.

(ii) Product audits (device and host system).

(iii) Inspections.

(d) Message error detection and handling.

(6) Technical Support and Customer Service.

(a) User training and support.

(b) Software Configuration Management (CM) and update procedures.

(c) Hardware CM and update procedures.

(7) Other.

(a) Postal rate change procedures.

(b) Address Management System ZIP+4 CD-ROM updates.

(c) Physical security.

(d) Personnel/site security.

C. Supplementary requirements, Concept of Operations:

(1) The CONOPS must be accompanied by substantiated market analysis supporting the target Postal Service market segment the proposed product is envisioned to serve as identified in the Letter of Intent.

(2) The CONOPS must include a list and a detailed explanation of any proposed deviations from USPS performance criteria or specifications. Any proposed deviation to audit and control functions required by current USPS policy, procedure, performance criteria, or specification must be accompanied by an independent assessment by a nationally recognized accounting firm attesting to the proposed auditing method. The report of this information is to be signed by an officer of the accounting firm.

D. USPS Response:

(1) The USPS will acknowledge, in writing, receipt of the CONOPS and perform an initial review. The USPS will provide the Provider with a written summary of the CONOPS review. Authorization to continue with the product submission process, or a listing of CONOPS requirements that are not met will be provided by the USPS in the written review.

(2) If, in the opinion of the USPS, it is determined that extensive CONOPS deficiencies do exist, the USPS, at the

discretion of the Manager, Metering Technology Management, may return the CONOPS to the Provider without further review. It will then be incumbent on the Provider to resubmit a corrected CONOPS.

(3) Upon receipt of authorization from the USPS to continue the product submission process, the Provider may continue with the sequential requirements of the product submission process.

(4) For submissions, the USPS will appoint an IBIP Product Review Control Officer. All communications between the Provider and the USPS are to be coordinated through the IBIP Product Review Control Officer.

4. Software and Documentation Requirements

A. The Provider must submit to the Postal Service five copies of executable code and one copy of full source code for all software.

B. The Provider must submit a detailed design document of the product. This must include the proposed IBIP indicia design, which must be approved by the Manager, Metering Technology Management. FIPS 140–1 Appendix A provides a checklist summary of documentation requirements for the FIPS 140–1 standard. Additionally, the Postal Service requires design documentation that includes, but is not limited to, the following:

(1) Operations manuals for product usage.

(2) Interface description documents for all proposed communications interfaces.

(3) Maintenance manuals.

(4) Schematics.

(5) Product initialization procedures.

(6) Finite state machine models/ diagrams.

(7) Block diagrams.

(8) Security features descriptions.

(9) Cryptographic operations descriptions.

Detailed references for much of this documentation is listed in the FIPS 140–1 Appendix A. The Postal Service will determine the number of copies needed of the aforementioned documentation based on the CONOPS review. The USPS will notify the Provider of the required number of copies. The required number of copies are to be uniquely numbered for control purposes.

C. The Provider must submit a comprehensive test plan that validates that the product meets all Postal Service requirements and FIPS 140–1. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes for all special test equipment and nonstandard or noncommercial instrumentation. Finally, this test plan must include a proposed schedule of major test milestones.

D. USPS Response:

(1) The Provider must submit a benchmark assessment plan. USPS Engineering will provide reference standards, performance criteria, specifications, etc., to be used as a basis for the Provider to produce this plan.

(2) The USPS will acknowledge in writing receipt of the Provider's design and test plans and perform an initial review. The USPS will provide the Provider with a written summary of the design plan and test plan reviews. Authorization to continue with the product submission process, or a listing of design plan requirements or test plan requirements that are not met, and perhaps other deficiencies, will be provided by the USPS in the written review.

(3) If, in the sole opinion of the USPS, it is determined that extensive design plan or test plan deficiencies do exist, the USPS at the discretion of the Manager, Metering Technology Management, may return the plans to the Provider without further review. It will then be incumbent on the Provider to resubmit corrected plans.

(4) Upon receipt of authorization from the USPS to continue the product submission process, the Provider may continue with the sequential requirements of the product submission process.

5. Provider Infrastructure Plan

A. The Provider Infrastructure Plan may be submitted concurrently with the design and test plans, or after written acknowledgment from the USPS indicating the plans successfully met the requirements of the product submission process.

B. The Provider must submit a Provider Infrastructure Plan that describes how the processes and procedures described in the CONOPS will be met or enforced. This includes, but is not limited to, a detailed description of all Provider and Postal Service related operations, computer systems, and interfaces with both customers and the Postal Service that the Provider shall use in manufacturing, producing, distribution, customer support, product/device lifecycle, inventory control, print readability quality assurance, and reporting.

C. USPS Response:

(1) The USPS will acknowledge in writing receipt of the Provider's Infrastructure Plan and perform an initial review. The USPS will provide the Provider with a written summary of the Infrastructure Plan review. Authorization to continue with the product submission process, or a listing of the Infrastructure Plan requirements that are not met, and perhaps other deficiencies, will be provided by the USPS in the written review.

(2) If, in the opinion of the USPS, it is determined that extensive Provider Infrastructure Plan deficiencies do exist, the USPS at the discretion of the Manager, Metering Technology Management, may return the Infrastructure Plan to the Provider without further review. It will then be incumbent on the Provider to resubmit a corrected Infrastructure Plan.

(3) Upon receipt of authorization from the USPS to continue the product submission process, the Provider may continue with the sequential requirements of the product submission process.

6. USPS Address Matching System (AMS) CD-ROM Integration

A. The USPS AMS CD-ROM is a required component of IBIP systems. The Provider shall initiate an agreement with the USPS National Customer Support Center (NCSC). This signed agreement shall describe responsibilities of the AMS CD-ROM supply chain processes, including roles of the Provider. The only functionality of the AMS CD-ROM available through an IBIP system is address matching and ZIP+4 coding of input addresses.

B. Any CONOPS or products proposed where the Provider requests a variance to the AMS CD–ROM requirements must be approved by the Manager, Metering Technology Management, prior to proceeding with the next step in the submission process.

C. A detailed description of the process in which an address is ZIP+4 coded including all possible optional and required parameters.

7. Product Submission/Testing

A. The Provider must be prepared to submit up to five complete systems of each product/device requested for approval, to the Postal Service for evaluation and review. The required number of submitted systems will be determined by the Postal Service. The Provider must provide directly, or through lease or rental, any equipment required for use in conjunction with the proposed product/device needed to

represent usage conditions as proposed in the CONOPS.

B. The Provider must submit the proposed product to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for FIPS 140–1 certification, or equivalent, as authorized by the Postal Service. Upon completion of the FIPS 140–1 certification, or equivalent, the Postal Service requires the following be forwarded directly from the accredited laboratory to the Manager, Metering Technology Management for review:

(1) A copy of letter of recommendation to the National Institute of Standards and Technology (NIST) of the United States of America.

(2) Copies of proprietary and nonproprietary reports and recommendations generated.

(3) A copy of NIST-issued certificate.

(4) Written full disclosure identifying any role of the NVLAP which contributed to the design, development, or ongoing maintenance of the product/device.

C. The Provider may submit the product to the USPS for initial evaluation without the completion of the FIPS 140–1 testing providing a letter is submitted from the NVLAP lab to the USPS indicating:

(1) The product is being tested under FIPS 140–1 for the required security levels.

(2) The product has a reasonable chance of meeting the FIPS 140–1/USPS security levels.

(3) The timeline for FIPS 140–1 test completion.

D. Upon satisfactory completion of FIPS 140–1 testing, or equivalent, as authorized by the Postal Service, the USPS will authorize the Provider, in writing, to submit the product to the USPS for testing and evaluation.

E. The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any product submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

F. Upon receipt of authorization from the USPS to continue the product submission process, the Provider may continue with the sequential requirements of the product submission process.

8. Product Infrastructure Testing

A. Testing of all reporting requirements, including, and not limited to, Postal Service/customer licensing support, product status activity reporting, total product population inventory, irregularity reporting, lost and stolen reporting, financial transaction reporting, account reconciliation, digital certificate acquisition, product initialization, cryptographic key changes, rate table changes, print quality assurance, device authorization, device audit, product audit, and remote inspections must be achieved by Providers prior to any product/device approval for distribution.

B. Testing of these activities and functions includes computer-based testing of all interfaces with the Postal Service including but not limited to the following:

(1) Product manufacture and life cycle (including leased, unleased, new meter stock, installation, withdrawal, replacement, key management, lost, stolen, and irregularity reporting).

(2) Product distribution and initialization (including product authorization, product initialization, customer authorization, and product maintenance).

(3) Licensing (including license application, license update and license revocation).

(4) Finance (including lockbox account management, individual product financial accounting, refunds, daily summary reports, daily transaction reporting, and monthly summary reports).

(5) Audits and inspections.

C. The Provider must complete a ''Product—Provider Infrastructure—Financial Institution—USPS Infrastructure'' (Alpha) test involving all entities in the proposed architecture; at a minimum this includes the proposed product, Provider Infrastructure, financial institution and USPS Infrastructure systems and interfaces. Alpha testing is intended to demonstrate the proposed product utility, functionality and compatibility with other systems, and may be conducted in a laboratory environment.

D. Provider Infrastructure Testing—(Alpha) test note: The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any Provider Infrastructure system supporting an IBIP product/device approved by the Postal Service for manufacture and distribution. Initial Provider Infrastructure testing and (Alpha) testing schedules will be supported at the convenience of the Postal Service.

E. Demonstrable evidence of successful completion for each test is required prior to proceeding.

F. Upon receipt of authorization from the USPS to continue the product submission process, the Provider may continue with the sequential requirements of the product submission process.

9. Field Test (Beta) Approval (Limited Distribution)

A. The Provider will submit a proposed Field Test (Beta) Test Plan identifying test parameters, product quantities, geographic location, test participants, test duration, test milestones, and product recall plan. The purpose of the Beta test is to demonstrate the proposed product's utility, security, audit and control, functionality, and compatibility with other systems in a real-world environment. The Beta test will employ available communications and interface with current operational systems to conduct all product functions. The Manager, Metering Technology Management will determine acceptance of Provider-proposed Beta Test Plans based on, but not limited to, assessed risk of the product, product impact on Postal Service operations, and requirements for Postal Service resources. Proposed candidates for Beta test participation must be approved by the Postal Service. Beta test approval consideration will be based in whole or in part on the location, mail volume, mail characteristics, and mail origination and destination patterns.

B. The Provider has a duty to report security weaknesses to the Postal Service to ensure that each product/device model and every product/device in service protects the Postal Service against loss of revenue at all times. Beta participants must agree to a nondisclosure confidentiality agreement when reporting product security, audit, and control issues, deficiencies, or failures to the Provider and the Postal Service. A grant of Field Test Approval (FTA) does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the product/device. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Metering Technology Management.

C. Upon receipt of authorization from the USPS to continue the product submission process, the Provider may continue with the sequential requirements of the product submission process.

10. Provider/Product Approval (Full Distribution)

A. Upon receipt of the final certificate of evaluation from the national laboratory, and after obtaining positive

results of internal testing of the product/device, successful completion of Provider infrastructure testing, Alpha testing, and demonstration of limited distribution activities (Beta testing); the submitted product, Provider infrastructure and Provider/manufacturer qualification requirements will be administratively reviewed for final approval. Note: Copies of Draft 39 Code of Federal Regulation Part 502 containing IBIP Provider/Manufacturer qualification requirements are available by contacting USPS Metering Technology Management, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–2444. Copies of CFR Part 501 pertaining to postage meters are also available at the above address.

B. The Postal Service may require at any time, that models/versions of approved products, and the design and user manuals and specifications applicable to such product, and any revisions thereof be deposited with the Postal Service.

It is emphasized that this proposed procedure is being published for comments and is subject to final definition.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b),(c)) regarding proposed rule making by 39 U.S.C. 410(a) , the Postal Service invites public comments on the proposed procedures.

**Neva R. Watson,**

*Chief Counsel, Legislative.*

[FR Doc. 98–23560 Filed 8–28–98; 3:59 pm]

**BILLING CODE 7710–12–P**

## POSTAL RATE COMMISSION

### 39 CFR 3001

**[Docket No. RM98–3; Order No. 1218]**

### Revisions to Rules of Practice

**AGENCY:** Postal Rate Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission seeks suggestions, especially from those who have taken part in recent rate, classification, and complaint dockets, on ways to improve the efficiency of proceedings conducted pursuant to 39 U.S.C. sec. 3624. Commenters are encouraged to address topics covered in 39 CFR 3001.1–92, with the exception of library references and confidential information. These two matters will be addressed in separate rulemakings. Commenters' suggestions will be considered in developing amendments that will improve the efficiency of Commission proceedings.

**DATES:** Comments should be filed on or before October 28, 1998.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820.

**SUPPLEMENTAL INFORMATION:** Following each major proceeding, the Commission reviews the effectiveness of its rules of practice and invites participants to offer suggestions for changes or improvements. The Commission's initial assessment of the operation of its rules in the recently-completed omnibus rate and classification case (Docket No. R97–1) leads to several preliminary conclusions. First, it appears that two recently-adopted revisions—addressing the use of surveys and the Service's filing of ''pro forma'' financial data and information—worked reasonably well. Second, it appears that consideration should be given to incorporating all (or most) of the special rules of practice into the general, or standing, rules. Third, an assessment of ways to reduce the costs inherent in service of documents, including consideration of the extent to which electronic filing requirements (or options) can be added should be undertaken.

A serious evidentiary dispute over library references indicates that clarification of this longstanding practice is essential. However, the Commission intends to address this matter, and the potential need for changes in its rules on confidential information, in separate rulemakings. Thus, commenters are requested not to include suggestions on these topics in response to this rulemaking.

Dated: August 27, 1998.

**Margaret P. Crenshaw,**

*Secretary.*

[FR Doc. 98–23636 Filed 9–1–98; 8:45 am]

**BILLING CODE 7710–FW–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 212–0092b; FRL–6142–6]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from stationary sources, including process industries and cement plants, within the South Coast Air Quality Management District (SCAQMD).

The intended effect of proposing approval of these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting should do so at this time.

**DATES:** Comments must be received in writing by October 2, 1998.

**ADDRESSES:** Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:** Patricia Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

**SUPPLEMENTARY INFORMATION:** This document concerns SCAQMD Rule 404, Particulate Matter—Concentration; Rule 405, Solid Particulate Matter—Weight; and Rule 1112.1, Emissions of Particulate Matter from Cement Kilns, submitted to EPA on June 4, 1986 by the California Air Resources Board. For further information, please see the information provided in the Direct Final

action that is located in the Rules Section of this **Federal Register**.

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

Dated: July 31, 1998.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 98–23329 Filed 9–1–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MD 061–3028b, MD 065–3028b; FRL–6148–2]**

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments VOC Regulations for Dry Cleaning and Stage I Vapor Recovery

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve two State Implementation Plan (SIP) revisions submitted by the State of Maryland. The first revision amends Maryland's dry cleaning regulation to eliminate perchloroethylene operations from the volatile organic compound (VOC) requirements. The second revision amends the Stage I Vapor Recovery regulation's gasoline storage tank capacity applicability requirements such that gasoline storage tanks with a capacity of less than 2000 gallons are no longer subject to the regulation. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 2, 1998.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Donahue, (215) 814–2095 at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: August 11, 1998.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

[FR Doc. 98–23327 Filed 9–1–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA 119–4074b; FRL–6148–4]**

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve two State Implementation Plan (SIP) revisions for the Commonwealth of Pennsylvania's enhanced Inspection and Maintenance (I/M) program. These SIP revisions amend the Commonwealth's enhanced I/M SIP to correct certain deficiencies that EPA identified in its January 28, 1997 interim conditional approval of the Commonwealth's SIP. EPA is proposing to remove several conditions and *de minimus* conditions from the interim conditional approval of Pennsylvania's SIP. However, since there remain conditions of approval which Pennsylvania has not yet addressed, the Commonwealth's SIP would continue to be conditionally approved upon finalization of this proposed rule. In the Final Rules section of this **Federal Register**, EPA is issuing a direct final rule without prior proposal to take the same action upon the Commonwealth's SIP revisions. The Agency views this rulemaking action as noncontroversial and anticipates no adverse public comment. A detailed rationale for the approval is set forth in the direct final rule and in the technical support document prepared by EPA for this action. If no adverse comments are received, no further activity is contemplated with relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 2, 1998.

**ADDRESSES:** Written comments should be addressed to Marcia Spink, Associate Director, Air Programs, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street—14th Floor, Philadelphia, Pennsylvania 19103. Copies of relevant documents may also be inspected at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, by phone at (215) 814–2176, or via e-mail at rehn.brian@epamail.epa.gov, or in writing at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: August 11, 1998.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 98–23325 Filed 9–1–98; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 745**

**[OPPTS–62158; FRL–6017–7]**

**RIN 2070–AD11**

## Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors

**AGENCY:** Environmental Protection Agency (EPA).
**ACTION:** Proposed rule.

**SUMMARY:** In this issue of the **Federal Register**, the EPA is publishing a final rule, pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA), to establish fees for the accreditation of training programs and certification of individuals and firms engaged in lead-based paint activities. As specified in TSCA section 402(a)(3), EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's cost of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors engaged in lead-based paint activities. Specifically, this action establishes the fees, in those States and Indian country without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

A detailed rationale for the promulgation of this rule is presented in the preamble to the final rule, along with the details of the action. With this corresponding notice in the Proposed Rules Section of this **Federal Register**, EPA is providing an opportunity for the public to submit comment on the provisions of the final rule. If no significant adverse comment is submitted in response to this action, the final rule will become effective without any further action by the Agency. If, however, a significant adverse comment is received during the comment period, those aspects of the rule addressed by the commenter(s) will be withdrawn and the public comments received will be addressed in a subsequent final rule. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received on or before October 2, 1998.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided below in Unit III. of the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mike Wilson, Project Manager, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: 202–260–4664; fax: 202–260–1580; e-mail: wilson.mike@epa.gov. For general information: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: 202–554–1404, TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under TSCA section 402 and 40 CFR 745.225, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with TSCA section 402 and 40 CFR 745.226. Potentially affected categories and entities may include:

| Category | Examples of Regulated Entities |
|---|---|
| Lead abatement professionals. | Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities<br>Firms engaged in lead-based paint activities |
| Training programs. | Training programs providing training services in lead-based paint activities |

This table is not intended to be exhaustive, but rather provides a guide to the entities that are likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the provisions in the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the FOR FURTHER INFORMATION CONTACT section.

### II. How Can I Get Additional Information or Copies of this or Other Support Documents?

*A. Electronically*

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/homepage/fedrgstr/.

*B. In Person or by Phone*

If you have any questions or need additional information about this action please contact one of the persons identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this action has been established under docket control number [OPPTS–62158], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. NEB–607, Waterside Mall, 401 M St., SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Document Control Office telephone number is 202–260–7093.

### III. How Can I Respond to This Action?

*A. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket number [OPPTS–62158] in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC; telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments in ASCII file format avoiding the use of special characters and any form of encryption.

Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket control number. You may also file electronic comments and data online at many Federal Depository Libraries.

*B. How Should I Handle CBI Information in My Comments?*

You may claim information that you submit in response to this action as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. All CBI claims must be made at the time the information is submitted. Failure to make a CBI claim at the time of submittal will be considered a waiver of such claims. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

## IV. Why Is EPA Issuing a Final Rule Simultaneously With this Proposal?

In this same issue of the **Federal Register** EPA is publishing a final rule identical to this proposal. EPA believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As such, two independent bases exist which qualify the final rule for the good cause exemption in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) that allows agencies in limited circumstances to issue rules without first providing notice and an opportunity for comment. Virtually all of the significant policy choices associated with the rule have already been made by Congress, and it is in most respects merely a technical application of statutory directive.

There are three major components to the rulemaking. First, the rule is based on an estimate of EPA administrative and enforcement costs. EPA is clearly in the best position to provide this estimate, as it necessarily involves consideration of internal EPA operating procedures, costs, and personnel practices. Thus, it is unlikely that the public will be able to provide meaningful comment on this aspect of the rulemaking.

Second, the rule reflects a policy choice on how EPA costs are to be distributed among those required to pay fees. Although those participants paying the highest fees under the rule may prefer that EPA flatten the fee structure so that their fees would be reduced, EPA has already considered this option and has determined that such an approach would be inequitable. In light of EPA's policy choice, the assessment of individual fees turns on a technical assessment of EPA administrative and enforcement costs for each category of participant. Once again, it is unlikely that the public can provide meaningful input on EPA's estimates of its own program costs.

The third component of the rule relates to fee waivers. Although the rule largely incorporates statutory directives in this regard (as to State and local governments, and non-profit training providers), it also provides a fee waiver for Indian Tribes, and specifies that contractors training their own employees will not be entitled to a fee waiver. Since the fee waiver for Indian Tribes is consistent with the statutory waivers provided for States and local governments, is consistent with EPA treatment of Indian Tribes for purposes of authorizing Tribal lead-based paint programs under 40 CFR 745.320–745.339, and relieves (rather than imposes) a regulatory requirement, EPA does not expect that the public would provide adverse comment on the Tribal fee waiver.

EPA recognizes that there may be some who are dissatisfied by the Agency's decision not to waive fees for contractors training their own employees, but EPA does not expect that the public can suggest a basis for a fee waiver that will override the objective of maximizing recovery of EPA costs associated with this program. Thus, EPA believes that providing an opportunity for public comment on the rule is ''unnecessary.'' While not required to do so under the APA, EPA is willing to delay the effective date of the rule pending the unlikely receipt of significant adverse comments that would inform the decision in ways not already considered. Such a delay seems prudent to avoid the possibility and the resultant confusion, of adjusting the fees once the application process has started. If significant adverse comment is received during the 30–day period (described in more detail below), EPA will issue a document to withdraw those aspects of the final rule which are addressed by the adverse comment before its effective date.

The Agency is scheduled to begin receiving applications for accreditation of training providers in September of 1998. The Agency believes that it is critically important for the necessary fees to be established prior to the initiation of the application period. Without established fees, it will be more difficult for applicants to determine the extent to which they may wish to participate in the program. Without a fee rule in place, EPA would need to assess fees on a case-by-case basis based on actual EPA costs in reviewing individual applications and on estimated future administrative and enforcement costs. This approach would burden EPA with the requirement of keeping track of all time spent processing individual applications. The use of a case-by-case assessment would undoubtedly prolong the application process and result in uncertainty to potential program applicants who would not know the amount of fees they will be required to pay until their application is fully processed. Delaying issuance of the rule to allow an opportunity for public comment would require use of the case-by-case assessment process in the interim pending finalization of a fee rule and would not, therefore, be in the public interest.

Although the Agency believes that it is appropriate to issue a final fee rule, EPA is providing an opportunity for the public to submit comment on it. If no significant adverse comment is submitted within 30 days of publication of the final rule in the **Federal Register**, the final rule will become effective 45 days after publication without any further action by the Agency. If, however, a significant adverse comment is received during the comment period, those aspects of the rule addressed by the commenters will be withdrawn and the public comments received will be addressed in a subsequent final rule. This proposed rule ensures that the public is aware of its opportunity to comment, and will provide the APA-required proposal in the event that significant adverse comment is received and issuance of a subsequent final rule is necessary.

## V. What Action Is EPA Taking?

For detailed information about the action, see the direct final rule which is located in the Rules section of this **Federal Register**, and are summarized below.

### VI. Do Executive Orders 12875 and 13084 Require EPA to Consult With States and Indian Tribal Governments Prior to Taking the Action in this Notice?

*A. Executive Order 12875*

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. As explained in more detail in Unit IV. of this document, the statutory waivers provided for States and local governments are being extended to Indian Tribes. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*B. Executive Order 13084*

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. As explained in more detail in Unit IV. of this document, the statutory waivers provided for States and local governments are being extended to Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### VII. How Do Other Regulatory Assessment Requirements Apply to this Action?

The applicability of various regulatory assessment provisions to this action are discussed in the preamble to the corresponding final rule published elsewhere in the Rules section of this issue of the **Federal Register**, and summarized below.

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), it has been determined that this rule is not ''significant'' and is not subject to OMB review. This 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 duties on State and local governments or impose private sector exependitures of $100 million or more annually so as to trigger applicablity of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any 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, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (Pub. L. 104–113).

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This certification is based on an analysis that the Agency prepared for this action, which indicates that the rule should not place undue burden on small business. Information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request. This information is also included in the public record for this action as a part of the economic analysis.

**List of Subjects in 40 CFR Part 745**

Environmental Protection, Fees, Hazardous Substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: August 25, 1998.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 98–23454 Filed 8–31–98; 11:24 am]
**BILLING CODE 6560–50–F**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Parts 1001, 1002, and 1003

**RIN 0991–AA95**

### Health Care Programs: Fraud and Abuse; Revised OIG Sanction Authorities Resulting From Public Law 105–33

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rulemaking proposes revisions to the OIG's exclusion and civil money penalty authorities set forth in 42 CFR parts 1001, 1002 and 1003, resulting from the Balanced Budget Act of 1997, Public Law 105–33. These proposed revisions are intended to protect and strengthen Medicare and State health care programs by increasing the OIG's anti-fraud and abuse authority through new or revised exclusion and civil money penalty provisions.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on November 2, 1998.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–30–P, Room 5246, Cohen Building 330

Independence Avenue, S.W., Washington, D.C. 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–30–P.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. The Health Insurance Portability and Accountability Act*

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, was enacted on August 21, 1996 and set forth a number of significant amendments to the OIG's exclusion and civil money penalty (CMP) authorities. Among the various provisions related to program exclusion authority, HIPAA: (1) expanded the OIG's minimum 5-year mandatory exclusion authority to cover any felony conviction under Federal, State or local law relating to health care fraud, even if governmental programs were not involved; (2) established minimum periods of exclusion from 1 to 3 years for certain permissive exclusions from Medicare and the State health care programs; and (3) established a new permissive exclusion authority applicable to individuals who have a majority ownership in, or have significant control over the operations of, an entity that has been convicted of a program-related offense. Proposed regulations addressing these revised or expanded OIG exclusion authorities were published in the **Federal Register** on September 8, 1997 (62 FR 47182).

In addition, HIPAA revised and strengthened the OIG's existing CMP authorities, and extended the application of the CMP provisions beyond those programs funded by the Department to include all Federal health care programs. The revised or expanded CMP provisions resulting from HIPAA are being addressed in a separate OIG proposed rulemaking.

### *B. The Balanced Budget Act of 1997*

In conjunction with many of the HIPAA fraud and abuse authorities, the Balanced Budget Act (BBA) of 1997, enacted on August 5, 1997, contained a number of provisions designed to further preserve and protect the integrity of Medicare, Medicaid and all other Federal health care programs for current and future beneficiaries, and combat fraudulent and abusive program activities. Specifically, the fraud and abuse provisions of BBA serve to strengthen the OIG's exclusion and CMP authorities with respect to Federal health care programs.

The new exclusion and CMP authorities under BBA are effective for violations occurring on or after August 5, 1997. As the new statutory provisions allow the Department some policy discretion in their implementation, we are developing this proposed rulemaking and soliciting public comments. The proposed regulation text changes reflected in this rule are designed to address statutory revisions resulting from BBA. As indicated above, revisions to 42 CFR chapter V resulting from the HIPAA fraud and abuse provisions are being published and addressed through separate proposed rulemakings. All final regulation text changes resulting from the HIPAA and BBA fraud and abuse proposed rules will be coordinated and collectively addressed in a final rulemaking document that will amend OIG's exclusion and CMP authorities.

## II. Provisions of the Proposed Rule

### *A. Revised Exclusion Authorities Resulting from BBA*

1. OIG Authority to Direct Exclusions From State Health Care Programs, and to Extend the Application of OIG Exclusions to all Federal Health Care Programs

Prior to the enactment of BBA, a program exclusion imposed by the OIG was applicable to Medicare and State health care programs, as defined in section 1128(h) of the Social Security Act (the Act). As part of the fraud and abuse provisions set forth in HIPAA, section 231 of Public Law 104–191 amended the criminal and CMP provisions in sections 1128A and 1128B of the Act to encompass acts occurring with respect to a ''Federal health care program,'' as defined in section 1128B(f) of the Act.[1] With the enactment of HIPAA, however, this extension of coverage was not replicated with respect to the Secretary's program exclusion authority as set forth in section 1128 of the Act. In addition, prior to BBA, the OIG was authorized to impose exclusions from participation in Medicare, but only to direct State health care programs to impose parallel exclusions from State health care programs such as Medicaid. The practical result of this bifurcated exclusion implementation process was that States frequently failed to implement exclusions in a timely or otherwise appropriate manner.

To ensure that the OIG's program exclusion authority is consistent with other sanction authorities set forth in sections 1128A and 1128B, section 4331(c) of BBA specifically amended sections 1128(a) and (b) of the Act to provide that the scope of an OIG exclusion extends beyond Medicare and the State health care programs to all Federal health care programs, as defined in section 1128B(f) of the Act, and to enable the OIG to impose exclusions from all Federal health care programs directly. As a result, we propose to add a definition for the term ''Federal health care program'' in § 1001.2, and make conforming revisions in §§ 1001.1(a), 1001.1901, 1001.3003, 1001.3005 and 1002.2(a).

Section 1001.1901, Scope and effect of exclusion, would be amended by revising paragraph (a) to reflect the revised scope of exclusions under title XI of the Act. As indicated above, under section 4331(c) of BBA, exclusions imposed by the OIG under title XI of the Act are now directly to indicate the Secretary, through the OIG, would have the authority to direct the imposition of exclusions from all Federal health care programs. Section 1001.1901 would be amended to indicate that the Secretary, through the OIG, now has the direct authority to impose exclusions from all Federal health care programs. The reference in this section to an exclusion's effect with respect to other Federal agency procurement and nonprocurement programs and activities is being deleted. The effect of an exclusion on such programs (other than Federal health care programs) is specifically addressed in the Federal Acquisition Regulation at 48 CFR 9.405 and the HHS Common Rule at 45 CFR part 76.

With regard to program agency notification, since all affected agencies within the Department, as well as all Federal health care programs outside of the Department, must now effectuate an OIG decision to exclude an individual or entity, we intend to provide notice to these program agencies regarding any action taken by the OIG. Since we believe that it would not be practical to send program agencies an individual notice on every case, we are proposing to inform all affected agencies through the OIG's web site (http://www.dhhs.gov/progorg/oig) every month. The OIG web site will also advise the public of all individuals and entities excluded from program participation. We are advising program

[1] Section 1128B(f) of the Act defines the term ''Federal health care program'' to encompass any plan or program providing health care benefits, whether directly through insurance or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the Federal Employees Health Benefits Program).

agencies to check the web site and to take action, as appropriate, to exclude individuals and entities from their programs.

*Broadening factors for the circumstances and length of exclusion*—We are also proposing to amend the mitigating and aggravating factors for length of exclusion in §§ 1001.201(b)(3)(iii)(A), 1001.301(b)(2)(ii) and (b)(3)(ii)(A), 1001.401(c)(2)(ii) and (c)(3)(i)(A), 1001.1301(b)(2)(iii), 1001.1401(b)(1) and (b)(4), and 1001.1501(a)(3) to incorporate consideration of all Federal health care programs, not just Medicare and the State health care programs, in determining an appropriate period of exclusion. We believe that since the OIG's authority to exclude individuals and entities has been broadened under section 4331(c) of BBA to encompass all Federal health care programs, it is reasonable for the OIG to consider the impact of exclusion with respect to all of these health care programs.

*Effect of exclusion on employment and the reimbursement of items and services in the Federal health care programs*—The effect of an exclusion as a result of this authority remains the same as it had been prior to the BBA expansion, i.e., with limited exceptions, no payment may be made for any health care item or service furnished, ordered or prescribed by an excluded individual. There is one significant difference, however, that results from broadening the scope of an exclusion to encompass all Federal health care programs. An individual who was excluded from Medicare and the State health care programs prior to BBA could be employed by another agency which funded a Federal health care program, such as the Department of Defense (which funds the CHAMPUS health care program). In addition, while other Federal agencies were instructed to give government-wide affect to the OIG exclusion, each agency retained some discretion as to whether it would debar that individual or entity from its programs. Such Federal agencies no longer have the discretion to permit excluded individuals and entities to remain in their programs. With the expanded scope of the OIG's exclusion authority, no agency which funds a Federal health care program may reimburse excluded individuals for items and services they provide, nor may any such agency pay the salaries or expenses of such persons using Federal dollars. As a result, an agency which funds a Federal health care program may only employ an excluded individual in limited situations, where the program is able to pay the individual with private grant funds or other non-Federal funding sources. In most instances, the effect of an OIG exclusion will preclude the employment of an excluded individual in any capacity by a Federal or State agency, or other entity, where reimbursement is made by any Federal health care program.

2. Permanent Exclusions for Individuals Convicted of 3 or More Health Care Related Crimes, and 10 Year Exclusions for Individuals Convicted of 2 Health Care Related Crimes

Prior to the enactment of BBA, section 1128(a) of the Act directed the Secretary to impose mandatory exclusions of individuals and entities from participation in the Medicare and State health care programs upon conviction of certain criminal offenses, including Medicare and Medicaid program-related crimes, patient abuse crimes, health care fraud felonies and felonies relating to controlled substances. While such mandatory exclusions were, in most cases, for a minimum period of 5 years, no established mechanism was in place to require a fixed exclusion period for repeat offenders.

As a result of the ability of some health care providers to re-enter participation in the Federal and State health care programs after a minimum exclusion period, section 4301 of BBA imposes a mandatory exclusion of not less than 10-years on individuals who have been twice convicted of mandatory exclusion offenses (including program-related crimes, patient abuse, health care fraud and convictions relating to controlled substances) under section 1128(a) of the Act. In addition, a mandatory permanent program exclusion would also be imposed against those individuals who have been convicted on 3 or more occasions for conduct relating to a Federal health care program under section 1128(a) of the Act. Accordingly, we propose to amend § 1001.102 by adding a new paragraph (d) to reflect these new mandatory lengths of exclusion. An exclusion of not less than 10 years, in the case of a second conviction, or a permanent exclusion, in the case of three or more convictions, will be mandatory where the final conviction has occurred on or after August 5, 1997—the date of enactment of BBA. We are also proposing to add a new paragraph (b)(7) to § 1001.102, the provision governing the length of mandatory exclusions, to include as a new aggravating factor consideration of whether prior criminal offenses involved same or similar circumstances.

3. Exclusion of Entities Controlled by Family or Household Members of Sanctioned Individuals

Under section 1128(b)(8) of Act, the OIG may exclude entities that are owned at least 5 percent, or controlled, by an individual who has been convicted of a health care related offense, or who has been sanctioned by the OIG. This authority enables OIG to enforce its exclusions by ensuring that health care companies operated by excluded individuals, in addition to the individuals themselves, do not continue doing business and receiving reimbursement from Government health care programs. Some excluded health care providers, however, have been able to circumvent the impact of a sanction by expediting transfers on paper of their ownership and control interests in health care entities to a family or household member. These individuals have thus been able to retain silent control of health care businesses that participate in Medicare, Medicaid and all other Federal health care programs despite their exclusion from these same programs. To address this concern of ''paper transfers'' of ownership or control interest by excluded individuals who still retain control of the health care business, section 4303 of BBA amended section 1128(b)(8) of the Act by expanding existing exclusion authority to include entities owned or controlled by the family or household members of excluded individuals when the transfer of ownership or control interest was made in anticipation of, or following a conviction, assessment of a CMP, or exclusion.

We propose to amend § 1001.1001(a)(1)(ii) to reflect this new statutory authority. With regard to an individual excluded under section 1128(b)(8) of the Act, and consistent with the statute, § 1001.1001(a)(2) would also be amended by adding definitions for the terms ''Immediate family member'' and ''Member of household.''

*B. Revised Civil Money Penalty Authorities Resulting from BBA*

1. CMPs Against Institutional Health Care Providers That Employ or Enter in Contracts for Medical Services With Excluded Individuals

The OIG has been made aware of situations where individuals who have been excluded from Medicare or State health care program participation have, nonetheless, been able to obtain (or retain) employment, staff privileges or other affiliation with various health care entities, and to render services that are ultimately paid for by the programs.

Providers, such as hospitals, that hire excluded practitioners have often failed to investigate or query available sources such as the National Practitioner Data Bank (NPDB) or the OIG's cumulative Sanction Report on the internet (as discussed in section II.A.1. of this preamble), that would have informed them of an individual's exclusion status [2]. While CMP authority has existed for health maintenance organizations that employ or contract with excluded individuals, there was no parallel CMP authority in situations where a group medical practice, hospital, nursing home, home health agency, hospice or other provider continues to bill the programs for services rendered by excluded individuals.

Section 4304(a) of BBA, amending section 1128A(a) of the Act, added a new provision authorizing the imposition of a CMP against any provider that submits, or causes to be submitted, claims for health care items or services rendered by employees or other individuals under contract, whom they know or should know have been excluded from participation in the Federal health care programs. Accordingly, paragraph (a)(2) of § 1003.102 and paragraph (a) of § 1003.103 of the OIG regulations would be revised to implement this new CMP of up to $10,000 against any entity that submits, or causes to be submitted, claims for health care services rendered by employees or other individuals under contract whom they know, or should know, have been excluded from participation in the Federal health care programs.

In determining the appropriate amount of the penalty for each violation, we propose to amend § 1003.106(a)(1) to include the following five criteria: (1) The degree of culpability of the contracting provider; (2) whether the contracting provider knew or should have known of the exclusion; (3) the harm to patients or any Federal health care program which resulted or could have resulted from the provision of care by a person or entity with which the contracting provider is expressly prohibited from contracting under section 1128A(a)(6) of the Act; (4) the history of prior offenses by the contracting provider or principals of the contracting provider, including whether at any time prior to the determination of the current violation(s) the contracting provider or any of its principals were convicted of a criminal charge or were held liable for civil or administrative sanctions in connection with a Federal, State or private health care program; and (5) such other matters as justice may require.

2. New CMP for Failure to Report Information to the Healthcare Integrity and Protection Data Bank

Section 1128E of the Act, as added by section 221 of HIPAA, established a national health care fraud and abuse data collection program, the Healthcare Integrity and Protection Data Bank (HIPDB), for the reporting of final adverse actions against health care providers, suppliers and practitioners. This authority mandated that private health plans [3], as well as certain State and Federal entities such as medical licensing boards, report information to the national fraud and abuse data collection program concerning certain final adverse actions taken against a health care provider, supplier or practitioner. However, while the Health Care Quality Improvement Act of 1986, which established the NPDB, provided sanction authority against those who do not report required information to the NPDB, the HIPAA authority for the HIPDB set forth no parallel provision to induce health care plans' compliance with the reporting requirements.

Section 4331(d) of BBA added a provision to the health care fraud and abuse data collection program to provide for the imposition of a CMP against any health plan that fails to report information on an adverse action required to be reported under this program. In accordance with section 1128E(b)(6) of the Act, § 1003.102(b)(5) would be amended to add a new subparagraph addressing violations by any health plan that fails to report information on an adverse action required to be reported under this authority. In addition, a new § 1003.103(g) would be added to impose a CMP of not more than $25,000 for each such adverse action not reported. In determining the penalty amount for each occurrence, we are proposing five criteria for consideration that would be set forth in an amended § 1003.106(a)(2): (1) the nature and circumstances of the failure to report any adverse actions taken against a health care provider; (2) the degree of culpability of the health plan in failing to provide timely and complete data; (3) the materiality or significance of omission of the information to be reported to the Data Bank; (4) any prior history of the individual or plan with respect to these occurrences; and (5) in general, other matters required by justice.

3. CMPs for Health Care Providers who Violate the Anti-Kickback Statute

Prior to the enactment of BBA, the only remedies available to the Federal Government to combat kickback violations involving the Federal health care programs were criminal penalties (section 1128B(b) of the Act), and exclusion from participation in Medicare and the State health care programs (section 1128(b)(7) of the Act) against individuals and entities that offer or receive improper remuneration in return for the referral of business paid for by Federal health care programs. Enforcement in the kickback area has been constrained since the two existing remedies were quite severe.

To create an alternative intermediate remedy, section 4304 of BBA amended section 1128A(a) of the Act, specifically authorizing a CMP of up to $50,000 and an assessment of up to three times the total amount of the kickback for any violations of the anti-kickback statute. A new § 1003.102(b)(11) would be added to codify this new CMP authority. Additionally, a new § 1003.103(h) is being proposed in accordance with section 4304 of BBA, setting forth $50,000 as the amount of penalty to be imposed for each kickback violation under section 1128B(b) of the Act, and an assessment (reflected in a new paragraph (b) in revised § 1003.104) of up to 3 times the total amount of remuneration offered, paid, solicited or received without regard to whether a portion of such remuneration was offered, paid, solicited or received for a lawful purpose.

4. Notification, Effectuation and Appeal Procedures

With respect to all 3 new proposed CMPs, violators of these provisions would be subject to the same notification, effectuation and appeal procedures as other CMP violations under section 1128A(a) of the Act and 42 CFR part 1003 of the OIG regulations.

[2] Under the Health Care Quality Improvement Act of 1986, hospitals are required to query the National Practitioner Data Bank when hiring or granting clinical privileges to a practitioner, and must perform follow-up checks on all such practitioners every two years.

[3] Section 1128E of the Act defines the term ''health plan'' consistent with the definition set forth in section 1128C(c) of the Act; that is, a plan or program that provides health benefits whether directly, through insurance, or otherwise, and includes (1) a policy of health insurance; (2) a contract of a service benefit organization; and (3) a membership agreement with a health maintenance organization or other prepaid health plan.

*C. Additional Technical and Other Revisions to 42 CFR Parts 1001 and 1003*

1. Technical Revisions

A number of proposed technical revisions consistent with the policy provisions resulting from BBA and these regulatory amendments are also being set forth. Specifically, we propose to amend the authority citation cites for parts 1001 and 1003, §§ 1001.302 (Basis for reinstatement), 1003.100 (Basis and purpose), and 1003.114 (Collateral estoppel) to reflect the above-cited revisions being proposed in accordance with revised OIG exclusion and CMP authorities.

In addition, we are revising § 1003.109(a)(3) by deleting the phrase ''the amount of the proposed penalty, assessment and the period of proposed exclusion (where applicable).'' This language appears in paragraph (a)(4) of this section, and appears inadvertently in paragraph (a)(3).

2. Proposed Revision to OIG Exclusion Reinstatement Considerations

We are proposing to add two new elements to § 1001.3002(b) that would pertain to the OIG's review of an individual's or entity's request for reinstatement in the Federal health care programs after the individual's or entity's exclusion period. The first new proposed element would address the OIG's expectation that excluded parties adequately and promptly inform all their clients or patients of the exclusion so that the clients or patients will have a clear understanding that items and services provided by that individual or entity will not be paid for under any Federal health care program. Section 1001.1901(b) of the regulations authorizes Medicare reimbursement to a beneficiary for the first claim submitted for an item or service provided by the excluded party, at which time the beneficiary is notified that future claims will be denied due to the provider's excluded status. We do not believe that notification only *after* the submission of a claim provides adequate protection for program beneficiaries. By stating in regulations that the OIG, in making its reinstatement decisions, will consider whether a provider has adequately and promptly informed clients or patients of an exclusion, we hope to offer an incentive for providers to give the earliest possible notification to beneficiaries of any exclusion.

A second proposed reinstatement element would codify existing OIG policy which, in making reinstatement decisions, considers whether the individual or entity has, during the period of exclusion, submitted claims or caused claims to be submitted, or payments to be made by any Federal health care program for items or services the excluded party furnished, ordered or prescribed, including health care administrative services. Such conduct is impermissible and is a basis for a CMP under section 1128A(a)(1)(D) of the Act. By setting forth this regulatory clarification, we hope to make clear that the submission of claims for payment to any Federal health care program during a provider's period of exclusion will jeopardize the provider's chances for reinstatement into the programs.

## III. Regulatory Impact Statement

*Executive Order 12866 and Regulatory Flexibility Act*

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

As indicated above, the provisions set forth in this proposed rulemaking implement new or revised OIG statutory requirements set forth in Public Law 105–33. These provisions are designed both to broaden the scope of the OIG's authority to exclude individuals and entities from Medicare, Medicaid and all other Federal health care programs, and strengthen current legal authorities pertaining to the imposition of CMPs against individuals and entities engaged in prohibited actions and activities. The proposed regulations would implement the new statutory requirements by (1) expanding the application of the OIG's exclusions to all Federal health care programs; (2) implementing permanent exclusions for individuals convicted of 3 or more offenses for which an exclusion can be imposed under section 1128(a) of the Act, and 10 year exclusions for individuals convicted of two or more such offenses; (3) allowing for the exclusion of entities controlled by family or household members of sanctioned individuals; and (4) establishing new CMPs in three specific areas.

With regard to the OIG's new exclusion authorities, the process for excluding individuals and entities who are convicted in accordance with these new provisions remains essentially the same, even though the types of convictions requiring mandatory exclusions have been broadened. While there may be a resulting increase in the number of mandatory and permissive exclusions imposed as a result of the expanded scope of the OIG's exclusion authority, we do not believe these increases will be significant. The clarification of exclusion authority in § 1001.1001 regarding a sanctioned individual's transfer of ownership or control interest to a family or household member, for example, should not result in a significant increase in exclusion actions in accordance with section 1128(b)(8) of the Act since the provision is likely to act as an effective deterrent against the occurrence of such transfer arrangements. In addition, we do not foresee significant increases resulting from the implementation of section 4301 of BBA, and proposed regulations at § 1001.102, regarding the permanent exclusion of individuals convicted of 3 or more health care related crimes. The authority for promulgating this exclusion is clear cut, and should limit the total number of repeat exclusions effectuated by the OIG against such fraudulent providers.

The proposed regulations addressing the new OIG CMPs also remain consistent with the congressional intent of BBA and with the OIG's existing CMP authority which allows for imposition of civil money penalties against individuals and entities who commit fraud. These CMPs are targeted to a limited group of individuals and entities; that is, those institutional health care providers that employ or enter into medical service contracts with excluded individuals, health care plans that fail to report information to the Healthcare Integrity and Protection Data Bank, and health care providers who violate the anti-kickback statute.

As indicated, these proposed regulations are narrow in scope and effect, comport with congressional and statutory intent, and strengthen the Department's legal authorities against those who defraud or otherwise act improperly against the Federal and State health care programs. Since the vast majority of individuals, organizations and entities involved in delivering health care do not engage in the

prohibited activities and practices described in this rulemaking, we believe that the aggregate economic impact of these regulations will not be economically significant. Since there is minimal economic effect on the industry as a whole, there would be little likelihood of effect on Federal or State expenditures to implement these regulations.

With regard to the effect of these proposed regulations on a substantial number of small entities, the provisions are targeted specifically to those individuals and entities who would defraud or abuse the health care programs, rather than to the health care industry as a whole. While some of the perpetrators of fraud effected by this rule may be small entities, it is the nature of the violation and not the size of the entity that will induce action on the part of the OIG.

In summary, we have concluded, and the Secretary certifies, that since this proposed rule should not have a significant economic impact on Federal, State or local economies and expenditures, nor have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis would not be required.

*Paperwork Reduction Act*

The provisions of these proposed regulations impose no new reporting or recordkeeping requirements necessitating clearance by OMB.

## IV. Public Inspection of Comments

Comments will be available for public inspection September 16, 1998 in Room 5518 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619–0089.

## List of Subjects

*42 CFR Part 1001*

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

*42 CFR Part 1002*

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping.

*42 CFR Part 1003*

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Accordingly, 42 Parts 1001, 1002 and 1003 would be amended as set forth below:

## PART 1001—[AMENDED]

A. Part 1001 would be amended as follows:

1. The authority citation for part 1001 would be revised to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.1 would be amended by revising paragraph (a) to read as follows:

### § 1001.1 Scope and purpose.

(a) The regulations in this part specify certain bases upon which individuals and entities may, or in some cases must, be excluded from participation in Medicare, Medicaid and all other Federal health care programs. They also state the effect of exclusion, the factors that will be considered in determining the length of any exclusion, the provisions governing notices of exclusions, and the process by which an excluded individual or entity may seek reinstatement into the programs.

* * * * *

3. Section 1001.2 would be amended by revising the definition for the term *Exclusion*; and by adding a definition for the term *Federal health care program* to read as follows:

### § 1001.2 Definitions.

* * * * *

*Exclusion* means that items and services furnished by a specified individual or entity will not be reimbursed under Medicare, Medicaid and all other Federal health care programs.

*Federal health care program* means any plan or program providing health care benefits, whether directly through insurance or otherwise, that is funded directly, in whole or part, by the United States Government (other than the Federal Employees Health Benefits Program), or any State health care program as defined in this section.

* * * * *

4. Section 1001.102 would be amended by revising paragraphs (b)(5) and (b)(6); and by adding new paragraphs (b)(7) and (d) to read as follows:

### § 1001.102 Length of exclusion.

* * * * *

(b) * * *

(5) The convicted individual or entity has a prior criminal, civil or administrative sanction record;

(6) The individual or entity has at any time been overpaid a total of $1,500 or more by Medicare, Medicaid or any other Federal health care programs as a result of improper billings; or

(7) The individual or entity has previously been convicted of a criminal offense involving the same or similar circumstances.

* * * * *

(d) In the case of an exclusion under this subpart, based on a conviction occurring on or after August 5, 1997, an exclusion will be—

(1) For not less than 10 years if the individual has been convicted on one other occasion of one or more offenses for which an exclusion may be effected under section 1128(a) of the Act (The aggravating and mitigating factors in paragraphs (b) and (c) of this section can be used to impose a period of time in excess of the 10-year mandatory exclusion); or

(2) Permanent if the individual has been convicted on two or more other occasions of one or more offenses for which an exclusion may be effected under section 1128(a) of the Act.

5. Section 1001.201 would be amended by revising paragraph (b)(3)(iii)(A) to read as follows:

### § 1001.201 Conviction relating to program or health care fraud.

* * * * *

(b) *Length of exclusion.* * * *

(3) * * *

(iii) * * *

(A) Others being convicted or excluded from Medicare, Medicaid or any of the other Federal health care programs, or

* * * * *

6. Section 1001.301 would be amended by revising paragraphs (b)(2)(ii) and (b)(3)(ii)(A) to read as follows:

### § 1001.301 Conviction relating to obstruction of an investigation.

* * * * *

(b) *Length of exclusion.* * * *

(2) * * *

(ii) The interference or obstruction had a significant adverse mental, physical or financial impact on program beneficiaries or other individuals or on the Medicare, Medicaid or other Federal health care programs;

* * * * *

(3) * * *

(ii) * * *

(A) Others being convicted or excluded from Medicare, Medicaid or any of the other Federal health care programs, or

* * * * *

7. Section 1001.401 would be amended by revising paragraphs (c)(2)(ii) and (c)(3)(i)(A) to read as follows:

**§ 1001.401 Conviction relating to controlled substances.**

* * * * *

(c) *Length of exclusion.* * * *

(2) * * *

(ii) The acts that resulted in the conviction or similar acts had a significant adverse mental, physical or financial impact on program beneficiaries or other individuals or the Medicare, Medicaid or other Federal health care programs;

* * * * *

(3) * * *

(i) * * *

(A) Others being convicted or excluded from Medicare, Medicaid or any of the other Federal health care programs, or

* * * * *

8. Section 1001.1001 would be amended by revising paragraph (a)(1)(ii); and by amending paragraph (a)(2) by adding definitions for the terms *Immediate family member* and *Member of household* to read as follows:

**§ 1001.1001 Exclusion of entities owned or controlled by a sanctioned person.**

(a) *Circumstances for exclusion.* * * *

(1) * * *

(ii) Such a person——

(A)(i) Has a direct or indirect ownership interest (or any combination thereof) of 5 percent or more in the entity;

(ii) Is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity or any of the property assets thereof, in which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the entity;

(iii) Is an officer or director of the entity, if the entity is organized as a corporation;

(iv) Is partner in the entity, if the entity is organized as a partnership;

(v) Is an agent of the entity; or

(vi) Is a managing employee, that is, an individual (including a general manager, business manager, administrator or director) who exercises operational or managerial control over the entity or part thereof, or directly or indirectly conducts the day-to-day operations of the entity or part thereof, or

(B) Was formerly described in paragraph (a)(1)(ii)(A) of this section, but is no longer so described because of a transfer of ownership or control interest to an immediate family member or a member of the person's household as defined in paragraph (a)(2) of this section, in anticipation of or following a conviction, assessment of a CMP, or imposition of an exclusion.

(2) * * *

*Immediate family member* means, a person's husband or wife; natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild. * * *

*Member of household* means, with respect to a person, any individual with whom they are sharing a common abode as part of a single family unit, including domestic employees and others who live together as a family unit. A roomer or boarder is not considered a member of household.

* * * * *

9. Section 1001.1301 would be amended by revising paragraph (b)(2)(iii) to read as follows:

**§ 1001.1301 Failure to grant immediate access.**

* * * * *

(b) *Length of exclusion.* * * *

(2) * * *

(iii) The impact of the exclusion on Medicare, Medicaid or any of the other Federal health care programs, beneficiaries or the public; and

* * * * *

10. Section 1001.1401 would be amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

**§ 1001.1401 Violations of PPS corrective action.**

* * * * *

(b) *Length of exclusion.* * * *

(1) The impact of the hospital's failure to comply on Medicare, Medicaid or any of the other Federal health care programs, program beneficiaries or other individuals;

* * * * *

(4) The impact of the exclusion on Medicare, Medicaid or any of the other Federal health care programs, beneficiaries or the public; and

* * * * *

11. Section 1001.1501 would be amended by revising paragraph (a)(3) to read as follows:

**§ 1001.1501 Default of health education loan or scholarship obligations.**

(a) *Circumstance for exclusion.* * * *

(3) The OIG will take into account access of beneficiaries to physicians' services for which payment may be made under Medicare, Medicaid or other Federal health care programs in determining whether to impose an exclusion.

* * * * *

12. Section 1001.1901 would be amended by revising paragraphs (a), (b)(1), introductory paragraph (c)(3) and (c)(4)(i) to read as follows:

**§ 1001.1901 Scope and effect of exclusion.**

(a) *Scope of exclusion.* Exclusions of individuals and entities under this title will be from Medicare, Medicaid and any of the other Federal health care programs, as defined in § 1001.2 of this part.

(b) *Effect of exclusion on excluded individuals and entities.* (1) Unless and until an individual or entity is reinstated into the Medicare, Medicaid and other Federal health care programs in accordance with subpart F of this part, no payment will be made by Medicare, Medicaid or any of the other Federal health care programs for any item or service furnished, on or after the effective date specified in the notice period, by an excluded individual or entity, or at the medical direction or on the prescription of a physician or other authorized individual who is excluded when the person furnishing such item or service knew or had reason to know of the exclusion.

* * * * *

(c) *Exceptions to paragraph (b)(1) of this section.* * * *

(3) Unless the Secretary determines that the health and safety of beneficiaries receiving services under Medicare, Medicaid or any of the other Federal health care programs warrants the exclusion taking effect earlier, payment may be made under such program for up to 30 days after the effective date of the exclusion for—

* * * * *

(4)(i) Notwithstanding the other provisions of this section, payment may be made under Medicare, Medicaid or other Federal health care programs for certain emergency items or services furnished by an excluded individual or entity, or at the medical direction or on the prescription of an excluded physician or other authorized individual during the period of exclusion. To be payable, a claim for such emergency items or services must be accompanied by a sworn statement of the person furnishing the items or services specifying the nature of the emergency and why the items or services could not have been furnished by an individual or entity eligible to furnish or order such items or services.

* * * * *

13. Section 1001.3002 would be amended by republishing introductory paragraph (b), removing existing paragraph (b)(5) and adding new paragraphs (b)(5) and (b)(6); and by revising paragraph (c)(1) to read as follows:

**§ 1001.3002 Basis for reinstatement.**

* * * * *

(b) In making the reinstatement determination, the OIG will consider—

* * * * *

(5) Whether the individual or entity, during the period of exclusion, has adequately and promptly informed its clients or patients that any items or services provided will not be reimbursable under any Federal health care program; and

(6) Whether the individual or entity has, during the period of exclusion, submitted claims, or caused claims to be submitted or payment to be made by any Federal health care program, for items or services the excluded party furnished, ordered or prescribed, including health care administrative services.

(c) * * *

(1) Has properly reduced his or her ownership or control interest in the entity below 5 percent;

* * * * *

14. Section 1001.3003 would be revised to read as follows:

**§ 1001.3003 Approval of request for reinstatement.**

(a) If the OIG grants a request for reinstatement, the OIG will—

(1) Give written notice to the excluded individual or entity specifying the date of reinstatement;

(2) Notify HCFA of the date of the individual's or entity's reinstatement;

(3) Notify appropriate Federal and State agencies that administer health care programs that the individual or entity has been reinstated into all Federal health care programs; and

(4) To the extent applicable, give notice to others that were originally notified of the exclusion.

(b) A determination by the OIG to reinstate an individual or entity has no effect if a Federal health care program has imposed a longer period of exclusion under its own authorities.

15. Section 1001.3005 would be amended by revising paragraphs (a) introductory text, (b) and (d) to read as follows:

**§ 1001.3005 Reversed or vacated decisions.**

(a) An individual or entity will be reinstated into Medicare, Medicaid and other Federal health care programs retroactive to the effective date of the exclusion when such exclusion is based on—

* * * * *

(b) If an individual or entity is reinstated in accordance with paragraph (a) of this section, HCFA and other Federal health care programs will make payment for services covered under such program that were furnished or performed during the period of exclusion.

* * * * *

(d) An action taken by the OIG under this section will not require any other Federal health care program to reinstate the individual or entity if such program has imposed an exclusion under its own authority.

## PART 1002—[AMENDED]

B. Part 1002 would be amended as follows:

1. The authority citation for part 1002 would continue to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396(a)(4)(A), 1396(p)(1), 1396a(30), 1396a(39), 1396b(a)(6), 1396b(b)(3), 1396b(i)(2) and 1396b(q).

2. Section 1002.2 would be amended by revising paragraph (a) to read as follows:

**§ 1002.2 General authority.**

(a) In addition to any other authority it may have, a State may exclude an individual or entity from participation in the Medicaid program for any reason for which the Secretary could exclude that individual or entity from participation in the Medicare, Medicaid and other Federal health care programs under sections 1128, 1128A or 1866(b)(2) of the Social Security Act.

* * * * *

## PART 1003—[AMENDED]

C. Part 1003 would be amended as follows:

1. The authority citation for part 1003 would be revised to read as follows:

**Authority:** 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320a–7e, 1320b–10, 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 would be amended by revising paragraphs (a) and (b)(1)(iv), (viii), (x), (xi) and by adding (b)(1)(xii) to read as follows:

**§ 1003.100 Basis and purpose.**

(a) *Basis.* This part implements sections 1128(c), 1128A, 1128E, 1140, 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1320a–7, 1320a–7a, 1320a–7e, 1320a–7(c), 1320b(10), 1395mm, 1395ss(d), 1396(m), 11131(c) and 11137(b)(2)).

(b) *Purpose.* This part—

(1) * * *

(iv)(A) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60, or

(B) Are health plans and fail to report information concerning sanctions or other adverse actions imposed on providers as required to be reported to the Healthcare Integrity and Protection Data Bank (HIPDB) in accordance with section 1128E of the Act;

* * * * *

(viii) Have submitted, or caused to be submitted, certain prohibited claims, including claims for services rendered by excluded individuals employed by or otherwise under contract with such person, under one or more Federal health care programs;

* * * * *

(x) Have collected amounts that they know or should know were billed in violation of § 411.353 of this title and have not refunded the amounts collected on a timely basis;

(xi) Are physicians or entities that enter into an arrangement or scheme that they know or should know has as a principal purpose the assuring of referrals by the physician to a particular entity which, if made directly, would violate the provisions of § 411.353 of this title; or

(xii) Violate the Federal health care programs' anti-kickback statute as set forth in section 1128B of the Act.

* * * * *

3. Section 1003.102 would be amended by revising paragraphs (a)(2) and (b)(5); and by adding a new paragraph (b)(11) to read as follows:

**§ 1003.102 Basis for civil money penalties and assessments.**

(a) * * *

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent, including a claim for any item or service furnished by an excluded individual employed by or otherwise under contract with that person;

* * * * *

(b) * * *

(5) Fails to report information concerning—

(i) A payment made under an insurance policy, self-insurance or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a medical malpractice claim or action or a judgment against such a physician, dentist or other practitioner in accordance with section 421 of Pub. L. 99–660 (42 U.S.C. 11131) and as required by regulations at 45 CFR part 60; or

(ii) An adverse action required to be reported to the Healthcare Integrity and Protection Data Bank as established by section 221 of Public Law 104–191 and set forth in section 1128E of the Act.

* * * * *

(11) Has violated section 1128B of the Act by unlawfully offering, paying, soliciting or receiving remuneration in return for the referral of business paid for by Medicare, Medicaid or other Federal health care programs.

* * * * *

4. Section 1003.103 would be amended by revising paragraph (a); and by adding new paragraphs (g) and (h) to read as follows:

**§ 1003.103 Amount of penalty.**

(a) Except as provided in paragraphs (b) and (d) through (h) of this section, the OIG may impose a penalty of not more than $10,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(g) The OIG may impose a penalty of not more than $25,000 against a health plan for failing to report information on an adverse action required to be reported to the Healthcare Integrity and Protection Data Bank in accordance with section 1128E of the Act and § 1003.102(b)(5)(ii) of this part.

(h) For each violation of § 1003.102(b)(11) of this part, the OIG may impose—

(1) A penalty of $50,000, and

(2) An assessment of up to 3 times the total amount of remuneration offered, paid, solicited or received, as specified in § 1003.104(b) of this section.

5. Section 1003.104 would be revised to read as follows:

**§ 1003.104 Amount of assessment.**

(a) The OIG may impose an assessment, where authorized, in accordance with § 1003.102 (except for § 1003.102(b)(11)), of not more than three times the amount claimed for each item or service which was a basis for the penalty. The assessment is in lieu of damages sustained by the Department or a State because of that claim.

(b) In accordance with § 1003.102(b)(11), the OIG may impose an assessment of not more than three times the total amount of remuneration offered, paid, solicited or received, without regard to whether a portion of such remuneration was offered, paid, solicited or received for a lawful purpose.

6. Section 1003.105 would be amended by revising the section heading, introductory paragraph (a)(1) and paragraph (b)(1) to read as follows:

**§ 1003.105 Exclusion from participation in Medicare, Medicaid and other Federal health care programs.**

(a)(1) Except as set forth in paragraph (b) of this section, in lieu of or in addition to any penalty or assessment, the OIG may exclude from participation in Medicare, Medicaid and other Federal health care programs the following persons for a period of time determined under § 1003.107—

* * * * *

(b)(1) (i) With respect to determinations under § 1003.102(b)(2) or (b)(3), a physician may not be excluded if the OIG determines that he or she is the sole community physician or the sole source of essential specialized services in a community.

(ii) With respect to determinations under § 1003.102(b)(5)(ii) of this part, no exclusion shall be imposed.

* * * * *

7. Section 1003.106 would be amended by redesignating existing paragraph (a)(1)(vi) to read as new paragraph (a)(1)(ix); by adding new paragraphs (a)(1)(vi), (a)(1)(vii) and (a)(1)(viii); and by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(ix), (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) to read as follows:

**§ 1003.106 Determinations regarding the amount of the penalty and assessment.**

(a) *Amount of penalty.*

(1) * * *

(ii) The degree of culpability of the contracting provider, or the person submitting the claim or request for payment, or giving the information;

(iii) The history of prior offenses of the contracting provider (or principals of the contracting provider), or the person submitting the claim or request for payment, or giving the information;

* * * * *

(vi) The amount of financial interest involved with respect to § 1003.102(b)(10);

(vii) Whether the contracting provider knew of the exclusion when employing or otherwise contracting with an excluded individual or entity in accordance with § 1003.102(a)(2) of this part;

(viii) The harm to patients or any Federal or State health care program which resulted or could have resulted from the provision of care by a person or entity with which the contracting provider is expressly prohibited from contracting under section 1128A(a)(6) of the Act; and

(ix) Such other matters as justice may require.

(2) * * *

(i) The nature and circumstances of the failure to properly report information, or the improper disclosure of information, as required;

(ii) The degree of culpability of the person in failing to provide timely and complete data or in improperly disclosing, using or permitting access to information, as appropriate;

(iii) The materiality, or significance of omission, of the information to be reported, or the materiality of the improper disclosure of, or use of, or access to information, as appropriate;

* * * * *

8. Section 1003.109 would be amended by revising introductory paragraph (a) and paragraph (a)(3) to read as follows:

**§ 1003.109 Notice of proposed determination.**

(a) If the Inspector General proposes a penalty and, when applicable, an assessment, or proposes to exclude a respondent from participation in Medicare, Medicaid and any other Federal health care program, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and exclusion, as applicable. The notice includes—

* * * * *

(3) The reason why such claims, requests for payments or incidents subject the respondent to a penalty, assessment and exclusion;

* * * * *

9. Section 1003.114 would be amended by revising paragraph (a) to read as follows:

**§ 1003.114 Collateral estoppel.**

(a) Where a final determination pertaining to the respondent's liability under § 1003.102 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

* * * * *

Dated: February 6, 1998.

**June Gibbs Brown,**

*Inspector General, Department of Health and Human Services.*

Approved: April 6, 1998.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 98–23463 Filed 8–28–98; 4:23 pm]

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# Notices

**Federal Register**

Vol. 63, No. 170

Wednesday, September 2, 1998

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

### Submission for OMB Review; Comment Request

August 28, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**National Agricultural Statistics Service**

*Title:* 1998 Farm and Ranch Irrigation Survey.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* The Farm and Ranch Irrigation Survey (FRIS) is an integral part of the 1997 Census of Agriculture and is conducted under the Authority of the Census of Agriculture Act of 1997 (Public Law 105–113). This law requires the Secretary of Agriculture and the National Agricultural Statistics Service (NASS) to conduct a Census of Agriculture in 1998 and every fifth year following 1998. Agricultural irrigation is the largest single use of available U.S. water supplies, accounting for more than two-thirds of all ground-water withdrawals and more than 84 percent of all consumptive uses. Therefore, high quality data on agricultural water use are needed to help public and private sector officials understand and manage this important national resource. NASS collects information using the FRIS.

*Need and Use of the Information:* NASS will collect information from the FRIS on acres irrigated by land use category, acres and yields of irrigated and nonirrigated crops, quantity of water applied and method of application to selected crops, acres irrigated and quantity of water used by source, acres irrigated by type of water distribution systems, and number of irrigation wells and pumps. The primary purpose of FRIS is to provide detailed data relating to on-farm irrigation activities for use in preparing a wide variety of water-related programs, economic models, legislative initiatives, market analyses, and feasibility studies. The absence of FRIS data would certainly affect irrigation policy decisions.

*Description of Respondents:* Farms.

*Number of Respondents:* 20,000.

*Frequency of Responses:* Reporting: Other (One time).

*Total Burden Hours:* 14,333.

**National Agricultural Statistics Service**

*Title:* 1998 Census of Horticultural Specialties.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* The census of horticultural specialties is one of a series of census special studies for the Census of Agriculture which provides more detailed statistics relating to a specific subject. The census of horticultural specialties is an integral part of the 1997 Census of Agriculture and is conducted under the authority of the Census of Agriculture Act of 1997 (Public Law 105–113). The law requires the Secretary of Agriculture and the National Agricultural Statistics Service (NASS) to conduct a Census of Agriculture in 1998 and every fifth year following 1998. Horticulture is one of the fastest growing segments in the agriculture sector. Horticultural crops are high value crops which farmers could grow to diversify their farming operations, but more information about them is needed. Horticultural operations are large consumers of pesticides and other chemicals, so research funding is critical to this industry to develop more effective horticultural chemicals or plants that are resistant to common diseases. NASS will collect information on horticulture using data from the census.

*Need and Use of the Information:* NASS will collect information from the number and value of plants grown and sold, the value of land, buildings, machinery and equipment, selected production expenses, irrigation, marketing channels, hired labor, area used for production, and type of structure. The primary objective of the horticultural specialties census is to obtain a comprehensive and detailed picture of the horticultural sector of the economy. Without the census of horticultural specialties, government policy makers and planners would lack valuable information needed to accomplish their missions.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 47,000.

*Frequency of Responses:* Reporting: Other (One time).

*Total Burden Hours:* 48,371.

**National Agricultural Statistics Service**

*Title:* Childhood Agricultural Injury.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue State and National estimates of crop and livestock production. NASS has been asked by the National Institute for Occupational Safety and Health (NIOSH), to conduct a childhood agricultural injury study. Injuries to children living, working, or visiting farms are the focus of a special NIOSH

initiative directed by Congress. A major problem in planning injury prevention programs for these children is the lack of surveillance data, especially for those injuries that are nonfatal. For the study, an injury is defined as any condition that results in one-half day or more of restricted activity (child missed school, could not perform normal activities, missed work). A childhood agricultural injury is defined as any injury meeting this definition that occurred on the farm property (including homestead), or occurred while performing work, either on the farm or off the farm, associated with the farm business. NASS will collect information using a survey.

*Need and Use of the Information:* NASS will collect information on the estimates of annual childhood agricultural injury incidence rates, annual injury frequencies, and descriptive injury information for children living on, working on, or visiting on farming operations in the United States. Data from the survey will provide a source of consistent information which NIOSH can effectively target funds appropriated by Congress for the prevention of childhood agricultural injuries.

*Description of Respondents:* Farms.

*Number of Respondents:* 42,500.

*Frequency of Responses:* Reporting: Other (One time).

*Total Burden Hours:* 2,125.

**Animal and Plant Health Inspection Service**

*Title:* 7 CFR 319.76 Exotic Bee Diseases and Parasites, 7 CFR 322 Honeybees and Honeybee Semen.

*OMB Control Number:* 0579–0072

*Summary of Collection:* The Honeybee Act of 1922 (Title 7, Chapter 11) was created to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable plasm of honeybees. The introduction and establishment of new honeybee diseases, parasites, and undesirable honeybee strains in the United States could cause multimillion dollar losses to American agriculture. Diseases and parasites can weaken or kill honeybees, thereby causing substantial reductions in the production of honey and other honeybee products, as well as a reduction in pollination activity. Section 281c of the Honeybee Act provides that honeybees and honeybee semen can only be imported into the United States under rules and regulations prescribed by the Secretary of Agriculture and the Animal and Plant Health Inspection Service (APHIS). Anyone who seeks to import honeybees, honeybee semen, or articles that could harbor diseases or parasites of honeybees must apply to APHIS for an import permit. APHIS will collect various pieces of information concerning the nature and point of origin of the items to be imported using a number of forms and documents.

*Need and Use the Information:* APHIS will collect information from importers such as name, address, telephone number; the quantity and kinds of articles intended for import; the amount of semen to be imported; the species or subspecies of honeybee from which the semen was collected; the country or locality or origin; the intended port of entry in the United States; the means of transportation; and the expected date of arrival. The information is needed to determine if the honeybee semen or restricted articles are eligible for importation into the United States, and under what conditions (i.e., necessary treatment, appropriate shipping containers, proper port of entry, etc.).

*Discription of Respondents:* Business or other for-profit; Individuals or households; Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 91.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 31.

**Food and Nutrition Service**

*Title:* Requisition for Food Coupon Books.

*OMB Control Number:* 0584–0022.

*Summary of Collection:* The Food Stamp Act of 1977 requires the Secretary and the Food and Nutrition Service (FNS) to prescribe appropriate procedures for the delivery of food coupon books to coupon issuers and for the subsequent controls to be placed over such coupons by coupon issuers in order to ensure adequate accountability. The regulations at 7 CFR 274.7 and 274.8 require State agencies to establish coupon inventory management systems which include proper control and security procedures as well as procedures for ordering coupon books and shipping books within the State. These procedures also provide an orderly mechanism for States to order new supplies of food coupon books. FNS will collect information using Form FNS–260, Requisition of Food Coupon Books, to determine what State needs additional coupon books and the details of their order.

*Need and Use of the Information:* FNS will collect information to determine how many coupon books to order, what denominations and when to order more coupon books in order to provide State agencies with inventories that will be adequate to issue program benefits to households on a monthly basis.

*Description of Respondents:* State, Local or Tribal Government.

*Number of respondents:* 1,000.

*Frequency or Responses:* Reporting: On Occasion.

*total Burden Hours:* 3,000.

**Food and Nutrition Service**

*Title:* Determining Eligibility for Free and Reduced Price Meals and Free Milk.

*OMB Control Number:* 0584–0026.

*Summary of Collection:* The Personal Responsibility and Work Opportunity Act of 1996, Public Law 104–193, was enacted on August 22, 1996. This statute amended the National School Lunch Act to remove all references to the automatic free meal eligibility of children from assistance units receiving benefits under Aid to Families with Dependent Children (AFDC). In its place, Congress established automatic eligibility for children receiving benefits under the State program funded under part A of title IV of the Social Security Act (generally known as Temporary Assistance of Needy Families (TANF)), provided that the eligibility criteria for the State's TANF program are comparable to or more restrictive than the standards for the AFDC program it replaced. Because States have latitude in the way they administer TANF, the Secretary is requesting State agencies, in cooperation with the agency administering TANF, to make comparison and inform the Secretary of their determination.

*Need and Use of the Information:* The Food and Nutrition Service (FNS) is requiring each State agency to notify the appropriate FNS regional office, in writing, whether the TANF program in their State is comparable to or more restrictive than their AFDC program, and indicate the information used to make the comparison. This information is required in order to facilitate the delivery of the Federal benefits to eligible beneficiaries.

*Description of Respondents:* Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 4,260,648.

*Frequency of Responses:* Recordkeeping; Reporting: Biennially; Annually; Other (Triennially).

*Total Burden Hours:* 1,028,149.

**Risk Management Agency**

*Title:* Multiple Peril Crop Insurance.

*OMB Control Number:* 0563–0053.

*Summary of Collection:* The Federal Crop Insurance Corporation (FCIC) provides for a nationwide crop insurance program. The Federal Crop

Insurance Act, as amended in 1994 and 1996, established the crop insurance program to be the principal tool for risk management by producers of farm products. The current regulations and insurance provisions require the collection of a wide range of information through various forms that are categorized as either sales documents or notices of damage and claim. The information collected is used in part to establish insurance coverage, premiums, payments, indemnities and allow for other program and administrative operations. The Risk Management Agency (RMA) on behalf of FCIC is proposing to modify regulations implementing the Grape Crop Insurance Provisions. The proposed changes will (1) Allow grape producers in Idaho, Oregon, and Washington to select one price election and one coverage level for each varietal group specified in the Special Provisions; and (2) provide year-round coverage in California, Idaho, Mississippi, Oregon, Texas and Washington for insureds with no break in coverage from the prior crop year. No changes are proposed to the existing forms and no additional burden is anticipated due to these proposed changes.

*Need and Use of the Information:* The current regulations and insurance provisions require the collection of a wide range of information that is used to in part to establish insurance coverage, premiums, payments, indemnities and allow for other program and administrative operations. This information is also used to create an information data base to support continued development and improvements in crop insurance products available to producers and to strengthen the insurance program overall.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 4,514.

*Frequency of Responses:* Recordkeeping; Reporting: Annually.

*Total Burden Hours:* 1,092,849.

**Risk Management Agency**

*Title:* Multiple Peril Crop Insurance.

*OMB Control Number:* 0563–0053.

*Summary of Collection:* The Federal Crop Insurance Corporation (FCIC) provides for a nationwide crop insurance program. The Federal Crop Insurance Act, as amended in 1994 and 1996, established the crop insurance program to be the principal tool for risk management by producers of farm products. The current regulations and insurance provisions require the collection of a wide range of information through various forms that are categorized as either sales documents or notices of damage and claim. The information collected is used in part to establish insurance coverage, premiums, payments, indemnities and allow for other program and administrative operations. The Risk Management Agency (RMA) on behalf of FCIC is proposing to modify regulations implementing the Cotton and ELS Cotton Crop Insurance Provisions. The proposed changes will (1) Provide a replant payment; (2) revise the provision used to determine the amount of production to count for cotton and ELS cotton that is eligible for quality adjustments; and (3) provide a prevented planting coverage level of 50 percent for cotton and ELS cotton for the 1999 and subsequent crop years. The burden associated with this collection will decrease due to fewer insured and respondents.

*Need and Use of the Information:* The current regulations and insurance provisions require the collection of a wide range of information that is used in part to establish insurance coverage, premiums, payments, indemnities and allow for other program and administrative operations. This information is also used to create an information data base to support continued development and improvements in crop insurance products available to producers and to strengthen the insurance program overall.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 1,599,244.

*Frequency of Responses:* Recordkeeping; Reporting: Annually.

*Total Burden Hours:* 1,126,103.

**National Agricultural Statistics Service**

*Title:* Wildlife Damage.

*OMB Control Number:* 0535–0217.

*Summary of Collection:* The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue current official state and national estimates of crop and livestock production, disposition, and prices. Auxiliary services such as statistical consultation, data collection, summary tabulation, and analysis are performed for other Federal and state agencies on a reimbursable basis as the need arises. NASS has entered into an agreement with the Animal and Plant Health Inspection Services (APHIS) to conduct nationwide sample surveys of selected fruit, nut and berry producers for the purpose of assessing the true incidence, extent, specific cause, and monetary value of agricultural product and resource losses caused by vertebrate wildlife. APHIS and NASS have entered into this agreement in direct response to specific recommendations to APHIS by the National Animal Damage Control Advisory Committee (NADCAC) in recognition of the present lack of current information available to the APHIS' Wildlife Service, for use in strategic planning. NASS will collect information using a sampling survey.

*Need and Use of the Information:* NASS will collect information on the development of valid statistical data reflecting the percentage of fruit, nut, and berry growers experiencing losses of products or resources and the total dollar losses at the national level caused by vertebrate wildlife. Goals of the survey are to assess the agricultural community's use and name recognition of the Wildlife Service program at a regional level, and provide accurate measurement of wildlife damage to agricultural products for use in long range planning and fund allocation.

*Description of Respondents:* Farms.

*Number of Respondents:* 15,000.

*Frequency of Responses:* Reporting: Other (One time).

*Total Burden Hours:* 1,875.

**Farm Service Agency**

*Title:* Implementation of Preferred Lender Program and Streamlining of Guaranteed Regulations.

*OMB Control Number:* 0560–0155.

*Summary of Collection:* The Consolidated Farm and Rural Development Act (CONACT) authorizes the Secretary of Agriculture to make and service loans guaranteed by the Farm Service Agency (FSA) to eligible farmers and ranchers. The Secretary is authorized to define the character, scope, and frequency of information required to be collected. The law requires that certain policies be verified by FSA to assure that farmers and ranchers, joint operators, farm cooperatives, private domestic corporations and partnerships that are controlled by farmers and ranchers engaged primarily and directly in farming or ranching in the United States comply with such policies in order to obtain the requested assistance. FSA will use several forms to collect information from lenders and loan applicants.

*Need and Use of the Information:* FSA will collect information on the characteristics of the borrower, the purpose for which loan funds will be sued, the proposed security for the loan, and the proposed terms and conditions of the loan request, verification of debt and income, cash flow, financial and production history. This information collection pertains primarily to the gathering of data to secure and

document decisions regarding FSA guaranteed farm loans.

*Description of Respondents:* Business or other for-profit; Individuals or households; Farms.

*Number of Respondents: 16,750.*

*Frequency of Responses:* Reporting: On occasion; Semi-annually.

*Total Burden Hours:* 197,962.

**National Agricultural Statistics Service**

*Title:* Mink Survey.

*OMB Control Number:* 0535–0212.

*Summary of Collection:* The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue state and national estimates of crop and livestock production. Statistics on mink production are published for the 15 major states that account for 95 percent of the U.S. production. Estimates for the remaining States are published in a combined ''all other states'' category. There is no other source for this type of information. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which can be obtain * * * by the collecting of statistics * * * and shall distribute them among agriculturists''. NASS will use a survey to collect information.

*Need and Use of the Information:* NASS will collect information on mink pelts produced by color, number of females bred to produce kits the following year, number of mink farms, average marketing price, and the value of pelts produced. The data is disseminated by NASS in the Mink Report and is used by the U.S. Government and other special interest groups.

*Description of Respondents:* Farms.

*Number of Respondents:* 425.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 71.

**National Agricultural Statistics Service**

*Title:* Livestock Survey.

*OMB Control Number:* 0535–0005.

*Summary of Collection:* The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue current official State and National estimates of crop and livestock production. General authority for data collection is granted under U.S. Code, Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which can be obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists.'' The Livestock survey is conducted annually to estimate livestock totals at state and county levels. Information from federally and non-federally inspected slaughter plants is used to estimate total red meat production. NASS will use a survey to collect information.

*Need and Use of the Information:* NASS will collection information on the number of head slaughtered plus live and dressed weights of beef, veal, pork, lamb, mutton, goats, and equine. Accurate and timely livestock estimates provide USDA and the livestock industry with basic data to project future meat supplies and producer prices. Agricultural economists in both the public and private sectors use this information in economic analysis and research.

*Description of Respondents:* Farms; Not for profit institutions.

*Number of Respondents:* 43,184.

*Frequency of Responses:* Reporting: Weekly; Monthly; Annually.

*Total Burden Hours:* 21,659.

**Farm Service Agency**

*Title:* Certification of Use or Nonuse of Insecticide/Herbicide or Other Growth Regulators on Peanuts.

*OMB Control Number:* 0560–NEW.

*Summary of Collection:* Provisions of the peanut poundage quota program are issued in accordance with the Agricultural Adjustment Act of 1938 and are applicable to the 1996 through 2002 crops of peanuts. In accordance with program provisions found at 7 CFR Part 729, peanut producers must certify if growth regulators has been used on the crop of peanuts planted. FSA will collect information regarding this certification using form FSA 1016.

*Need and Use of the Information:* FSA will collect information to monitor and enforce the requirements for entering peanuts into the domestic edible market. The information collected will be used by FSA State and County office personnel as proof of use or nonuse of growth regulators on peanuts. In the event a violation occurs where the producer certifies to not using the growth regulators and the peanuts are later discovered to have been produced in violation of the certification, the completed (certified) form will be sued by FSA, the Agricultural Marketing Service, and the Applicable Peanut Area Associations, which are contractors of the agency, to determine penalty amounts, if applicable, or any other appropriate actions. Producers found in violation of the certification will not be eligible for price support and the subject peanuts will not be allowed to enter the domestic edible market.

*Description of Respondents:* Farms; Individuals or households.

*Number of Respondents:* 59,437.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 10,104.

Emergency approval for this information collection has been requested by August 31, 1998.

**Farm Service Agency**

*Title:* Verification of Debts and Assets.

*OMB Control Number:* 0560–0166.

*Summary of Collection:* The Federal Claims Collection Standards (4 CFR part 101 through 105) in conjunction with the provisions of 7 CFR part 1956, subpart B, provide authority for the Farm Service Agency (FSA) to access confidential financial data to document the propriety of the agency's decision to forgive debt. The Office of the Inspector General (OIG) has noted that FSA debt settlement policies and procedures do not address the verification of cash, bank deposits, investments and other current assets. 7 CFR part 1956 subpart B requires a borrower that has requested debt settlement to provide accurate and complete financial information. Accordingly, FSA form 440–32 has been modified to collect this information.

*Need And Use Of The Information:* FSA will collect information using form FSA 440–32 to verify assets in consideration of requests for debt forgiveness. The local servicing officials who are preparing the debt settlement application and its supporting documents will include the information provided on this form, if any, in their analysis of the validity of the borrower's settlement offer. This will reduce the likelihood of the government forgiving debt when the debtor has the ability to pay a portion.

*Description of Respondents:* Business or other for-profit; Farms; Federal Government.

*Number of Respondents:* 43,310.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 11,411.

**Cooperative State Research, Education, and Extension Service**

*Title:* Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program Application Guidelines.

*OMB Control Number:* 0524–0024.

*Summary of Collection:* The Office of Higher Education Programs (HEP), Science and Education Resources Division (SERD), Cooperative State Research, Education, and Extension Service (CSREES), conducts a program of competitive institutional graduate fellowships grants to help meet the Nation's needs for food and agricultural

scientific and professional expertise. These fellowships are intended to encourage outstanding students to pursue and complete a graduate degree in an area of the food and agricultural sciences for which development of scientific expertise is designated by HEP–CSREES as a national need. This program is authorized by section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977. CSREES will collect information using several forms before grants can be awarded.

*Need And Use Of The Information:* CSREES will collect information on the identification of the national needs to be addressed, description of the fellow's proposed program study, description of the institution's academic and research competencies, plans for recruiting fellows, pertinent faculty vitae, a budget request, and other relevant information. The purposes of the information requested are for USDA recordkeeping, proposal evaluation, and administration of the National Needs Graduate Fellowships Grants Programs. Some of the information will be used to respond to inquiries from Congress, other Government agencies, and the grantee community.

*Description of Respondents:* Not-for-profit institutions; Individuals or households; State, Local, or Tribal Government.

*Number of Respondents:* 400.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 9,458.

**Animal and Plant Health Inspection Service**

*Title:* Environment Monitoring Form.

*OMB Control Number:* 0579–0117.

*Summary of Collection:* The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, and the regulations of the Council on Environmental Quality, which implements the procedural aspects of NEPA (40 CFR 1500–1508) requires APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide use in sensitive habitats.

*Need And Use Of The Information:* APHIS will collect information on the kind of pesticide used, the date of application, the location where samples are collected, a description of the samples, and the environmental conditions at the collection site including wind speed and direction, temperature, humidity, amount of rainfall, and topography. The supporting information contained on the APHIS Form 2060 is vital for interpreting the laboratory test APHIS conducts on collected samples. Also if a given sample was not accompanied by the form, APHIS would have no way of knowing which site the sample was taken.

*Description of Respondents:* Federal Government; Individual or households; Farms.

*Number of Respondents:* 15.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 150.

**Nancy B. Sternberg,**

*Departmental Information Clearance Officer.*

[FR Doc. 98–23649 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Study of the Implementation of the School Meals Initiative for Healthy Children

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval of the Study of the Implementation of the School Meals Initiative for Healthy Children.

**DATES:** Written comments on this notice must be received by November 2, 1998.

**ADDRESSES:** 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: Alberta C. Frost, Director, Office of Analysis and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection forms should be directed to Alberta C. Frost, (703) 305–2117.

**SUPPLEMENTARY INFORMATION:**

*Title:* The Study of the Implementation of the School Meals Initiative for Healthy Children.

*OMB Number:* 0584–0485.

*Expiration Date:* 10/31/2000.

*Type of Request:* New collection of information for second year of study.

*Abstract:* The Study of the Implementation of the School Meals Initiative (SMI) for Healthy Children is a three-year study designed to collect information needed to address current policy issues including those associated with the School Meals Initiative for Healthy Children and Team Nutrition. A major part of this study is intended to provide the Food and Nutrition Service (FNS) with descriptive data on the status of School Food Authorities' (SFAs) implementation of the School Meals Initiative for Healthy Children and the changes that have occurred in the food service operations as a result of implementing this new regulation. FNS will examine trends in SMI implementation and characteristics of SFAs implementing certain elements of SMI and Team Nutrition.

A nationally representative sample of approximately 2,250 public school districts was selected in 1997 to participate in a three-year longitudinal survey which began in School Year 1997–98. Data is being collected from the SFA directors using a mixed mode approach of mail/telephone surveys. The study combines elements of longitudinal research and cross-sectional surveys. A brief telephone survey of all State Child Nutrition Directors will be included each year. This request for OMB approval is for the second year data collection instrumentation only. A separate OMB package will be submitted for data collection instruments in the third year. Estimates of burden shown below are based upon field experience from the first year of data collection.

*Estimate of Burden:* Public reporting burden is estimated to range between 45 and 60 minutes for School Food Service Authority directors; and range between 20 and 30 minutes for State Child Nutrition directors;

*Respondents:* State Child Nutrition directors will be asked to respond to a brief telephone survey. SFA directors will be asked to respond to a self-administered mail survey with telephone follow-up.

*Estimated Number of Respondents:* 50 State Child Nutrition directors, 2,250 SFA directors.

*Estimated Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 1,850 hours.

Dated: August 27, 1998.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 98–23577 Filed 9–1–98; 8:45 am]

**BILLING CODE 3410–30–U**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Middle Fork Weiser River Watershed Project, Payette National Forest, Adams County, Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to Prepare Environmental Impact Statement.

**SUMMARY:** The Payette National Forest is proposing timber harvest, prescribed fire, and road removal to enhance forest and watershed conditions in the Middle Fork Weiser River Watershed on the Council Ranger District. The 50,000 acre watershed extends from No Business Mountain to the confluence of Fall Creek and the Middle Fork Weiser River about 6 miles southeast of Council, Idaho.

**DATES:** The Forest Service expects to release a Draft Environmental Impact Statement for the Middle Fork Weiser River Watershed Project in December 1998. A Final EIS and Record of Decision are expected in February 1999.

**ADDRESSES:** Written comments or requests for the above documents can be sent to David Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed project should be directed to Sue Douglas, Team Leader (208) 253–0169; or John Baglien, Acting Council District Ranger, (208) 549–4201.

**SUPPLEMENTARY INFORMATION:** The Proposed Action (Alternative B) would harvest timber on approximately 2,900 acres. On an estimated 1,190 acres, understory trees would be selectively removed, favoring the retention of ponderosa pine, western larch, and Douglas-fir. Large overstory trees of these species would generally be retained. About 790 acres of immature forests would be selectively thinned to accelerate the growth of the remaining trees, allowing these forests to reach a larger size sooner. Approximately 880 acres of lodgepole pine, subalpine fir, or grand fir would be converted to younger-aged forests through harvest and planting.

Most of the area would be logged using ground-based systems. An estimated 200 acres would be logged using helicopters and 500 acres would be logged with skyline systems.

Timber harvest would require 7 miles of new road construction. No road building or harvest activities would occur in the Council Mountain roadless area. Approximately 19 miles of roads would be decommissioned and 9 stream crossings removed or improved to benefit watershed conditions and fish and wildlife habitat as part of the timber sale contract. An additional 60 miles of road would be decommissioned with appropriated money or as part of the nonessential Knudsen-Vandenberg (KV) projects.

Broadcast burning on 700 acres and piling and burning of logging slash on 500 acres would reduce existing and created fuels or prepare the site for planting. Planted or natural regeneration, primarily of ponderosa pine, Douglas-fir, or western larch, would occur on an estimated 900 acres.

In addition, prescribed fire activities would occur on 500 acres of open ponderosa pine forests, 300 acres of dry Douglas fir forests, 1,400 acres of aspen communities, and 2,000 acres of grass/shrubland to enhance plant growth and diversity.

Standard INFISH Riparian Habitat Conservation Area (RHCA) buffers would be established throughout the project area. Areas identified as RHCAs would be excluded from timber harvest. Key wildlife habitats, including northern goshawk post-fledgling areas, flammulated owl habitat, and elk travel corridors would be maintained.

Members of the public, organizations, and government agencies were involved in the watershed analysis through meetings and field reviews. This scoping document provides another level of involvement. The Forest Service is conducting scoping for issues the environmental analysis should address.

During the preliminary analysis the team identified two issues to explore further. (1) Will thinning old trees improve the resilience of the remaining old structure trees? Is the economic benefit of thinning old trees essential to pay for other desired improvements? (2) Is it possible to enhance near term economics and benefit the watershed as a whole through longer return intervals by treating additional acres at this time? These issues, in addition to others brought forward through the scoping process will be more fully developed in evaluating the proposed action. If appropriate, alternatives will be developed to address them in the analysis process.

**Comments**

Comments on the Proposed Action and the analysis should be received in writing on or before October 5, 1998. Send comments to Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, ID 83638; telephone (208) 634–0700; FAX (208) 634–0744.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts and agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1002 (9th Cir,. 1986); and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the Proposed Action, comments should be as specific as possible.

*Responsible Official:* David F. Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 West Park, McCall, ID 83638.

Dated: August 29, 1998.

**David F. Alexander,**

*Forest Supervisor.*

[FR Doc. 98–23651 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Klamath Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Klamath Provincial Advisory Committee will meet on September 10, 1998 at the Del Norte County Fairgrounds Arts and Crafts Building, 421 Highway 101N, Crescent City, California. On September 10, the meeting will begin at 8:00 am and adjourn at 5:00 pm. (The Klamath PAC will be meeting on September 9 for a PAC field trip.) Agenda items for Thursday include: (1) Provincial Interagency Executive Committee and Subcommittee meetings; (2) travel access management and emergency repair for Federally owned roads update; (3) timber sale implementation monitoring discussion; (4) Pelican Butte Ski Area proposal; and (5) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468.

Dated: August 27, 1998.

**Harry T. Sampson,**

*Acting Forest Supervisor.*

[FR Doc. 98–23625 Filed 9–1–98; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m. on September 23, 1998, at the JC Penney Government Relations Office, Suite 1015, 1156 15th Street NW, Washington, DC 20036. The purpose of the meeting is to review information obtained from the August 6, 1998 press conference/briefing session, discuss the development of a future memorandum to the Commissioners as an update to the mortgage lending report, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 25, 1998.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 98–23597 Filed 9–1–98; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 16, 1998, at the Indiana Department of Workforce Development, Indiana Government Center South, 10 North Senate Avenue, Conference Room SE 410, 3rd floor, Indianapolis, Indiana 46204. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 1998.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 98–23596 Filed 9–1–98; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (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 USC Chapter 35).

*Agency:* National Institute of Standards and Technology (NIST).

*Title:* National Voluntary Conformity Assessment Systems Evaluation Program (NVCASE).

*Agency Form Number(s):* None.

*OMB Approval Number:* 0693–0019.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 30 hours.

*Number of Respondents:* 10.

*Avg. Hours Per Response:* 2 hours for reporting and 1 hour for recordkeeping.

*Needs and Uses:* The NVCASE Program includes activities related to laboratory testing, product certification, and quality system registration. The purpose of this program is to enable U.S. industry to satisfy mandated foreign technical assessment programs that perform technical evaluations comparable in their rigor to practices in the receiving country. Under this program, NIST evaluates U.S.-based conformity assessment bodies in order to be able to give assurances to a foreign government that qualifying bodies meet that government's requirements. Information provided by those bodies wishing to obtain a ''certificate of recognition'' is used in the evaluation process.

*Affected Public:* Businesses or other for-profit organizations, not for profit institutions.

*Frequency:* On occasion, recordkeeping.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Virginia Huth, (202) 395–6929.

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 Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: August 26, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98–23609 Filed 9–1–98; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Action Affecting Export Privileges; Robert E. Mahler; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: ROBERT E. MAHLER 1115 Madison Street NE Salem, Oregon 97303

On June 12, 1995, following a plea of guilty to one count of an information, Robert E. Mahler (Mahler) was convicted in the United States District Court for the District of Oregon of violating Section 38 of the Arms Export Control Act (22 U.S.C.A. § 2778 (1990 & Supp. 1998)) (the AECA). Mahler was convicted of willfully and knowingly exporting and attempting to export a defense article, specifically a 40-foot container containing handguns, rifles and ammunition, to the Republic of South Africa without having first obtained the required export license from the U.S. Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the Untied Stares Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1998)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Mahler's conviction for violating the AECA, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Mahler permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of six years from the date of his conviction. The six-year period ends on June 12, 2001. I have also decided to revoke all licenses issued pursuant to the Act in which Mahler had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*

I. Until June 12, 2001, Robert E. Mahler, 1115 Madison Street NE, Salem, Oregon 97303, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Mahler by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-producted direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until June 12, 2001.

VI. A copy of this Order shall be delivered to Mahler. This Order shall be published in the **Federal Register**.

Dated: August 18, 1998.

**Eileen M. Albanese,**

*Director, Office of Exporter Services.*

[FR Doc. 98–23652 Filed 9–1–98; 8:45 am]

**BILLING CODE 3510–DT–M**

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1998)) (IEEPA).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### President's Export Council; Subcommittee on Encryption, Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Encryption (PECSENC) will be held on September 18, 1998. The initial open session will convene at 9:00 a.m. at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The initial open session is scheduled to adjourn at 12:00 p.m. The closed session will convene in Room 4832. The PECSENC will reconvene in open session at 3:00 p.m. in Room 4832. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

**Open Session**

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Update on Bureau of Export Administration initiatives.

4. Issue briefings.

**Closed Session**

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

**Open Session**

6. Issue briefing.

7. Reports by working groups.

8. Open discussion.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved May 7, 1998, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: August 26, 1998.

**Iain S. Baird,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 98–23578 Filed 9–1–98; 8:45 am]

BILLING CODE 3510–33–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–806]**

### Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On April 7, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its antidumping duty administrative review of the antidumping duty order on carbon steel wire rope from Mexico (63 FR 16967). This review covers one manufacturer/exporter of the subject merchandise to the United States, Aceros Camesa S.A. de C.V. (Camesa), and the period of March 1, 1996 through February 28, 1997. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Camesa and from the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the petitioner). We have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Joanna M. Gabryszewski, Laurel LaCivita, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0780, (202) 482–4236, or (202) 482–3020, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provision effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 353 (April 1, 1996).

**Background**

On April 7, 1998, the Department published in the **Federal Register** the preliminary results of the review of the antidumping duty order on carbon steel wire rope from Mexico (63 FR 16967). On May 7, 1998, we received comments from the petitioner and Camesa. The petitioner and Camesa submitted rebuttal comments on May 15, 1998. Both parties presented their comments in a hearing held on May 28, 1998.

The Department has now completed this antidumping duty administrative review in accordance with section 751(b) of the Act.

**Scope of Review**

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Excluded from this review is stainless steel wire rope, which is classifiable under HTS subheading 7312.10.6000, and all forms of stranded wire, with the following exception.

Based on the final affirmative determination of circumvention of antidumping duty order, 60 **Federal Register** 10831 (February 28, 1995), the Department has determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. Such merchandise is currently classifiable under subheading 7312.10.3020 of the HTS.

Although HTS subheadings are provided for convenience and for Customs purposes, our own written description of the scope of this review remains dispositive.

This review covers one manufacturer/exporter, Camesa, and the period March 1, 1996 through February 28, 1997.

**Model Match Methodology**

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir.) (*CEMEX*). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section

771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for normal value (NV) if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this segment of the proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

**Analysis of the Comments Received**

We gave interested parties an opportunity to comment on the preliminary results of review. We received case and rebuttal briefs from the petitioner and from Camesa.

*Comment 1: Whether Camesa's U.S. Sale is a Bona Fide Transaction*

The petitioner contends that the timing and nature of Camesa's one sale to the United States during the period of review (POR) indicates that it was not a bona fide transaction.

The petitioner asserts that although Camesa's sale of subject product was not overtly fraudulent, circumstances surrounding the sale were contrived under controlled conditions. Petitioner contends the price of the product was arranged to ensure that the sale would yield little or no dumping margin and serve as the basis for an administrative review and adjustment of the existing antidumping duty deposit requirement.

Petitioner argues that, given that Camesa had not sold carbon steel wire rope to the United States in over three years, and that the U.S. customer purchased subject product so late in the POR and was willing to pay a 111.68 percent duty indicates that this sale was orchestrated by Camesa and does not represent typical commercial trade. Petitioner further contends that the price of the sale was calculated so as to closely coordinate with home market sales of identical product during the same period. Consequently, the petitioner argues, the Department must disregard this sale and determine that no proper basis existed for an administrative review of the March 1, 1996 through February 28, 1997 period.

Camesa contends that the petitioner has not provided any evidence that the sale in question was not genuine, or that the prices were aberrational or atypical compared to other sales in the U.S. market. Camesa points out that the petitioner has not demonstrated that Camesa's U.S. customer had a financial interest in the outcome of this antidumping duty review. Camesa argues that the petitioner's arguments are based on the speculation that the U.S. sale must have been contrived because it occurred so late in the review period and results in a margin that the petitioner does not like.

Camesa further claims that there is no statutory or regulatory basis for excluding any U.S. sales from an administrative review. Camesa notes that the Department set forth its understanding that section 751(a)(2)(A) of the Act requires the Department to include all U.S. sales in the calculation of dumping margins in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding,* 61 FR 57629, 57639 (November 7, 1996) (*TRBs*). Therefore, Camesa contends, its one U.S. sale should be included in this review.

DOC Position

We agree with Camesa. Section 751(a)(2)(A) of the Act requires the Department to determine the NV and export price (or constructed export price) of each entry of the subject merchandise and to calculate the dumping margin for each entry during the POR. We stated in *TRBs* that section 751(a)(2)(A) of the Act requires us to analyze all U.S. sales within the review period. As the petitioner notes in its case brief, the sale in question was made between a foreign company and the first unaffiliated purchaser in the United States, during the POR. The petitioner does not claim that this sale was fraudulent and has not provided any evidence, only speculative allegations, that the sale was not a bona fide transaction. Therefore, we have continued to include this sale in our margin calculation in these final results of review.

*Comment 2: Whether Camesa's Home Market Sales Constitute a Fictitious Market*

The petitioner contends that the home market sales which served as the basis for the price comparison constitute a fictitious market. The petitioner claims that section 773(a)(2) of the Act and section 353.43(b) of the Department's regulations require the Department to disregard and/or reject any pretended sale or sales intended to establish a fictitious market in determining NV.

The petitioner alleges that the data provided by Camesa regarding the home market sales on which NV is based demonstrate a price movement vis-a-vis different forms of the product subject to the order which is indicative of a fictitious market. Specifically, the petitioner states that the timing and isolated nature of one customer-specific discount was contrived to lower the home market price, thereby reducing or eliminating the dumping margin. Therefore, the petitioner asserts, the price manipulation evident in these sales constitutes the very type of price movement which the Department has determined constitutes the basis for a fictitious market determination.

Camesa argues that there is no evidence to support the petitioner's claim of a fictitious market. Camesa notes that under the Department's established practice, a ''fictitious market'' may be found when the evidence shows that the trends in prices for comparison products: (1) are moving in a different way from the trends in prices for non-comparison products, and (2) would have the effect of reducing the dumping margins. See the preamble to *Antidumping Duties; Countervailing Duties; Final Rule; Final Rule*, 62 FR 27296, 27357 (May 19, 1997). Camesa claims that the home market prices for the comparison product in the month of the U.S. sale were at relatively high levels both in comparison to other sales of the same product and in comparison to the trends in prices of non-comparison products. Thus, the price trends for the comparison product had the effect of raising, not lowering, the dumping margins.

Furthermore, Camesa argues that an analysis of the timing of its home market sales and discounts reveals that these sales and discounts were not unusual and were within the range of Camesa's normal sales practices. Camesa concludes, therefore, there is no evidence to support the petitioner's claim that these sales constitute a fictitious market.

DOC Position

The petitioner failed to raise its fictitious market allegation until the filing of its case brief following the preliminary results of this review. Therefore, the petitioner's allegation was untimely filed and, consequently, does not warrant determining that Camesa's home market sales constitute a fictitious market.

As we explained in our *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea*, 62 FR 39809, 39822 (July 25, 1997), a fictitious market analysis is extraordinary. The preamble to *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27357 (May 19, 1997)(the Departments's regulations), implementing the URAA, states that the Department typically does not engage in a fictitious market analyses under section 773(a)(2) of the Act, or a variety of other analyses called for by section 773, ''unless it receives a timely and adequately substantiated allegation from a party.'' (*See Tubeless Steel Disc Wheels from Brazil; Final Results of Antidumping duty Administrative Review*, 56 FR 14083 (April 15, 1991); *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 32095, 23096 (June 8, 1993) (*Mexican Cooking Ware*).) The various provisions of section 773, particularly section 773(a)(2), ''call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard antidumping analysis.'' *See* 62 FR 27296, 27357, (May 19, 1997). The Department must determine, as a threshold matter, whether such an analysis is warranted based upon the adequacy of the allegation. *See Mexican Cooking Ware; Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 28551, 28555 (May 14, 1993).

The untimely nature of the petitioner's allegation during this review prevented the Department from making this threshold determination at an appropriate point in the proceeding. Therefore, we reject petitioner's fictitious market allegation.

*Comment 3: The Date of Sale for Home Market Observation 527*

The petitioner argues that the Department must reject the reported date of sale for home market observation (OBS) 527 since Camesa used the invoice date as the date of sale whereas, during verification, the Department discovered a facsimile transmission from Camesa to its home market customer indicating that the material terms of sale for OBS 527 had been settled three months before the date of invoice. The petitioner contends that the Department should establish the date of the facsimile transmission as the date of sale for OBS 527, since it corresponds to the date of the last known changes in the material terms of sale. As a result, the petitioner argues, OBS 527 should not be used as a basis for calculating NV, since the earlier date of sale is outside of the contemporaneous window period. The petitioner further alleges that the remaining sales of the foreign like product sold in the home market during the month of the U.S. sale, constitute an unacceptably small quantity of home market sales upon which to base NV. Therefore, the petitioner argues, the Department should base NV on contemporaneous home market sales of other carbon steel wire rope products of the same general class or kind as the subject merchandise sold by Camesa in the United States, or, alternatively, on sales of the foreign like product made prior to the month of the U.S. sale.

Camesa asserts that section 351.401 of the Department's regulations stipulates that the date of sale should be based on the date of invoice and that the preamble to this new regulation also expresses a ''preference for using a single date of sale for each respondent, rather than a different date of sale for each sale.'' (*See* 62 FR 27296, 27348). Furthermore, Camesa notes that the preamble to the Department's regulations also indicates that the Department will depart from using the date of invoice as the date of sale when ''the material terms of sale usually are established on some date other than the date of invoice.'' (*See* 62 FR 27296, 27349.) Camesa finally points to the requirement in the Department's questionnaire that respondents use a uniform date of sale methodology for all sales.

Camesa notes that, as a general matter, the prices for the home market sales reported during the POR were fixed based on the price lists in effect when the invoice was generated. Camesa explains that it used the date of invoice as the date of sale for all of the home market transactions reported in this review. Finally, Camesa explains that the facsimile transmission in question establishes neither the price nor quantity of the sale and consequently cannot be used as the basis of the date of sale.

DOC Position

We agree with Camesa. The Department's verification report established that the purpose of the facsimile transmission petitioner references was to grant a discount, and not to establish the price, quantity or other terms of the sale. As Camesa explained above, the new regulations require the use of single, uniform date of sale throughout each response, rather than a different date of sale for each sale. Although this review is not governed by the new regulations, the new regulations serve as a restatement of the Department's interpretation of the requirements of the Act as amended by URAA. *See* section 351.701 of the Department's regulations. Therefore, the Department will use the date of invoice as the date of sale. Section 351.401(i) of Department's regulations establishes that normally, the date of sale is the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Section 351.401(i) also states that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Camesa prepared its response on a consistent basis, using the invoice date as the date of sale. There is no evidence that any date other than the invoice date should be considered as the date on which Camesa established the material terms of sale in the course of its business. The verification report did not identify any discrepancies with respect to the date of sale for this transaction. Therefore, for the purposes of these final results of review, we will accept Camesa's verified invoice date as the date of sale.

*Comment 4: Duty Drawback*

The petitioner argues that Camesa is not entitled to a duty drawback adjustment under section 772(c)(1)(B) of the Act because Camesa has failed to satisfy the Department's two-pronged test to receive duty drawback. (*See Far East Machinery Co.* v. *United States*, 12 CIT 972, 974 (1988). Petitioner states that the first prong of the test requires Camesa to demonstrate that the import duty and the rebate received under the duty drawback program must be directly

linked to, and dependent upon, one another. The second prong requires that Camesa demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product, *Id*.

Petitioner argues that Camesa failed to satisfy the first prong because under PITEX, Mexico's duty drawback program, Camesa did not actually pay the import duty as petitioner claims is required by the Act. According to the petitioner, duty drawback adjustments ''may only be made where imports [sic] duties are *actually paid and rebated*.'' Petitioner's case brief at 19 (emphasis in original), citing *Far East Machinery,* 12 CIT at 976, quoting *Huffy Corporation* v. *United States,* 10 CIT 214 (1986).

Moreover, petitioner argues that since Camesa did not pay any import duties, it has failed to establish that such duties were paid for those raw materials that were used to produce steel wire rope sold in the home market but not paid on wire rope products exported. Petitioner also asserts that Camesa did not pay duties on a quantity of imported rod substantially greater than the quantity of its documented exports.

Camesa contends that the petitioner incorrectly characterizes section 772(c)(1)(B) of the Act and in a way that is directly inconsistent with the plain language of the Act. Camesa also disputes petitioner's allegation that they did not meet the second prong, *i.e.,* did not export a sufficient quantity of finished products to account for its amount of imports. Camesa argues that petitioner ignored the vast majority of the steel products it exports—steel wire, steel wire strand, and electro-mechanical cable—which, like steel wire rope, are produced from imported steel wire rod. Camesa notes that the total exports of these products were substantially more than the quantity of steel wire rod imported by Camesa.

DOC Position

We disagree with the petitioner. Section 772(c)(1)(B) of the Act explicitly provides for the Department's grant of a duty drawback adjustment when import duties ''imposed by the country of exportation which have been rebated, or *which have not been collected,* by reason of the exportation of the subject product to the United States''. *Id*. (emphasis added).

Petitioner's argument that Camesa has to actually pay and receive a rebate in order to qualify for duty drawback adjustment is contrary to the plain language of the statute and the Department's long-established practice. ''Section 772(c)(1)(B) of the Act provides for adjustment for duty drawback on import duties which have been rebated (or which have not been collected) by reason of exportation * * *.'' *Final Determination of Sales Less Than Fair Value: Stainless Steel Wire Rod from Korea,* 63 FR 40404, 40415 (July 29, 1998). *See also Certain Welded Stainless Steel Pipe from Taiwan; Final Results of Administrative Review,* 63 FR 38382, 38389 (July 16, 1998); *Certain Welded Carbon Steel Pipes and Tubes from India; Final Results of New Shipper Antidumping Duty Administrative Review* (*Indian Pipe*), 62 FR 47632, 47635 (September 10, 1997).

The Department will grant a duty drawback adjustment if we determine: 1) that the import duty and rebate are directly linked to, and dependent upon, one another; and 2) that imported raw materials are sufficient to account for the duty drawback received on the exports of the manufactured product. (*See Far East Machinery,* 12 CIT at 974.)

However, the Department has never established a strict prerequisite that import duties must actually be paid and subsequently rebated in order for there to be the necessary link justifying an adjustment to the U.S. starting price. Nor have the courts established such a requirement. It is true, as petitioner notes, that the Court of International Trade stated in *Far East Machinery* that payment of import duties is a ''prerequisite to receipt of an export rebate'' to qualify for an adjustment. *Far East Machinery,* 12 CIT at 976. However, petitioner has taken the Court's discussion of this issue out of context. In *Far East Machinery,* the respondent had actually paid duties upon importing the input and had received some amount of rebate on exporting the subject merchandise. The question in that case only concerned whether the government drawback program at issue established the necessary link between actual payment of the duties and receipt of the rebate. *See id.; see also, Du Pont de Nemours & Co.* v. *United States,* 841 F. Supp. 1237, 1242–43 (CIT, 1993); *Huffy Corp., supra.*

In this case, under the PITEX program, the Mexican government has effectively suspended collection of duties from Camesa on imported steel wire rod contingent upon Camesa's later exporting merchandise containing an equivalent amount of steel. The Department has reviewed this type of program before. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review,* 62 FR 1970, 1976 (January 7, 1997) (Brazilian duty drawback program suspends the payment of taxes or duties that ordinarily would have been due upon exportation); *Extruded Ruber Thread from Malaysia; Final Results of Antidumping Administrative Review,* 62 FR 33588, 33598–99 (June 20, 1997) (import duties not collected when subject merchandise incorporating those imported goods were exported).

Therefore, in cases where the import duty is not collected, the first prong then becomes whether ''import duties were actually not collected by reason of the exportation of the subject merchandise to the United States.'' This type of program falls within the express language of section 772 (c)(1)(B). *See Indian Pipe,* at 47632, 47635. The Department determines that Camesa has met the requirements of the first prong.

The Department examined and reviewed the PITEX program at verification. The Department also examined the Mexican government's audits of Camesa's imports of wire rod, consumption of steel wire rod, and subsequent exports of wire rope. We verified that Camesa conformed to the requirements of the PITEX program, which requires that exports be sufficient to account for the drawback claimed.

The Department agrees with Camesa that it has also met the second prong. After taking into consideration the variety of products Camesa exported—including exports of steel wire, steel wire strand, and electro-mechanical cable—Camesa's total exports were sufficient to account for the quantity of steel wire rod imported. It should also be noted that the Court of International Trade has consistently held that there is no requirement that specific inputs be traced from importation through exportation before allowing drawback on duties paid. *See Far East Machinery,* 12 CIT at 975.

*Comment 5: The Accuracy of Camesa's Duty Drawback Claims*

The petitioner contends that the Department must reject Camesa's claimed adjustment for duty drawback since the Department was unable to verify the information provided in the questionnaire response. The petitioner claims that Camesa, by basing the reported duty drawback adjustment on only one of many imports of steel wire rod, attempted to obtain the highest possible adjustment by selectively supplying the Department with certain information, while withholding other, less advantageous, information. Therefore, the petitioner argues, as adverse facts available, the Department must reject Camesa's claim for a duty drawback adjustment in its entirety.

Camesa argues that the Department should use verified information, and not ''adverse inferences'' to correct what it claims was a minor ''error'' in the reported duty drawback found during verification. Camesa claims that the employee responsible for providing the duty drawback information did not explain that the information was based on a single import of wire rod. At verification, the Department reviewed the documents for all of Camesa's purchases of imported rod during the review period. Camesa claims the Department did not find discrepancies with respect to the one invoice that was reported. Camesa further contends that, at verification, it successfully demonstrated the accuracy of the information it had submitted. Camesa claims that the duty drawback rate that it submitted was not unreasonable, since it is very close to the rates obtained for other imports which occurred at the beginning and the middle of the POR. Therefore, Camesa argues, since the verification report did not identify any discrepancies in the information reported in the questionnaire response, the Department should base Camesa's duty drawback adjustment for the final results of review on verified information, rather than on adverse facts available.

DOC Position

We agree with the petitioner that Camesa failed to use all of the appropriate information available to it in calculating its claimed adjustment for duty drawback. The Department's verification established that Camesa used only one of many imports of steel wire rod as the basis for the claimed adjustment, yet reported it as an average price for imported rod during the POR. In addition, Camesa was not able to explain the reason for the reporting error at verification. (*See Report of the Sales and Cost Verification of Aceros Camesa S.A. de C.V. (Camesa) in the First Administrative Review of the antidumping Duty Order on Steel Wire Rope from Mexico,* March 31, 1998, pages 12 and 13.) In fact, Camesa's explanation of this ''minor'' error is made for the first time in its case brief. Consequently, in the preliminary results of review, we concluded that Camesa overreported the amount of the duty drawback and we made an adjustment based on adverse inferences. Since there have been no changes in material fact since the preliminary results of this review, we have continued to allow an adjustment for duty drawback in the final results of this review and to make an adjustment to starting price in the United States using the smallest per-unit amount of duty drawback calculated for any invoice of steel wire rod purchased during the POR.

*Comment 6: Rescission of the Department's Decision to Initiate the Sales Below Cost Investigation*

Camesa contends that the Department should rescind its decision to initiate a sales-below-cost investigation in this review. Camesa claims that the petitioner's sales-below-cost allegation failed to include the net gain on monetary position recorded on Camesa's financial statements, thereby overstating net financial expense and the cost of production (COP). Camesa further contends that if the petitioner had properly included the net gain on monetary position in its calculations, all of the home-market sales identified by the petitioner would have been made above cost, and the allegation would not have been made. Therefore, Camesa argues, the petitioner's allegation should be rejected and the sales-below-cost investigation should be rescinded.

The petitioner contends that the Department's decision to initiate the investigation was proper in all respects and in accord with the Department's standards. The petitioner further states that it presented the Department with more than sufficient grounds to proceed with an investigation. And, since the petitioner's allegation otherwise met the legal criteria for initiation of a COP investigation, the Department's decision to initiate a COP investigation was fully in accord with the controlling statutory standard and legal precedent. Therefore, the petitioner contends, the Department must reject Camesa's argument for rescission of the initiation of the COP investigation.

DOC Position

We agree with the petitioner. The Department considered Camesa's arguments and rejected them on two previous occasions. Camesa originally presented this argument in its letter to the Department on October 1, 1997 arguing that the petitioner failed to include net gain on monetary position in its calculation of net financial expense. Nevertheless, at the time of the decision to initiate a sales-below-cost investigation, the Department determined that Camesa did not sufficiently substantiate its case for this adjustment for the record for the Department to be able to determine whether Camesa's proposed adjustment concerning the monetary position was appropriate. In the Department's October 6, 1997 decision memo, *Steel Wire Rope from Mexico: Whether to Initiate a Sales Below Cost Investigation,* the Department stated on page 3, ''since Camesa's financial statements do not specify what the interest expenses relate to, we believe that we do not have enough information on the record to determine whether such an adjustment is appropriate in this case.'' On October 19, 1997, Camesa again requested the Department to rescind its decision to initiate a sales-below-cost investigation, presenting for a second time the arguments set forth in its October 1, 1997 letter. The request was considered and denied in a letter from the Department to Camesa on October 23, 1997. Furthermore, the Department found the petitioner's allegation to be representative of the broader range of the home market sales than were actually used to determine NV in the review.

Therefore, the Department initiated a sales-below-cost investigation, because at the time the decision was made, the Department had ''reasonable grounds'' to believe that sales of foreign like product under consideration for the determination of normal value had been made at prices which represent less than the cost of production. *See* Section 773(b)(1) of the Act. The Department will not revisit the issue of initiation at this time.

*Comment 7: Disregarding Sales Below Cost*

Camesa claims that the Department erroneously conducted its cost test on all home market sales of the foreign like product reported to the Department. Camesa points out that it made only one sale of steel wire rope to the United States during the POR, and that the Department based its preliminary results of review on home market sales of the identical product. Therefore, Camesa points out that section 773(b)(1) of the Act requires the Department to exclude sales below cost which have been made within an extended period of time in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time. Camesa notes that section 773(b)(2)(C) states that ''sales made below cost of production have been made in substantial quantities if —(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or (ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.'' Therefore, Camesa concludes, the Department cannot apply the cost test to sales of similar merchandise or disregard them

from its analysis, since only sales of identical merchandise should have been the relevant universe of sales under consideration for the determination of NV.

Camesa notes that this issue does not bear any significance for calculation of NV in the current review, since the Department did not disregard any of the home-market sales of the product that were used as the basis for NV. However, Camesa notes that it may have a significance in future reviews since the Department's questionnaire instructs respondents to respond to the cost of production and CV sections of the questionnaire only if any of the respondent's sales were disregarded as below cost in the prior review. Therefore, Camesa requests the Department to specifically state that none of Camesa's home market sales were disregarded as below cost in the current review.

The petitioner contends that Camesa is incorrect in its assertion that the sales of similar merchandise in the home market are not under consideration for the determination of NV. It further notes that all sales of merchandise covered by the scope of the order remain candidates for the determination of NV, even if the NV for the final results of this review continues to be based solely on the identical home market product. The petitioner argues that, since the Department acted in accordance with law in its preliminary results of review, it must maintain this analysis for purposes of the final results of this review.

DOC Position

We disagree with Camesa's interpretation of section 773(b)(1) of the Act and that we should find that no below-cost-sales were disregarded. The premise underlying Camesa's argument—that the sales-below-cost analysis is done after the Department does its matching analysis—is inconsistent with the current court decision in *CEMEX*.

The Department's practice following the *CEMEX* decision is to conduct a sales-below-cost test prior to conducting the matching analysis. The Court in *CEMEX* held that ''A determination of the dumping margin cannot be made if sales of a product which are to be relied upon in reaching foreign market value are not in the ordinary course of trade. [citations omitted]. Therefore, the *initial consideration* for Commerce is whether, under section 1677b(a)(1), the sales are 'in the usual commercial quantities and in the ordinary course of trade. 19 U.S.C. 1677b(a)(1).' '' CEMEX, 133 F.3d at 903 (emphasis added).

The Court in *CEMEX* explicitly held that sales below cost are not in the ''ordinary course of trade.'' Citing *Mantex* v. *United States,* 841 F. Supp. 1290, CIT, 1993, the Court in *CEMEX* held that '' '[a] profit level comparison is probative of the economic reality' of the sales [citation omitted] and therefore the disparity in profit margins is indicative of sales that were not in the ordinary course of trade.'' *CEMEX*, 133 F.3d at 900 citing *Mantex,* 841 F.Supp. at 1308.

Sales that are below cost (not in the ordinary course of trade) are then disregarded and subsequently the matching analysis is done on remaining sales. ''Commerce should then examine the next available class of merchandise * * * to determine if it matches any of the * * * categories of 'such or similar merchandise.' '' *CEMEX*, 133 F.3d at 903.

Therefore, Camesa's argument that only identical merchandise should have been subjected to the sales-below-cost analysis is contrary to the Court's mandate in *CEMEX*. Camesa incorrectly takes a very narrow interpretation of the phrase ''under consideration for the determination of normal value'' to include only those identical sales that were actually used in calculating normal value. The Department considers all home market sales reported to be ''under consideration for the determination of normal value.'' The fact that certain sales were later disregarded for being below cost or non-identical matches, when identical matches were available, does not alter the fact that initially all reported home market sales were ''under consideration for the determination of normal value.''

Accordingly, based on the cost test, the Department disregarded certain of Camesa's below-cost home-market sales in the current review.

*Comment 8: Home Market Credit*

Camesa maintains that the Department should calculate home-market credit expenses based on the actual short-term interest rate available to Camesa, rather than the published interbank equilibrium rate (abbreviated TIIE in Spanish), used in the preliminary results of review. Camesa notes that the TIIE rate is an interbank rate which is available for transactions between banks and not intended for corporate customers. Therefore, Camesa contends, the Department should calculate the credit expense for Camesa's home-market sales based on the evidence on the record concerning the actual interest rates Camesa would have paid if it had short-term borrowings during the review period.

The petitioner contends that the Department properly used the TIIE interest rate to determine home market credit expense during this review. The petitioner states that since Camesa did not have actual borrowings in the home market during the period of the review, an interest rate must be imputed. The petitioner contends that the interest rates proposed by Camesa are hypothetical and speculative, cannot be verified and cannot serve as the basis for a circumstance of a sale adjustment. Therefore, the petitioner contends, the Department should continue to use the TIIE rate in its final results of review.

DOC Position

The Department's preference for determining an interest rate for imputed credit expenses when the respondent does not have any short-term loans is set forth in Import Administration Policy Bulletin 98.2 (Policy Bulletin 98.2). Policy Bulletin 98.2 states, ''For foreign currency transactions, we will establish interest rates on a case-by-case basis using publicly available information, with a preference for published average short-term lending rates.'' The Bulletin also states that any short-term interest rates used by the Department should meet three criteria: '' * * * it should be reasonable, readily obtainable, and representative of 'usual commercial behavior.' '' We were not able to identify any published sources of short-term lending rates in Mexico during the period of review. However, we recognize that the information on the record concerning the minimum interest rate that Camesa could have obtained from commercial banks, if it had had short-term borrowings during the period of review, satisfied the above criteria. Furthermore, we agree with Camesa that the TIIE rate is an interbank rate that is applied only to transactions between banks and understates the rates available to corporate customers and is not appropriate for calculating imputed credit expenses in this review. Therefore, for these final results we have imputed credit expenses using the information on the record. (*See,* Calculations Memo for the Final Results of Review, dated August 21, 1998.)

*Comment 9: The Timeliness of the Filing of the Public Version of Camesa's Case Brief*

The petitioner argues that by submitting the public version of its case brief to the Department on May 11, 1998, Camesa missed the public filing deadline date of May 8, 1998. The petitioner contends that due to the untimely filing, the Department must reject Camesa's filing according to the

Department's regulation at section 353.38(a) which states that ''[T]he Secretary will return to the submitter * * * any written argument submitted after the time limits specified in this section or by the Secretary.'' The petitioner further contends that to do otherwise not only works to the prejudice of the petitioner, which operated under the established time frames, but provides license for Camesa, and parties to other proceedings before the Department, to flout the Department's mandatory requirements. The petitioner further argues that, at the least, the Department must reject Camesa's claim for confidentiality regarding its case brief since it failed to perfect this claim by filing a public version of the case brief by the close of the next business day. Camesa did not comment on this issue.

DOC Position

Camesa attempted to file its business proprietary version of its case brief on May 7, 1998. Details of Camesa's attempt to file its case brief in a timely manner are outlined in Sherman & Sterling's letter to the Honorable William Daley dated May 8, 1998 and accompanying affidavit of its courier. The Department accepted Camesa's explanation and effectively gave Camesa an extension of one day by accepting its case brief on May 8, 1998. *See* 353.38(c)(1). Therefore, the public version of Camesa's case brief was due on the next business day, which in this case was on May 11, 1998. *See* 353.32(b). Camesa timely filed its public version on May 11, 1998.

**Final Results of the Review**

As a result of our review of the comments, we determine that the following dumping margins exist:

| Manufacturer/exporter | Period | Margin (percent) |
|---|---|---|
| Aceros Camesa, S.A. de C.V. | 3/1/96–2/28/97 | 0.00 |

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. We will instruct customs to liquidate the entries made during the POR without regard to antidumping duties since no margins were determined to exist in this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Further, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of steel wire rope from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Camesa will be the rate stated above; (2) for previously investigated companies not listed above, 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, or the original investigation of sale at less than fair value (LTFV), 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) the cash deposit rate for all other manufacturers or exporters will continue to be 111.68 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/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 notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 771(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 353.22.

Dated: August 27, 1998.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 98–23670 Filed 9–1–98; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–008]**

## Color Television Receivers From the Republic of Korea; Final Results of Changed Circumstances Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of affirmative final determination of changed circumstances antidumping duty review and revocation of order in part.

**SUMMARY:** This changed circumstances review covers one manufacturer, Samsung Electronics Corporation. The International Brotherhood of Electrical Workers; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (AFL–CIO); and the Industrial Union Department (AFL–CIO) are collectively the ''petitioners.''

On December 31, 1997, the Department of Commerce published the preliminary results of the changed circumstances review of the antidumping duty order on color television receivers from the Republic of Korea. At that time, the Department preliminarily determined to partially revoke this antidumping duty order with respect to Samsung Electronics Corporation. Based on our analysis of the record evidence, including interested party comments, we have determined that changed circumstances warrant revocation of the antidumping duty order on color television receivers from the Republic of Korea, as it applies to Samsung Electronics Corporation.

**EFFECTIVE DATE:** September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Irene Darzenta Tzafolias or Mark Manning, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0922 and 482–3936, respectively.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997). Although the new regulations do not apply in these final results, they are cited, where appropriate, as a statement of the Department's current practice. *See* 62 FR 27296, 27378 (May 19, 1997).

*Background*

On April 30, 1984, the Department of Commerce (the Department) published in the **Federal Register** (49 FR 18336) the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea).

On July 20, 1995, the Department received a request by Samsung Electronics Corporation (Samsung) for a changed circumstances review to consider revocation of the antidumping duty order, as it applies to Samsung. The petitioners opposed this request. In its revocation request, Samsung cited three reasons why the Department should revoke the antidumping duty order. First, the timing of certain court decisions on previous administrative reviews of this order prevented Samsung from filing in a timely manner for revocation under Section 751(a) of the Act. Second, Samsung was found not to be dumping CTVs in the United States during the six consecutive years in which Samsung had shipments from Korea. Third, Samsung has not shipped CTVs to the United States since early 1991. Zenith Electronics Corporation, a domestic interested party, and petitioners, filed objections to Samsung's request on August 4 and August 11, 1995, respectively.

Pursuant to Samsung's request, the Department initiated this changed circumstances review on June 24, 1996. *See Color Television Receivers From the Republic of Korea: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Consideration of Revocation of Order (in Part)* (61 FR 32426, June 24, 1996).[1] On July 16, 1996, the Department issued to the parties a draft changed circumstances questionnaire for comment. We received comments from petitioners and Samsung on July 30, 1996, and August 6, 1996, respectively. On December 6, 1996, the Department issued a changed circumstances questionnaire to Samsung, who filed its response on February 24, 1997. Petitioners submitted their comments on Samsung's questionnaire response on June 17, 1997. Subsequently, both petitioners and Samsung submitted several additional comments.

On December 31, 1997, the Department issued its affirmative preliminary results in this changed circumstances review of the antidumping order on CTVs from Korea, partially revoking this order with respect to Samsung. *See Color Television Receivers From Korea; Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review* (62 FR 68256, December 31, 1997). Petitioners, Samsung, and LG Electronics (LGE) submitted comments to the Department concerning the preliminary determination on February 13, 1998 and March 6, 1998. A public hearing was held on March 18, 1998, to allow interested parties the opportunity to express their views directly to the Department. Additional information was submitted on March 30, 1998, and comments were filed by petitioners and Samsung on April 7, 1998, and May 8, 1998, respectively. This review was conducted in accordance with Section 751(b) of the Act.

## Scope of Order

Imports covered by this order include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is classifiable under the 1997 Harmonized Tariff Schedule (HTS) as item 8528.12.04, 8528.12.08, 8528.12.12, 8528.12.16, 8528.12.20, 8528.12.24, 8528.12.28, 8528.12.32, 8528.12.36, 8528.12.40, 8528.12.44, 8528.12.48, 8528.12.52, 8528.12.56, 8528.12.62, 8528.12.64, 8528.12.68, 8528.12.72, 8528.12.76, 8528.12.80, 8528.12.84, and 8528.12.88. The order covers all CTVs regardless of HTS classification. The HTS subheadings are provided for convenience and for customs purposes. The Department's written description of the scope of the order remains dispositive.

## Scope of the Review

Imports covered by this review pertain to merchandise as defined by the ''Scope of the Order'' section above that was produced by Samsung.

## Intent to Revoke In Part

Section 751(d) of the Act provides that the Department may revoke an antidumping order, in whole or in part, after conducting a review under Section 751(a) or 751(b). 19 U.S.C. 1675(d)(1) (1995). This changed circumstances review is being conducted pursuant to Section 751(b) of the Act. The Department's regulations at 19 CFR 353.25(d) permit the Department to conduct a changed circumstances review under 19 CFR 353.22(f) when there is sufficient information to warrant a review. We stated in the initiation notice that the unique circumstances presented by Samsung in this proceeding constitute changed circumstances sufficient to warrant a review under Section 751(b) of the Act and 19 CFR 353.22(f).

Although this review is being conducted pursuant to Sections 353.25(d) and 353.22(f) of the Department's regulations, for guidance we have relied upon the criteria contained in Section 353.25(a) as a starting point from which to analyze the case, in addition to any other factors raised by the parties. Section 353.25(a) states that the Secretary may revoke an order in part if the Secretary concludes that (1) a manufacturer or reseller covered at the time of revocation by the order has sold the subject merchandise at not less than foreign market value (LTFMV) for a period of at least three consecutive years, (2) it is not likely that those persons will in the future sell the merchandise at LTFMV, and (3) the manufacturer or reseller agrees in writing to the immediate reinstatement of the order if the Secretary concludes that the manufacturer or reseller, subsequent to the revocation, sold the merchandise at LTFMV. In the preliminary determination, the Department found that Samsung met all three of the above requirements. At that time, we encouraged interested parties to submit comments concerning whether Samsung was not likely to sell the subject merchandise at LTFMV in the future.

[1] In a separate but related proceeding, the Department investigated whether Samsung and other Korean television producers were circumventing the antidumping duty order on CTVs from Korea through their production facilities in Mexico. Pursuant to an application filed by petitioners on August 11, 1995, the Department initiated the anti-circumvention inquiry on January 19, 1996 (61 FR 1339, January 19, 1996). On December 31, 1997, pursuant to petitioners' request, the Department terminated the anti-circumvention inquiry with respect to all companies.

With respect to the issue of likelihood, in past cases, we have considered ''such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales.'' *See Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part* (61 FR 49727, 49730; September 23, 1996) (Brass Sheet and Strip) and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea* (62 FR 39809, 39810; July 24, 1997) (DRAMS). Other criteria the Department has considered in past cases include the existence of trade restrictions on the sale of the foreign like product in third world countries and the industry's development of new technologies in its analysis of the likelihood of future dumping. *See, e.g., Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part* (54 FR 35517, 35519; August 28, 1989) (TVs from Japan). As stated in TVs from Japan, the market forces described above are important in cases, such as this one, where there have been no shipments of subject merchandise for several years, and there is therefore little information regarding a respondent's current pricing practices with regard to the subject merchandise. *See* TVs from Japan at 35519.

Based upon our analysis of the information on the record of this case, Samsung has not sold the subject merchandise at LTFMV for a period of six consecutive years (*i.e.*, April 1, 1985 through March 31, 1991). We consider this to be an important indicator of Samsung's expected pricing practices in the future. In addition, Samsung has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that Samsung, subsequent to the revocation, sells the merchandise at LTFMV.

With respect to whether Samsung is not likely to resume dumping, we have examined the information submitted after issuing the preliminary results. We continue to find that the record supports the conclusion that Samsung is not likely to sell the subject merchandise at LTFMV in the future. As more fully explained below, our analysis of whether Samsung is not likely to resume selling CTVs in the U.S. market at LTFMV focuses on conditions and trends in the U.S. and Korean CTV markets, the effects of the Asian economic downturn on Samsung, the movements of the Korean won and other Southeast Asian currencies, Samsung's ability to compete in the United States without LTFMV sales, trade restrictions concerning CTVs in third countries, and the potential impact of new technologies, specifically high definition television.

**Analysis of Comments Received**

*Part I—General Comments*

Comment 1: Legal Entitlement to a Changed Circumstances Review

Petitioners claim that Samsung missed the opportunity to request revocation under 19 CFR 353.25(b) and is therefore ineligible for revocation pursuant to a changed circumstances review under Section 751(b) of the Act and Section 353.25(d) of the Department's regulations. Petitioners argue that the statute and the regulations provide two methods to request revocation. Pursuant to Section 751(a) and 19 CFR 353.25(a)–(c), the Department may consider a respondent's request for revocation if the respondent has made sales at LTFMV for three consecutive years in the immediately preceding review periods. The Department also will consider a request for revocation pursuant to Section 751(b) and 19 CFR 353.22(f) and 353.25(d) based on other ''changed circumstances.''

Petitioners claim that, in this case, Samsung had the opportunity to request revocation pursuant to Section 751(a) and 19 CFR 353.25(a)–(c), but failed to make such a request in a timely manner. Specifically, petitioners argue that Samsung should have requested revocation in April 1991 for the eighth review, by which time the Department had already published its final results in the fourth and fifth reviews and had determined that Samsung's dumping margins were *de minimis*. Furthermore, despite the outcome of litigation in the fourth review, the Department announced in the final results of the fifth review, published in March 1991, that it did not agree with the Court of International Trade's decision in *Daewoo Electronics Co.* v. *United States*, 13 CIT 253, 712 F. Supp. 931 (1989) (*Daewoo*), and was consequently calculating its margins for Samsung pursuant to its standard practice. Based upon the Department's standard commodity tax methodology, Samsung was able to obtain *de minimis* margins in the fourth and fifth reviews. Since the final results of these reviews were known to Samsung in March 1991, coupled with the Department's announcement that it did not intend to follow the lower court's decision in *Daewoo*, petitioners argue that Samsung clearly had the basis to certify that it would have no sales at LTFMV in the eighth review. According to petitioners, Samsung should have requested revocation in April 1991, but it failed to do so.

Petitioners also argue that although the final results of the sixth and seventh reviews were not published by the Department until 1996, this should not have prevented Samsung from requesting revocation in April 1991 for the eighth review. If Samsung had done so, petitioners argue, the Department would have known in April 1991 that the results of the sixth and seventh reviews could have an impact on whether Samsung would be allowed to obtain revocation in the eighth review. Presumably, the petitioners reason, the Department could have changed its administrative process and conducted the sixth, seventh, and eighth reviews simultaneously to determine whether Samsung had three consecutive years of no dumping.

Petitioners claim that because Samsung missed its opportunity to request revocation pursuant to Section 751(a) and 19 CFR 353.25(a)–(c), it is not eligible for revocation through a changed circumstances review pursuant to Section 751(b) and 19 CFR 353.22(f) and 353.25(d). Petitioners claim that, in the past, the Department has conducted changed circumstances reviews only in cases where domestic parties had no interest in maintaining the order, or where the request for revocation was otherwise warranted but could not be obtained through the normal revocation procedure. In this case, petitioners contend that Samsung is prohibited from requesting revocation through a changed circumstances review because it failed to request such a review through the normal regulatory procedures (*i.e.*, 19 CFR 353.25(a)–(c)). Moreover, petitioners assert that Samsung is requesting a changed circumstances review on the basis of the discontinuance of dumping and cessation of shipments, something that the Department has never done before. Petitioners contend that Samsung is specifically trying to avoid the mandate of the law by improperly relying on this alternative method for revocation. Petitioners assert that the Department's regulations were revised to prohibit revocation based on no shipments in recent time periods because the Department recognized that the absence of shipments by a respondent, even after

an initial period of no dumping, was not a reliable indication that the respondent was not likely to dump in the future.

Lastly, petitioners argue that a negative determination in this changed circumstances review is consistent with the World Trade Organization's (WTO's) Antidumping Agreement. Petitioners claim that Article 11 of the Antidumping Agreement provides only basic guidelines concerning the duration and review of antidumping duties. Beyond outlining broad principles, Article 11 is silent as to any factors or considerations that should be taken into account by member countries' authorities during a review of the need to maintain antidumping duties. Therefore, petitioners contend that the Antidumping Agreement gives to each member country's authorities the responsibility and discretion to establish specific rules for the authorities to evaluate the issue of revocation. In this capacity, the Department has promulgated regulations at 19 CFR 353.25(a)–(c) that set forth the criteria respondents must meet to obtain revocation. Petitioners conclude that the Department's decision to withhold revocation under its applicable regulations is in compliance with Article 11.

Samsung claims that the Department's revocation regulations failed to operate as intended with respect to Samsung because of the timing of certain court decisions and the systematic failure of the Department to comply with its regulatory obligation to complete administrative reviews within 365 days. Specifically, Samsung cites the following six reasons: (1) the Department improperly determined in 1988 that Samsung had an above *de minimis* margin in the third review; (2) the margin in the third review was not reduced to *de minimis* until 1995; (3) the Department amended its revocation regulations in April 1989 to require that producers file revocation requests only in the anniversary month immediately following three consecutive years of no sales at LTFMV; (4) the Department did not issue its final determinations in the fourth and fifth reviews until June 1990 and March 1991, respectively—in each case, two years after the 365-day deadline for completion; (5) the Court of Appeals for the Federal Circuit issued a decision that resulted in *de minimis* margins in the third through eighth reviews; and (6) the Department did not issue final results for the sixth and seventh reviews until February 1996, six and five years late, respectively. As a result, Samsung learned for the first time that it had become eligible to request revocation under the new regulations long after April 1989, the ''opportunity month'' for requesting such a review, had passed. However, Samsung states that it does not seek revocation on the basis that its revocation requests under the new regulations were timely. Rather, certain facts relied on in those requests are relevant changed circumstances.

Samsung also argues that under Article 11 of the WTO Antidumping Agreement, the Department ''shall review the need for the continued imposition of the duty, where warranted, . . . upon request by any interested party which submits positive information substantiating the need for a review.'' Samsung asserts that this provision contains no time limit in which parties must request a review and establishes no procedural bars to prevent parties from obtaining a review. Furthermore, Article 11 states that ''an antidumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.'' According to Samsung, under Article 11, the Department is obligated to revoke an order when ''dumping which is causing injury'' no longer occurs. Given that Samsung has received *de minimis* margins for a period of six years and has discontinued shipments since 1991, Samsung maintains that the Department must, pursuant to Article 11, revoke the order with respect to Samsung.

Samsung further argues that the House Report on the URAA explains that ''the changes are made to conform United States law more specifically to the provisions of the Agreement.'' Samsung contends that the House Report indicates that Congress recognized that the Department must comply with the WTO Antidumping Agreement's provisions governing revocation. Therefore, Samsung asserts that the Department's changed circumstances review provision authorizes it to conduct revocation reviews where warranted and to revoke orders that are no longer necessary, and does not limit the Department to examining only those situations in which the domestic industry is no longer interested in an order.

*Department's Position:* We disagree with petitioners' claim that, because Samsung missed the opportunity to request revocation under 19 CFR 353.25(b), it is therefore ineligible for revocation pursuant to a changed circumstances review under Section 751(b) of the Act and § 353.25(d) of the Department's regulations. A review based upon changed circumstances, as provided under § 353.25(d) of the regulations, is a separate and distinct procedure from that of a revocation review provided for under §§ 353.25(a)–(c). In the Department's view, the failure to meet a procedural requirement for a review under §§ 353.25(a)–(c) cannot act as a bar to a changed circumstances review where a company satisfies the requirements for such a review. Thus, if the facts demonstrate that changed circumstances exist sufficient to warrant a review, the Department has authority, under the statute and regulations, to conduct such a review (*see* Section 751(b) of the Act and 19 CFR 353.22(f)(1)). In this case, the facts clearly demonstrate that there were changed circumstances sufficient to warrant a changed circumstances review. As noted in the *Notice of Initiation,* these changed circumstances are (1) the decision of the Court of Appeals for the Federal Circuit in *Daewoo Electronics Col, Ltd., et al.* v. *United States,* 6 F.3d 1511 (Fed. Cir. 1993), cert. denied, 114 S. Ct. 2672 (1994), which Samsung claims made it possible for the first time for it to contemplate the possibility of *de minimis* margins for three or more consecutive review periods; (2) as a direct result of that decision, Samsung was able to establish that it had not been dumping CTVs in the United States for six consecutive years; and (3) Samsung has not shipped CTVs to the U.S. since 1991.

Furthermore, petitioners have misunderstood the intended purpose of the procedural requirement that a respondent seeking revocation submit a *timely* request for revocation under § 353.25(b). The requirement of a timely filed request is not meant to bar consideration of a company-specific revocation for respondent. Rather, the purpose of the regulatory requirement is to ensure that the Department has adequate time to address the issues of revocation, to prepare for and conduct a proper verification as required under § 353.25(c)(2)(ii), and to ensure that all parties to the proceeding are provided with an opportunity to comment on the issues of revocation. Thus, the Department's decision to grant a changed circumstances review does not frustrate the purpose of the antidumping law or prejudice the parties to the proceeding. To the contrary, it is a reasonable exercise of the Department's authority, consistent with Section 751(b) of the Act and the Department's regulations.

We also disagree with petitioners' contention that revocation is not warranted because the Department's regulations prohibit revocation based upon no shipments. First, we have based revocation upon Samsung's six

consecutive years of zero or *de minimis* margins and a determination that resumption of dumping by Samsung is not likely, not the absence of shipments.[2] Furthermore, in amending its regulations on revocation, the Department stated that, in determining whether an order should be revoked under a changed circumstances review, the Department ''may consider among other things periods of no shipments.'' *Antidumping Duties, Final Rule*, 54 FR 12742, 12758 (Mar. 28, 1989). Thus, Samsung's lack of CTV shipments from Korea to the United States does not prohibit the Department from revoking the order as to Samsung. To the contrary, that fact may be taken into consideration.

Comment 2: Revocation Of The Order In Full

LGE, a Korean producer of the subject merchandise and an interested third party, argues that four significant changed circumstances exist since the imposition of the Korean CTV order nearly 14 years ago that warrant the revocation in full of the antidumping duty order on CTVs from Korea. First, LGE claims that there have been no commercially significant imports of CTVs from Korea since approximately 1989, despite zero or very low cash deposit rates for all major Korean exporters during this period. Therefore, LGE contends that the antidumping duty order offers no legitimate commercial benefit to the United States industry. Second, LGE states that the Department's administrative reviews established a pattern of sustained reduction, and ultimately virtual elimination, of the dumping margins found by the Department in its margin calculations for all Korean producers. Third, LGE asserts that Mexico has supplanted Korea and other Asian nations as the dominant supplier of CTVs to the U.S. market because many Korean, Japanese, and American CTV companies have shifted their production facilities that serve the U.S. market to Mexico. Fourth, due to the emergence of Mexico as the leading supplier of CTVs sold in the U.S. market, LGE doubts whether there continues to exist an industry engaged in the manufacture of CTVs—as distinct from color picture tubes (CPTs) and other components—in the United States.

Petitioners contend that, apart from the fact that LGE is unable to satisfy the basic requirements of the regulations and that LGE has been found to be dumping above *de minimis* levels during one of the last periods for which a review was conducted, LGE's comments fail on several grounds. First, LGE has not participated in this review except tangentially. Second, LGE has not addressed the significant changes caused by the recent economic downturn facing Korea which would cause it, like Samsung, to export its excess production capacity at LTFMV to obtain foreign exchange to service its debt. Third, petitioners contend that LGE, like Samsung, has not demonstrated that it is not likely to resume dumping, and therefore revocation must be denied.

*Department's Position:* In this case the Department initiated a changed circumstances review solely with respect to Samsung based upon specific facts demonstrating changed circumstances sufficient to warrant a review as to Samsung. Accordingly, this changed circumstances administrative review was not conducted with respect to any other company. Thus, the Department's determination in this review pertains exclusively to Samsung.

*Part II—Likelihood Comments*

Comment 3: Conditions And Trends In The United States Market

Petitioners argue that Samsung is likely to resume dumping CTVs in the U.S. market because U.S. CTV prices are steadily declining and will fall below foreign market value in the near future. Petitioners state that Samsung's weighted-average price data indicates that, for almost all screen sizes, particularly the large sizes, Samsung's U.S. prices have steadily decreased. More broadly, petitioners note that, although Samsung's prices fell in both the U.S. and Korean markets from 1991 through 1997, its U.S. prices fell approximately twice as fast as those in Korea. In addition, petitioners claim that the data Samsung obtained from the Electronics Industries Association (EIA), which lists the overall U.S. market sales volumes and average unit prices from 1954 through 1998 (projected), demonstrate significant, and continuing, price declines. Petitioners also claim that the price decline in the U.S. market will accelerate as Southeast Asian CTV producers respond to their need for increased revenue, precipitated by the Asian economic situation, by flooding the U.S. market with significantly discounted CTVs. Petitioners conclude that, as a result of declining U.S. prices, amplified by competition among cheap Southeast Asian imports, Samsung will be forced to lower its U.S. prices below foreign market value and resume dumping.

Petitioners also claim that the changing pattern of demand in the U.S. market makes Samsung likely to resume dumping CTVs, especially in the large (25- and 27-inch) and very large (31-inch and greater) product segments. In support of their argument, petitioners provide their estimates, by screen size, of demand in the U.S. CTV market from 1996 through the year 2000. Based on these estimates, petitioners contend that the U.S. market will exhibit growth in the large and very large product segments, while decreasing in the small (13-inch and less) and medium (19- and 20-inch) product segments.

In light of these data, petitioners argue that Samsung is currently adjusting its domestic production to reflect the shift in United States demand toward large and very large CTVs. As evidence of Samsung's shifting production pattern, petitioners provide their estimate of Samsung's Korean CPT production capacity, on a screen size basis, through the year 2000. According to petitioners, examination of these estimates indicates that Samsung is increasing its Korean production of large and very large-sized CPTs, while cutting back its Korean production of small and medium-sized CPTs. This point is especially relevant, state petitioners, because Samsung's CPT plant in Mexico can only produce medium-sized CPTs. Thus, Samsung could reserve its Mexican operations for production of medium-sized CTVs, which is the segment of the U.S. market petitioners claim is showing considerable decline, while exporting small and large CTV sizes directly to the United States from Korea.

Samsung characterizes the U.S. CTV market as stable and non-cyclical. As evidence, Samsung relies on the data it obtained from the EIA, which indicates that sales volumes in the U.S. CTV market, measured in units, have been steady throughout the 1990's, and that average unit prices have shown only slight erosion since 1993. Samsung also claims that this stability is mirrored in its own U.S. market prices for its Mexican-made CTVs.

Samsung responds to petitioners' allegation that it is adjusting its Korean production to reflect the growth in U.S. market demand for large and very large CTVs by making three points. First, Samsung states that during the eight administrative reviews in which it

[2] In 1991, Samsung ceased, and has not resumed, shipping CTVs from Korea to the United States. *See Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 59 FR 13700 (Mar. 23, 1994); *Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 38987 (July 31, 1995); and *Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 59402 (Nov. 22, 1996).

shipped CTVs to the United States from Korea, it never exported CTVs with screen sizes of 25 inches or more. Thus, Samsung states there is no basis on which to conclude that it would resume dumping large screen size CTVs since it never dumped them in the first place. Second, Samsung claims it has no need to ship large screen size CTVs from Korea to the United States because it can fully serve the large screen size market segment through its Mexican operations. Samsung notes that the Department verified in the now terminated anti-circumvention proceeding that all four of its production lines in Mexico can produce CTVs with screen sizes ranging from 25 to 31 inches. Third, Samsung asserts that its Korean CPT facilities cannot produce conventional CPTs (4:3 width-to-height ratio) for certain large screen sizes. For these reasons, Samsung concludes that it is not adjusting its Korean production operations to service better the U.S. market.

Department's Position: We disagree with petitioners' claim that Samsung is likely to resume dumping in the U.S. CTV market because, according to petitioners, U.S. prices are steadily declining and will fall below foreign market value in the near future. The U.S. CTV industry is a non-cyclical, mature industry historically characterized by modestly declining prices. Although declining U.S. prices and a competitive U.S. market were factors in rejecting requests for revocation in certain past cases, the evidence on the record of this case concerning U.S. market conditions is significantly different from that in past cases and does not support a similar conclusion.

For example, in DRAMS, the Department noted that the global DRAM industry is highly cyclical in nature with periods of sharp upturn and downturn in market prices. In the year prior to the July 1997 final results of administrative review, the world market experienced a year-long downturn, resulting in depressed prices and increased DRAM supply, from which it had not fully recovered by the time of the final results. We concluded that, due to price fluctuations, there was a large degree of uncertainty about the market's future direction. *See* DRAMS at 39816 and 39817. As discussed more fully below, the CTV industry is not characterized by the large cyclical swings found in the DRAMS industry and, therefore, does not experience periods of significantly depressed prices. *See* Samsung's February 13, 1998, submission at Exhibit H.

In another case, *TVs from Japan*, we found that prices in the U.S. television market had declined steadily during the six-year period immediately preceding the 1989 final determination not to revoke the order, imported televisions from countries other than Japan (many sold at LTFMV) had increased as a percentage of U.S. consumption, and that the competitive pricing pressures in the United States had become stronger with the emergence of Taiwan and Korea as significant television producers and exporters. We also noted in *TVs from Japan* that these market factors are important where there have been no shipments for many years, therefore limiting (Japanese) respondents' U.S. pricing information. *See TVs from Japan* at 35519.

However, *TVs from Japan* is substantially different from the current review because, in this case, we have evidence of how Samsung would price (compete) in a U.S. market characterized by significant dumped imports (*i.e.*, Samsung's pricing behavior in the U.S. market during the 1980s when it competed against dumped television receivers from Taiwan, Japan, and other Korean producers). When making our determination in *TVs from Japan* we did not have evidence indicating how the Japanese respondents requesting revocation (Sanyo and Hitachi) would compete in a U.S. market characterized by significant dumping, because they had stopped shipping before the orders on television receivers from Taiwan and Korea were issued. *See* Analysis Memorandum dated August 25, 1998. Therefore, even if Samsung were to resume shipments and compete against potentially dumped imports from Japan, Taiwan, and other Korean producers, the fact that Samsung received *de minimis* margins while competing against dumped imports during the period 1985 through 1991, supports a conclusion that Samsung is not likely to resume sales at LTFMV.

In a third case, *Brass Sheet and Strip*, we characterized the U.S. market for the subject merchandise as being mature, known for its price competitiveness, and a ''desirable market for foreign exporters, by virtue of its large size relative to other markets.'' *See Brass Sheet and Strip* at 49731. However, the Department's decision to reject the respondent's request for revocation was based on other significant factors, such as the respondent's under-utilized home market capacity, the severe decrease in shipments of subject merchandise to the United States since the imposition of the order, the appreciating home market currency, and the existence of a U.S. processing plant that required subject merchandise as feedstock. Unlike in *Brass Sheet and Strip*, the current review is not characterized by the combination of factors which support a conclusion that the respondent is likely to resume sales at LTFMV.

Samsung provided data it obtained from the EIA listing the total quantity, value, and the percentage of household penetration of sales in the U.S. CTV market from 1954 to 1998 (projected). *See* Samsung's February 13, 1998, submission at Exhibit H. Close examination of these data indicates that from 1980 through 1998, the annual average unit price for the U.S. CTV market has decreased, except for a period of five consecutive years, from 1989 to 1993, when prices increased. Specifically, these data indicate that CTV prices, as measured by the average annual rate of change, declined at a rate of 2.79 percent from 1980 to 1988, increased at a rate of 1.71 percent from 1989 to 1993, and decreased at a rate of 2.61 percent from 1994 through 1998. In addition, the EIA data shows that CTVs have held a household penetration of approximately 98 percent since 1993. The low rates of annual change in average unit prices, the fact that 12 of the last 18 years have been marked by modestly declining prices, and that the CTV market has had full household penetration since 1993, are consistent with the view that the U.S. CTV industry is a non-cyclical, mature industry.

Furthermore, we note that Samsung's own data supports our characterization of the U.S. CTV market. As noted above, Samsung placed on the record data concerning its prices of Mexican-produced CTVs sold in the U.S. market for the period 1991 through 1997. These data indicate that, as petitioners note, Samsung's prices in the U.S. market declined during this period.

Samsung received *de minimis* margins during the period April 1985 through March 1991. During the first four years, from 1985 to 1988, we note that the U.S. CTV industry experienced declining prices. Since the Department normally considers declining U.S. prices to be a factor that increases the likelihood of continued sales at LTFMV, we note that Samsung has demonstrated its ability to sell CTVs in the United States at fair value even in the face of these declining prices.

Furthermore, we disagree with petitioners' claim that Samsung is changing its Korean production to match what petitioners characterize as a shift in U.S. demand toward large and very large CTVs. Petitioners' basis for this argument is that, according to their estimates, Samsung is increasing its

production of large and very large CPTs, which will eventually have to be exported in the form of a completed CTV. As more fully discussed in *Comment 4* below, we conclude that a change in CPT production does not necessarily produce a corresponding change in CTV production. In addition, we note that Samsung's Korean CPT facilities cannot produce conventional CPTs for certain large screen sizes. More importantly, we agree with Samsung that its Mexican facilities fully serve the U.S. market with respect to CTVs ranging in screen size from 13 to 31 inches. We note that Samsung has an incentive to continue serving the U.S. market from Mexico, for all screen size CTVs because, among other things, such CTVs can receive duty-free treatment under the North American Free Trade Agreement (NAFTA), provided the merchandise meets the appropriate rules of origin, while CTVs from Korea are subject to import duties.

Lastly, petitioners have argued that the shift in U.S. demand toward large and very large CTVs, in combination with their estimate that Samsung is increasing Korean production of large and very large CPTs, is an incentive for Samsung to resume sales at LTFMV in the United States. As mentioned above, we disagree that an increase in large-size CPT production necessarily corresponds to an increase in large-size CTV production in Korea. Moreover, although we agree with petitioners that the large and very large CTV market segments are likely to continue to grow over time, while the smaller CTV segments are likely to shrink, it is not clear that this trend provides Samsung with any additional incentive to resume sales at LTFMV. It is not unreasonable to assume that, over the history of the CTV industry, demand has shifted toward larger screen sizes as each new, and larger, screen size was introduced as a result of technology advances. During its six-year period of *de minimis* margins in the 1980's, it is reasonable to assume that Samsung faced a similar shifting of demand toward screen sizes that were at that time the upper end of the CTV market, but was able to compete without LTFMV sales.

Comment 4: Home Market Conditions And Samsung's Korean Production Capacity

Petitioners argue that the Korean CTV market is in a depression and that prices are declining, although not as fast as in the U.S. market. Petitioners contend that this price decline and Korean demand decrease, coupled with Samsung's excess CTV capacity in Korea, will force Samsung to export its excess production to the United States at LTFMV.

Citing a newspaper article entitled ''1998 Home Electronics Product Forecast,'' which provides an overview of the state of the Korean consumer electronics industry and its prospects for 1998, petitioners state that in 1997, Korean demand for CTVs fell by 50,000 units, and, due to the economic slowdown triggered by the Asian economic situation, is expected to fall by another 5–10 percent in 1998. *See* petitioners' submission dated February 13, 1998, at Enclosure 10. Continuing their citation of the article, petitioners state that Korean CTV producers are expected to increase exports in order to sell production no longer being absorbed by the domestic market.

Petitioners also contend that Samsung has excess CTV capacity in Korea and that Samsung will dispose of this excess production by exporting it, most likely to the United States, at LTFMV. Petitioners state that Samsung and the other Korean producers expanded their capacity during the years preceding the Asian economic downswing. In order to calculate the aggregate Korean excess CTV capacity, petitioners subtract Korean CTV demand from Korean CPT capacity, for the years 1985 through 1996. Petitioners maintain that because the Korean market cannot absorb the excess CPT production, this excess must be exported as completed CTVs. Furthermore, petitioners state that the condition of excess CPT production over CTV demand in Korea will only increase as demand falls due to the Korean economy slowing as a result of the Asian economic situation. Korea's excess capacity, petitioners state, has contributed to a world-wide oversupply that has resulted in depressed CTV market conditions across the globe.

Petitioners contend that Samsung, in its position as one of the major Korean CTV producers and as a direct result of its history of expansion, helped create the current situation of excess capacity existing in the Korean CTV industry. Although Samsung's excess capacity contributed to the world-wide oversupply of CPTs, petitioners maintain that Samsung will not reduce its Korean CPT production in view of its dire need to raise hard currencies. On the contrary, petitioners claim, Samsung will postpone any domestic cuts in CPT production and, as newspaper articles have reported, increase its exports of CTVs to enhance revenue flow.

Petitioners also argue that Samsung's sales data concerning its CTV exports from Korea to third countries do not support its claim that it has no incentive to export Korean-produced CTVs to the United States. Although Samsung's data do indicate that exports to Russia, Iran and the United Arab Emirates increased substantially between 1995 and 1996, the data for the first half of 1997 indicate that, when annualized, Samsung's exports to these countries significantly declined. This trend in declining third country exports, petitioners claim, proves inaccurate Samsung's characterization of these markets as ''fast growing'' and further supports petitioners'' argument that Samsung has an incentive to export its excess CTV capacity to the United States.

Samsung disagrees with petitioners' argument that a decline in the Korean market's demand will lead to increased pressure to export CTVs to the United States. Samsung observes that the 50,000 unit decrease experienced in 1997, as referenced by petitioners, is an insignificant decrease considering that the Korean market exceeded 2.3 million units in that year. In regard to the 5–10 percent projected decline in 1998, Samsung notes that even if such a decline occurs, it will be offset by a concomitant decline in the market share of foreign CTV suppliers (currently about 7 percent) which will find it much more difficult to sell in Korea due to the devaluation of the won. Therefore, Samsung reasons, even if overall demand declines, Samsung can gain market share at the expense of more costly foreign CTVs, and not be faced with unsold inventory which would generate pressure to export. Moreover, Samsung states that even if it did face increased pressure to export CTVs due to a decline in domestic demand, there is no reason to assume such exports would go to the United States since Samsung's Korean facilities already serve other third countries with growing demand.

Samsung also asserts that petitioners use the phrase ''excess CPT capacity'' in a misleading manner, attempting to imply that Samsung, and the other Korean producers, have unutilized capacity which will force them to export CTVs. While Samsung does not contest that its Korean CPT production capacity exceeds its Korean CTV sales, it asserts that this larger CPT production exists because its Korean CPT production is export-oriented—*i.e.*, the CPTs not incorporated into CTVs sold in Korea are exported and sold to unrelated CTV producers in various third countries. Samsung claims that its Korean CPT production capacity is fully utilized and, as evidence, provides a chart listing its Korean CPT capacity, production, and utilization rates since 1993. Samsung explains that this chart

indicates that, by 1997, Samsung reduced its CPT capacity by a significant amount and experienced high utilization rates throughout the five-year period. Samsung explains that these utilization rates are the functional equivalent of full capacity, after accounting for yield loss and maintenance downtime. Based on the above reasons, Samsung concludes that petitioners' implication that it has substantial unused CPT capacity which would force it to export CTVs to the United States is incorrect.

Samsung also acknowledges that its Korean CTV production is larger than its domestic CTV sales. Samsung states that this is because its CTV production, as with its CPT production, is export-oriented. Specifically, Samsung states that its Korean CTV facilities produce CTVs for sale in Russia, the Middle East, and Africa. Samsung further states that its CTV facility is fully utilized due to its Korean sales and export sales to these third country markets. To support its claim, Samsung provides a chart listing its CTV capacity, production, and utilization rates from 1993 through 1997. Samsung explains that this chart indicates that its CTV facility operated at or in excess of full capacity during this period. Therefore, Samsung concludes that, assuming petitioners' theory was correct and it did have unused CPT capacity, Samsung does not have any excess CTV production capacity in Korea which could be used to absorb the alleged excess CPT capacity.

Samsung also provides 1996 data showing the total quantity of Korean-produced CTVs sold domestically and in third countries. Samsung asserts that these data show that its overall export strategy for Korea is well diversified and, specifically, that the markets in Russia, Iran, and the United Arab Emigrates are ''fast growing.'' Samsung concludes that even if there is a modest decline in Korean CTV demand, Samsung can offset that decline with exports to alternative third country markets. Samsung argues further that in *Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order,* 62 FR 17171, at 17174 (April 9, 1997) (*Steel Wire Rope 1997*) and *Frozen Concentrated Orange Juice From Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order,* 56 FR 52510 (October 2, 1991), the Department considered a respondent's showing that it was not ''solely dependent on the United States for financial viability'' as an important factor in granting revocation.

Furthermore, Samsung states that if petitioners are correct in their theory that, when Samsung's Korean CPT production capacity exceeds its domestic CTV sales, it will be forced to increase its CTV exports to the United States, then this theory must equally apply to Samsung's Mexican operations. Citing the Department's 1997 verification report of Samsung's Mexican facilities, generated in the context of the now terminated anti-circumvention inquiry of CTVs from Korea, Samsung states that these documents clearly indicate that its CPT capacity in Mexico far exceeds its Mexican CTV capacity. Samsung asserts that, according to petitioners' theory, the larger Mexican CPT capacity should place substantial pressure on Samsung to export CTVs to the United States from Mexico, rather than from Korea. Petitioners, Samsung concludes, have ignored this implication of their theory.

*Department's Position:* Although we agree with petitioners that prices in the Korean CTV market have been falling and that the current economic slowdown may increase this trend, we cannot conclude that it is likely that Samsung will export its production normally absorbed by the Korean market, but now left unsold, to the United States at LTFMV.

According to Samsung's data, petitioners are correct that Samsung's annual, weighted-average market prices in Korea declined at a small rate over the 1991 through 1997 period (averaged across all screen sizes). *See* Analysis Memorandum dated August 25, 1998. However, this rate of price decline is much smaller than that exhibited in other cases where revocation was ultimately denied. *See, e.g.*, DRAMS at 39816 and 39817 and Brass Sheet and Strip at 49730. Furthermore, Samsung's Korean and U.S. market price data, in addition to overall U.S. market price data, indicate that the CTV industry, in both Korea and the United States, exhibits a trend of consistent, yet gradual, price declines. Unlike DRAMS, the CTV industry is a mature, non-cyclical industry. Thus, the steep price declines that occurred in other industries that contributed to the Department's decision not to grant revocation are not present in the CTV industry.

Petitioners' claim that the current economic situation will cause a decrease in demand and accelerate the decline in prices in the Korean CTV market. Assuming that a decrease in demand occurs, we note that Samsung has several options from which to choose in meeting a potential slow-down in home market CTV demand. For example, Samsung could reduce its CTV production, discount its Korean CTV prices to stimulate consumer spending, or export unsold CTVs to third country markets. In regard to petitioners' claim that unsold Korean CTV production is likely to be exported to the U.S. market and sold at LTFMV, we note that Samsung has provided evidence that its Korean CTV facilities serve viable third country markets other than the United States. Therefore, we do not find that a potential decline in Korean CTV demand supports a conclusion that Samsung is likely to resume sales at LTFMV in the U.S. market.

Petitioners also claim that Samsung has excess CTV capacity in Korea and that Samsung will dispose of this excess production by exporting it, most likely to the United States, at LTFMV. In past cases, we have examined a respondent's production capacity when considering revocation. For example, in Brass Sheet and Strip, the Department found that excess capacity existed in the home market ''because [the respondent's] level of new orders had been unsatisfactory.'' With ''capacity utilization in the home market under threat'' from decreased new orders and increased pressure from imports into the home market, combined with a plant in the United States that processed the subject merchandise, among other factors described above, we determined that the respondent had an incentive to resume sales in the United States at LTFMV. *See* Brass Sheet and Strip at 49731.

In the instant case, petitioners claim that Samsung has excess CTV capacity in Korea by subtracting Korean CTV demand from aggregate Korean CPT production capacity. We note that subtracting CTV demand from CPT production is not an appropriate method to calculate excess CTV capacity. Rather, examining the capacity utilization rate of CTV production facilities is a more meaningful measure. Furthermore, petitioners' methodology is not consistent with, or as accurate as the one used in Brass Sheet and Strip, where we examined directly the degree to which the respondent was utilizing its production capacity for subject merchandise. Even if it were, we note that petitioners applied this methodology on a Korea-wide basis, rather than specifically to Samsung. Furthermore, we learned in the terminated anti-circumvention inquiry that Samsung produces its CPTs through its subsidiary company, Samsung Display Devices-Mexicana, S.A., which sells its CPTs not only to Samsung's own CTV production facilities, but also

to unaffiliated CTV manufacturers. *See* memorandum to the file, dated August 12, 1998, that transmits the verification report of the November 20–21, 1997, verification of Samsung-Mexico to the record of this review. For this reason, Samsung's CPT production is not captive for Samsung's CTV production only. Thus, the one-to-one relationship between CPT production and CTV production capacity relied upon by petitioners distorts the analysis of whether Samsung has excess CTV production capacity. For this reason, we do not find petitioners' methodology to be an accurate or meaningful way of measuring unutilized capacity for Samsung. To the contrary, following petitioners' rationale, we find Samsung's claims with respect to the export orientation of its CPT production to be more reasonable.

We agree with Samsung that the proper method of determining whether it has excess CTV production capacity is to examine whether its current CTV production facilities are fully utilized. To this end, Samsung provided its production, capacity, and resulting utilization rates for its CPT and CTV facilities from 1993 through 1997 in Exhibits 20 and 21 of its March 6, 1998 submission. The utilization rates presented by Samsung are the functional equivalent of full capacity, after accounting for yield loss and maintenance downtime. In our view, excess capacity would exist if Samsung's current facilities were underutilized or if Samsung were building additional CTV production facilities during a time when there was no unmet demand, either domestically or abroad, that would absorb the additional output. In this case, Samsung has not announced, nor have petitioners alleged, that Samsung is currently building, or will build in the future, additional CTV production facilities in Korea. In fact, Samsung's utilization charts indicate that it significantly reduced both CPT and CTV capacity in 1997. Therefore, we find that Samsung's high utilization rates indicate that its does not have excess CTV production capacity at this time that, according to petitioners, would have to be exported and likely sold in the U.S. market at LTFMV.

Comment 5: The Effects of the Asian Economic Downturn on Samsung

Petitioners claim that the recent Asian economic slowdown has affected Samsung in three ways: (1) foreign creditors are requesting repayment of loans in hard currencies, rather than in the depreciated Korean won; (2) foreign lenders are reluctant to offer new loans to Samsung so that it can roll-over its current debt; and (3) the drastic depreciation of the won makes repayment of foreign debt in hard currencies very expensive. These effects, state petitioners, are especially relevant because Samsung is currently operating under a very heavy debt load as a result of financing both its Korean and global expansion throughout the 1980's and 1990's with foreign debt. This large amount of debt is illustrated by the Samsung Group's 1997 debt-to-equity ratio of 267 percent. Petitioners contend that the combination of this large amount of debt, coupled with the negative effects of the Asian economic situation, has forced Samsung to enter a ''debt-service mode'' and consequently maximize revenues, rather than profits, in order to make loan repayments and survive. To obtain the hard currency revenue it needs to survive, petitioners argue that Samsung will dramatically increase its exports of all its products from Korea to the United States, with CTVs leading the export drive.

Pursuant to its need to maximize hard currency revenue, petitioners state that Samsung will face enormous pressure to lower its prices, thereby increasing the quantity sold and enhancing revenues. Petitioners cite the economic theory concerning the behavior of firms in ''debt-service'' mode, which states that a firm seeking to maximize revenue, as opposed to profits, is required to lower prices below the total unit cost of production. As long as the producer's price exceeds the marginal cost of production, the firm will enhance cash flow even if the price is below the total unit cost. Petitioners state that this type of pricing behavior is especially relevant because the CTV industry is capital-intensive and characterized by high startup costs and high fixed costs. Thus, the marginal cost of an additional unit being produced is well below that unit's total cost. Because of Samsung's need to raise hard currency to pay off foreign debt, and its excess production capacity that the Korean CTV market cannot absorb, petitioners conclude that Samsung is likely to export Korean CTVs to the United States and to price them below foreign market value.

Samsung disagrees with petitioners' portrayal of its foreign debt situation, claiming that it has not defaulted on any loans and has no difficulty obtaining additional debt and equity financing in the international marketplace. As support for its assertions, Samsung provided documentation showing recent security offerings, renewals and an extension of credit, and a lease agreement.

In response to petitioners' argument that Samsung is likely to dump CTVs because it is heavily in debt and has a large debt-to-equity ratio, Samsung provided its fiscal year end debt-to-equity ratio from 1984 through 1997. Samsung points out that during the period 1985 through 1991, when it received *de minimis* margins on the CTVs it shipped directly from Korea to the United States, its debt-to-equity ratio exceeded the 1997 rate. Additionally, although Samsung ceased shipments to the United States in 1991, its debt-to-equity ratio in 1991 through 1993 was higher than its current ratio. Samsung claims that under petitioners' theory, it would have desperately needed to export CTVs from Korea to the United States from 1991 to at least 1993 because it was in a ''debt-service mode'' at that time. The fact that it did not, Samsung asserts, disproves petitioners' claims. Furthermore, Samsung makes the point that the 1997 debt-to-equity ratio cited by petitioners is lower than the 1996 ratios for Philips Electronics N.V. and Thompson-CSF, the parent companies of two U.S. CTV producers. Samsung doubts that petitioners would claim that these two companies were in a ''debt-service mode'' in 1996 which compelled them to adopt a strategy of exporting CTVs below the cost of production in order to maximize revenue and survive.

Lastly, Samsung states that even assuming it had to export goods from Korea to the United States in order to survive, petitioners never provide evidence as to why Samsung must export CTVs, rather than other products it manufacturers, to service its debt. Samsung claims that relying on revenue from U.S. CTV sales would be a poor strategy and could not play a significant role in servicing its debt because its CTV sales in the U.S. market account for a small portion of its overall corporate sales. As support for this claim, Samsung provides documentation showing that its total 1996 CTV sales in the United States by its Mexican subsidiary accounted for a very minor portion of its total 1996 corporate sales.

*Department's Position:* We disagree with petitioners' allegation that as a result of the Asian economic downturn and its debt burden, Samsung is currently in a ''debt-service mode'' and, in order to service its debt, is compelled to adopt a strategy of exporting CTVs below the cost of production, thereby maximizing hard currency revenue. Although Samsung may be facing a high debt burden in light of the current economic downturn, the lack of CTV shipments from Korea to the United States during the 1991 to 1993 period,

when Samsung's debt-equity-ratio was higher than the current level, does not support petitioners' contention that Samsung is likely to export Korean CTVs to the United States because of its current debt situation.

As an initial matter, we note that, of the numerous newspaper articles petitioners submitted to the record of this proceeding concerning the effects of the Asian economic downturn on Korean companies and the Korean economy in general, the majority of articles reported the statements and actions of the Samsung Group, while only a few discussed how the decline specifically affected Samsung, the company subject to this review, and described what actions the company is taking in light of the situation. Petitioners, through their reliance on articles reporting the response of the Samsung Group, have implied that the actions of the group are synonymous with the actions of individual companies within the group, such as Samsung. Given that the Samsung Group consists of approximately 80 individual companies (see petitioners' February 13, 1998 submission at Enclosure 20) producing a wide array of products and services, we find that in this case the actions of the group are of limited value in our analysis of whether Samsung is likely to resume dumping CTVs in the U.S. market.

Of the few newspaper articles submitted by petitioners that specifically discuss Samsung, all of them indicate that Samsung intends to increase its Korean exports of a variety of products. Although the most commonly mentioned products designated by Samsung to lead its export drive are kitchen and household appliances, semiconductors, and telecommunications equipment, two articles include large screen and digital CTVs on this list. These articles, however, do not state the destination of the increased CTV exports and fail to mention that Samsung's Korean CTV operations are historically export-oriented, serving markets in Africa, the Middle East, and the republics of the former Soviet Union. However, in our preliminary determination, we stated that the issue of central importance in the final results of this review is whether Samsung is likely to resume dumping in the absence of an antidumping duty order, assuming that shipments occur. Therefore, arguments that Samsung will resume shipments directly from Korea are not enough.

The foundation of petitioners' argument that Samsung is likely to resume dumping as a result of the Asian economic downswing is their assumption that Samsung is currently operating under an extraordinary amount of debt. According to petitioners, this debt load, in conjunction with the drastic depreciation of the won, has made it very difficult for Samsung to obtain new loans and service its current debt. As a result, petitioners contend that Samsung must maximize revenues in order to survive, and will do so by exporting CTVs at LTFMV to the United States.

In response, Samsung stated that it has not defaulted on any loans and provided evidence that demonstrates it is able to obtain additional debt and equity financing in the international marketplace. Moreover, Samsung has shown that its debt load, as measured by its debt-to-equity ratio, was actually much higher in previous periods than it is now. From 1985 through 1991, when it received *de minimis* margins, Samsung had debt-to-equity ratios significantly higher than the 1997 ratio cited by petitioners. *See* Samsung's March 6, 1998 submission at 20. See also the August 25, 1998, Analysis Memorandum. Furthermore, from 1991 to 1993, which were the first three years in which Samsung had ceased CTV shipments to the United States, Samsung's ratio was even higher than the 1985 to 1991 period.

Thus, the facts of this case do not support petitioners' theory that Samsung's current level of debt would compel Samsung to resume shipments of CTVs from Korea to the United States at LTFMV. As Samsung correctly states, petitioners' theory implies that because Samsung was servicing substantial debt during the 1985 to 1993 period, it must have sold CTVs in the U.S. market at LTFMV, which it did not do. Since Samsung had significantly higher debt-to-equity ratios during periods in which it had *de minimis* margins or no shipments, we are not persuaded by petitioners' arguments.

Comment 6: Currency Movements

Petitioners argue that CTV producers in Malaysia, Singapore, Thailand, and Indonesia are competitively advantaged over Samsung because the currencies of these countries devalued to a greater extent than the won during the Asian economic decline. Moreover, petitioners claim that because CTV producers in these countries are also in a ''debt-service mode'' and have greater excess capacity than Samsung, they can be expected to flood the U.S. market with deeply discounted CTVs. In order to stay competitive and maximize revenue, petitioners maintain that Samsung will have to match the U.S. prices of its Southeast Asian competitors, which will quickly be reduced to dumping levels.

According to petitioners, the currencies of Malaysia, Singapore, Thailand, and Indonesia significantly depreciated against the U.S. dollar from the last half of 1997 through January 1998, as the Asian economic situation unfolded. Citing the exchange rates from this period, petitioners assert that the magnitude of the Southeast Asian devaluations often surpassed that of the Korean won. Moreover, petitioners observe, that since reaching its nadir on December 23, 1997, the won appreciated by 28 percent while the Malaysian ringgit, Thai baht, and Singapore dollar depreciated by 9 percent, 13 percent, and 3 percent, respectively. Petitioners claim that the won's recent appreciation *vis-a-vis* the other Southeast Asian currencies permits producers in these countries to discount their U.S. prices to a greater extent than Samsung. Petitioners state that the reduction in export value resulting from the depreciation of the won will not be enough to prevent Samsung from selling at LTFMV because it will have to drastically lower its U.S. prices to match the deeply discounted prices of its Asian competitors. Petitioners further state that, since Samsung's costs and prices are denominated in the relatively stronger won, and because some of Samsung's parts and components are not sourced locally in Korea, the same devaluation that provides a margin of safety in price comparisons correspondingly results in a rise in costs of production, which will increase the likelihood of sales at LTFMV in the United States.

Second, petitioners argue that the excess capacity of producers in Malaysia, Singapore, Thailand, and Indonesia, as measured by aggregate Southeast Asian CPT capacity minus aggregate Southeast Asian CTV demand, is greater than the combined excess capacity of the Korean producers. For this reason, petitioners assert that the Southeast Asian producers will dispose of their excess inventory by exporting it to the United States. Petitioners state that the ensuing rounds of competitive pricing among the imports will drive down the U.S. market price of CTV imports in all screen size categories, and that Samsung, in order to stay competitive, will be forced to match these prices, which will most likely be below normal value.

Third, petitioners state that the Southeast Asian suppliers, unlike Samsung and the other Korean CTV producers, are not currently subject to a U.S. antidumping duty order. Therefore, petitioners state, they are not

constrained to sell at normal value in the United States and are free to reduce their export prices to whatever level is necessary to dispose of their excess capacity. Petitioners also claim that Southeast Asian CTV producers, like Korean producers, are struggling under large debt burdens and are motivated to maximize revenue by increasing exports to the United States. Petitioners conclude that the fierce competition among increasing cheap Asian imports will force suppliers in the U.S. market to engage in rounds of head-to-head price reductions. According to petitioners, Samsung's need to maximize revenue will force it to participate in the price reductions, leading Samsung to sell CTVs at LTFMV.

In regard to currency movements, Samsung states that it received *de minimis* margins in the fourth through eighth administrative review periods (April 1986 through March 1991), which were periods when the Korean won appreciated against the dollar compared to the exchange rates prevailing in calendar year 1985.

Samsung responds to petitioners' allegation by stating that the CTV producers in Southeast Asia are primarily subsidiaries of foreign multinational companies that would not undermine their significant North American operations by shipping CTVs from their Southeast Asian facilities to the United States. Samsung provides a chart indicating that the producers in Malaysia, Indonesia, Thailand, Singapore, and the Philippines are subsidiaries of Japanese, Korean, and American CTV manufacturers. Samsung argues that the facilities within Southeast Asia primarily serve the Asian markets rather than the U.S. market, because the Asian plants are at a competitive disadvantage to plants in the United States and Mexico due to higher shipping and inventory costs, as well as the five percent U.S. import duty on CTVs. Samsung asserts that it makes no economic sense for these multinational producers to ship CTVs to the United States from Southeast Asia and thereby undercut their significant North American operations.

Furthermore, Samsung observes that U.S. import statistics for January through November 1997 indicate that approximately 90 percent of CTV exports from Southeast Asia to the U.S. market were of the small and medium screen sizes. *See* petitioners' February 13, 1998 submission at 39 for the above-referenced statistics. Petitioners, Samsung notes, have made the argument that, since the U.S. demand is growing for large and very large CTVs, Samsung has adjusted its Korean production to reflect this shift and can be expected to export these sizes should the Department grant revocation. Samsung states that petitioners have also made the argument that stiff competition from Southeast Asian producers will drive down U.S. prices to dumping levels because these producers have excess capacity that will be exported to the United States and enjoy a competitive advantage over Samsung due to the currencies of Southeast Asia depreciating to a greater extent than the Korean won. However, Samsung asserts, the import statistics indicate that exports from Southeast Asia currently compete in segments of the U.S. market (*i.e.*, small and medium screen sizes) which petitioners argue will not be the primary target of Samsung's Korean exports.

Samsung claims that Singapore was the one country that exported significant volumes of larger size CTVs to the United States during the January to November 1997 period. Samsung states that Philips, Sanyo, Toshiba, and Mitsubishi, the primary producers in Singapore, will do nothing to undercut their North American production facilities. Moreover, Samsung asserts that producers in Singapore are at a comparative disadvantage *vis-a-vis* Samsung and the other Korean producers because the Korean won depreciated further than the Singaporean dollar did in 1997. Samsung also states that, although the won depreciated more than the Singapore dollar, it depreciated approximately the same as the Thai baht and Malaysian ringgit since December 1996. This roughly equivalent depreciation, Samsung argues, provides no competitive advantage to producers in Thailand or Malaysia. Samsung, however, does acknowledge that the Indonesian rupiah depreciated more than any other Southeast Asian currency. Although this drastic depreciation would imply a competitive advantage for Indonesian producers, Samsung dismisses this implication by stating that Indonesia is not a meaningful supplier of CTVs to the United States.

Lastly, Samsung argues that many producers in Southeast Asia often purchase many CTV parts from related and unrelated producers outside the region. Samsung surmises that Southeast Asian producers may not be able to lower significantly their cost of production in dollar terms, or reduce their final dollar price, because these parts account for the bulk of the cost of production of CTVs and the dollar cost of these parts is not affected by the depreciation of the local currencies.

*Department's Position:* We disagree with petitioners' argument that Samsung is likely to sell CTVs in the U.S. market at LTFMV because the currencies of other Southeast Asian countries have depreciated further than the Korean won, thereby granting a competitive advantage to CTV producers in these countries, who can be expected to flood the U.S. market with deeply discounted imports and drive down U.S. prices to extremely low levels.

Petitioners' argument that Samsung is likely to resume sales at LTFMV because of the recent currency movements precipitated by the Asian economic downswing is based upon the assumption that Korean and other CTV producers essentially compete against one another only on the basis of price. Due to this assumption, petitioners argue that a greater depreciation in Southeast Asian currencies *vis-a-vis* the won necessarily means that Samsung will have to lower its U.S. price to stay competitive with CTV producers from these countries who export subject merchandise to the United States and are benefitting from the deeper currency depreciations. We disagree with petitioners' assumption that CTV producers compete only on the basis of price. We note that CTVs are not commodity products; they are produced in several different sizes, vary in quality, are visually distinct due to differently styled cabinets, and contain different types and quantities of features. Certain producers can also command a price premium on their CTVs due to brand name recognition. For these reasons, it is plausible to conclude that consumers include differences in size, features, brand name, and other factors into their decision when purchasing a CTV. Therefore, we find that CTV producers compete against one another with respect to more than price alone.

The ramification of petitioners' argument that CTV producers compete only on the basis of price is that if a foreign producer lowers its U.S. price, as may happen from a home market currency devaluation, then all other producers must fully match this price decrease or they will be uncompetitive, eventually lose market share and possibly exit the market. Due to the product differentiation discussed above, it is reasonable to assume that a price reduction by one CTV producer does not necessarily mean that competitors must follow suit to the same degree. The strength of a brand name or feature mix may be sufficient to allow a producer to

remain competitive, even in the face of decreasing prices by competitors.

Moreover, there are many factors that, in combination, constitute the competitive position of a producer in relation to its competitors. The relative strength of a producers' home market currency is only one such factor. While a devaluation of the other Southeast Asian currencies may make producers in these countries more competitive in the U.S. market, it also increases these producers' cost of capital and imported inputs, and may cause home market prices and costs to rise. For example, if a producer in Indonesia imports a large percentage of the parts and components used to produce a CTV in Indonesia, the deep depreciation of the rupiah may increase the production costs to a degree that might actually diminish this producers' overall competitive position rather than enhance it. Therefore, while it is correct that a depreciating currency may tend to decrease the pressure for a respondent to make LTFMV sales in the U.S. market, these linkages are not absolute and must not be considered in isolation. With respect to this case, there is very little information on the record concerning Samsung's home market costs or to what degree Samsung and the other Southeast Asian producers import parts and components used in the production of CTVs. Therefore, there is not sufficient evidence on the record to say conclusively how the exchange rate movements of the won and other Southeast Asian currencies have affected the competitive position of Samsung and CTV producers in these countries.

Petitioners assert that the Southeast Asian currencies depreciated further than the Korean won, which grants a competitive advantage to producers in these countries. Although this may have been the situation in December 1997, more recent exchange rate data indicates that this is no longer the case. We examined the exchange rates for the Singapore dollar, Indonesian rupiah, Malaysian ringgit, Thai baht, and Korean won from December 31, 1996, through June 30, 1998. *See* petitioners' submission dated February 13, 1998, at 37. *See* also the Analysis Memorandum, dated August 25,1998. Using the petitioners' methodology of indexing each currency's exchange rate data to the spot rate that prevailed on December 31, 1996, we were able to analyze the relative depreciations of the five Southeast Asian currencies. We found that by June 1998, the Singapore dollar and baht depreciated the least, retaining over 80 percent of their indexed value, while the rupiah depreciated the most, retaining only 20 percent of its indexed value. Although the won and ringgit depreciated at different rates over the length of the period we analyzed, by June 1998, the indexed exchange rates for these two currencies had converged to roughly the same point, with each currency retaining over 60 percent of its indexed value. These data indicate that only one currency, the rupiah, has consistently depreciated further than the won and, as Samsung points out, U.S. import statistics provided by petitioners indicate that Indonesia is not a significant supplier of CTVs to the U.S. market. Given Samsung's history of receiving zero or *de minimis* dumping margins in the face of an appreciating currency (*see* Samsung's February 13, 1998, submission at 8) and a larger debt burden than the debt experienced in 1997 (*see Comment 5* above), we find that the weight of the evidence on the record indicates that Samsung is not likely to resume dumping in the U.S. market.

Petitioners support their main argument that Samsung is likely to resume sales at LTFMV because the won has depreciated less than the other Southeast Asian currencies by making several allegations concerning the CTV producers in other Southeast Asian countries. In order to address each of petitioners' concerns, we provide the following discussion.

With respect to petitioners' allegation that Southeast Asian CTV producers have large excess capacity that will motivate them to dispose of their surplus inventory by exporting it to the United States, as we noted in *Comment 4* above, subtracting CTV demand from CPT production is not an appropriate method to calculate excess CTV capacity. Rather, examining the capacity utilization rate of a company's CTV production facilities is a more meaningful measure. Since petitioners have not placed any evidence on the record concerning the utilization rates of the CTV factories in Southeast Asia, we are not able to agree with petitioners' conclusion that producers in these countries have excess capacity.

Petitioners also claim that, because Southeast Asian CTV producers are not constrained by U.S. antidumping duty orders and are suffering from the negative effects of the Asian economic situation, they will increase exports to the United States and engage in aggressive price reductions that will eventually force Samsung to dump. Petitioners are correct in that the Department does not currently have any antidumping duty orders on CTVs from Malaysia, Indonesia, Singapore, or Thailand, and that Southeast Asian producers therefore do not have an externally enforced discipline on their pricing behavior. Since there is nothing on the record of this proceeding to indicate significant increases in exports and aggressive pricing by Southeast Asian producers, we disagree with petitioners that the absence of an antidumping duty order on CTVs from the Southeast Asian countries provides any additional incentive to producers from these countries to sell their merchandise at low prices, leading Samsung to eventually sell CTVs at LTFMV.

Finally, since petitioners have placed no data on the record of this review concerning the financial condition of CTV producers in Southeast Asia, we cannot agree with petitioners that these producers carry unmanageable debt loads, are unable to service their current debt, and are therefore forced to increase their exports to the United States at very low prices. Therefore, we disagree with petitioners that these factors, in conjunction with their main argument concerning currency movements, are likely to force Samsung to compete in the U.S. market at LTFMV.

Comment 7: Ability To Compete In The United States Market Without LTFMV Sales

Petitioners argue that Samsung's own cost and pricing data show that Samsung is likely to sell its CTVs in the U.S. market at below FMV. In its questionnaire response dated February 24, 1997, Samsung submitted price and cost information covering the period 1991 through the first half of 1996 for its sales and expenses of Korean-produced CTVs in Korea and its sales of Mexican-produced CTVs in the United States. With respect to its price data, Samsung reported its distributor sales prices, calculated as a single weighted-average price for all models within each screen size category. Korean prices and costs were converted to U.S. dollars with the weighted-average exchange rate for the first half of 1996.

Using the weighted-average price data reported by Samsung, petitioners compared U.S. market prices to Korean market prices and found that the U.S. prices for 25-, 27-, and 31-inch CTVs were consistently lower than those in Korea throughout the 1991–1996 period. With respect to 13-, 19-, and 20-inch CTVs, petitioners claim that, although Samsung's data were more varied throughout the 1991–1996 period, by the first half of 1996, U.S. prices were lower than Korean prices for these screen sizes. Thus, petitioners contend that these weighted-average price-to-price comparisons indicate that

significant dumping margins would exist if Samsung resumed CTV shipments directly from Korea. Petitioners defend their use of U.S. prices of Mexican-produced CTVs in their comparisons to Korean CTV prices because Samsung's cessation of CTV shipments directly from Korea has made current pricing data of CTVs produced in Korea and sold in the United States impossible to obtain. Given the competitive market for CTVs in the United States, petitioners assert it is reasonable to presume that Samsung's prices in the United States would not vary depending on the production location.

Furthermore, petitioners claim that the data for the first half of 1996 indicates that Samsung was selling at below its cost of production in the home market for 31-inch CTVs. In this situation, petitioners contend that the Department would not rely on Samsung's home market price to calculate the dumping margin, but would instead resort to constructed value (CV). Using a CV methodology, based on adding a profit amount to Samsung's cost of production to determine the appropriate normal value, petitioners perform a CV-to-price comparison for 31-inch CTVs and calculate an even higher dumping margin. Moreover, petitioners argue that the dumping margin based on CV is not eliminated even if Samsung's cost of production is converted into U.S. dollars at the significantly depreciated January 1998 exchange rate.

In their case brief, petitioners also compare specific 28- and 32-inch CTV models sold in Korea and the United States using 1997 retail prices obtained from a U.S. and Korean consumer electronics catalog. Petitioners use the January 1998 exchange rate to convert the retail prices of the Korean models to U.S. dollars, compare the converted Korean price to the retail price of comparable 32-inch models sold in the United States, and then calculate dumping margins. Petitioners state that any true comparison of home market and U.S. prices should be based on actual selling prices to distributors, with circumstance-of-sale adjustments, difference-in-merchandise adjustments, and adjustments for movement charges, data which is only available to Samsung and has not been provided on the record of this proceeding. Petitioners contend that these basic comparisons support their claim that Samsung is likely to resume dumping, especially in the large and very large screen models, should shipments directly from Korea recommence.

Petitioners conclude that Samsung's own price data and the retail price data from Korea and the United States indicate that Samsung cannot compete in the U.S. market without sales at LTFMV. According to petitioners, it is entirely predictable that Samsung has resolved to reenter the U.S. market and, in the face of competing and aggressively priced imports, will be forced to price its Korean CTVs unfairly. Petitioners note that Samsung has not sold a Korean-produced CTV in the United States for nearly seven years. By emphasizing that it has chosen to supply the U.S. market from Mexico, petitioners maintain that Samsung has acknowledged that it cannot competitively produce, ship, and sell CTVs to the United States from Korea. Petitioners conclude that Samsung's six years of *de minimis* margins provide no evidence of any current ability to compete without unfair pricing if the order were revoked.

Samsung responds to petitioners' allegation that its price and cost data reveal that dumping is likely to occur by stating that petitioners have relied upon stale 1996 data for their weighted-average price-to-price comparisons rather than using the more recent 1997 data Samsung submitted on the record of this proceeding. For example, Samsung states that using the price data for the first half of 1997 and the January 1998 exchange rate, the weighted-average price of its 31-inch CTVs sold in Korea, after being converted in dollar terms, is well below the weighted-average price for its 31-inch (Mexican-produced) CTVs sold in the U.S. market.

Samsung further states that any type of weighted-average price-to-price comparison of Korean CTV models to U.S. CTV models is invalid. Samsung argues that, although it is true that the price information it submitted shows that the weighted-average price of all models of a particular screen size sold in the United States were often lower than the weighted-average price of all models of that same screen size sold in Korea, petitioners incorrectly conclude that this is evidence that dumping would resume. According to Samsung, this conclusion is erroneous because weighted-average prices mask the fact that individual model prices within a particular screen size can vary widely. Samsung elaborates that the model mix and features contained in the models sold in the United States and Korea are significantly different. Samsung states that CTVs sold in Korea have a larger number of expensive features than the models its sells in the United States. In order to show that the lower U.S. weighted-average prices are accounted for by the differences in features between U.S. and Korean models, Samsung conducts a model-to-model comparison of its largest selling U.S. models (Mexican-produced) to the most physically similar models produced and sold in the Korean market and makes adjustments for selling expenses, duty drawback, and physical differences. According to Samsung, these comparisons indicate that Korean prices did not exceed U.S. prices for these models.

Using similar logic, Samsung argues that the problems inherent in comparing weighted-average prices also apply to comparing weighted-average costs of production. For this reason, Samsung claims that petitioners' allegation of below-cost sales in the home market is not valid because that allegation is based on a comparison of weighted-average costs of production to weighted-average prices, per screen size.

In regard to petitioners' comparison of specific 28- and 32-inch models, Samsung claims that these comparisons are invalid for several reasons. First, petitioners use Korean and U.S. retail prices, rather than wholesale prices, to demonstrate that Samsung would be likely to sell CTVs in the United States at dumped prices. Samsung states in its questionnaire response that it has two levels of trade in the United States, sales through its U.S. distribution subsidiary and sales Samsung describes as being to original equipment manufacturer (OEM) customers. Since it does not sell at the retail level in the United States, Samsung contends that retail prices should not be used in a ''likely'' dumping calculation. Second, Samsung claims that the Korean retail prices used by petitioners include special excise tax, value added tax, and other taxes which together total a significant percent of the wholesale price. Additionally, Samsung states that the Korean retail prices do not include the substantial rebates it usually grants to its customers. Third, Samsung claims that the Korean 28- and 32-inch models used by petitioners are not comparable to the United States models because the Korean models have a 16:9 CPT width/height ratio while the U.S. 32-inch models have a 4:3 ratio. Samsung asserts that the materials cost of a wide-screen CPT is greater than the cost of producing a normal screen CPT, and, therefore, any comparisons of these models at issue for dumping purposes would be distorted.

Samsung argues that its six years of *de minimis* margins, from the third through eighth reviews, constitute substantial evidence that it can compete in the United States market without pricing CTVs at LTFMV. Samsung notes that

during this six-year period of no dumping, its level of shipments to the United States remained substantial, its product mix remained varied, and it received *de minimis* margins even during periods of significant appreciation of the won (the fourth through eighth review periods). Most importantly, Samsung notes that it has invested millions of dollars in its Mexican production facilities that can, and do, fully serve the United States market. Samsung concludes that it has no need to ship CTVs from Korea to the United States, and even if it did, there is no evidence indicating that it would dump them on the U.S. market.

*Department's Position:* We disagree with petitioners' claim that Samsung is not able to compete in the U.S. market without LTFMV sales. In arguing their point, petitioners conduct rough dumping margin calculations on Samsung's U.S. and home market prices, both on a weighted-average by screen size basis and on a model-specific basis. We acknowledge that any type of dumping margin analysis conducted in this review is problematic due to Samsung's cessation of CTV shipments to the United States from Korea in early 1991. Unlike the pricing analyses conducted in past cases such as DRAMS and Brass Sheet and Strip, in this case a pricing analysis cannot be based on a comparison of home market and U.S. prices of Korean-produced CTVs, as the latter price is not available due to the cessation of shipments. Rather, in this case, the comparison involves home market prices of Korean-produced CTVs to U.S. prices of Mexican-produced CTVs. It is reasonable to presume that prices of Mexican- and Korean-produced CTVs reflect the cost structure of producing CTVs in Mexico and Korea, respectively. While the cost structures of Mexican and Korean CTVs vary, we conclude that in this case, use of the U.S. price for Mexican-produced CTVs is a reasonable surrogate for the U.S. price of Korean-produced CTVs because Samsung's pricing of its Mexican-produced CTVs sold in a competitive market, such as the U.S. market, provides some indication of the price for which Samsung's Korean-produced CTVs would be sold. Moreover, we note that there are no other pricing data available pertaining to Samsung.

In DRAMS, unlike the instant case, we determined the DRAM industry to be ''highly cyclical in nature with periods of sharp upturn and downturn in market prices.'' *See* DRAMS at 39810. Due to the position of the United States as the ''world's largest regional market for DRAMs, with considerable potential growth,'' we determined that companies had the economic incentive to ''ride out industry downturns'' in order to maintain market share. *See* DRAMS at 39819. The fact that DRAM producers had historically been found to have dumped during downturns supported our conclusion. However, in this case, we have determined that the U.S. CTV industry, as described in our discussion of *Comment 3* above, is not highly cyclical and does not have ''periods of sharp downturn and upturn in market price.'' Rather, the U.S. CTV industry is a competitive and mature industry, that has reached approximately 98 percent household penetration. Samsung's reported U.S. prices and the price data it provided for the overall U.S. CTV industry indicate that this industry is generally stable, exhibiting a historic trend of modest, annual price decreases. *See Comment 3* above. Since Samsung received *de minimis* margins during four consecutive years of price decreases, from April 1985 through March 1988, we determine that it has demonstrated the ability to compete in the U.S. market without LTFMV sales.

In their analysis, petitioners compared the weighted-average prices Samsung reported, by screen size, for its Korean and U.S. sales. Based on this comparison, petitioners argue that Samsung's Korean prices are higher than its U.S. prices in the large and very large product segments, which indicates that dumping would occur given the resumption of shipments. We disagree with this conclusion. First, we note that comparing weighted-average prices between the Korean and U.S. markets is problematic, as Samsung states, because in the CTV industry the prices of individual models within the same screen size category can vary widely, the model mix within each screen size is different across markets, and the types and quantity of features contained in specific models are significantly different between markets. Since Korean models may contain a larger number of expensive features, this may account, at least in part, for the differences in prices observed by petitioners for the 25-, 27-, and 31-inch CTVs sold in the two markets. Absent evidence to the contrary on the record of this proceeding, it is not unreasonable that the Korean weighted-average price for a given screen size is higher than the U.S. weighted-average price in that same size. Moreover, the model-to-model comparisons that Samsung conducted, in order to show that the lower U.S. weighted-average prices are accounted for by the differences in features between U.S. and Korean models, showed that after adjusting the initial prices of the Korean and U.S. models for selling expenses, duty drawback, and physical differences, the alleged dumping margins suggested by the models' unadjusted prices were eliminated. *See* Samsung's letter to the Secretary, dated August 22, 1997, at Exhibit A. These comparisons were done for 13 of Samsung's largest selling U.S. models, accounting for approximately 50 percent of its total U.S. sales, and support the conclusion that the petitioners' analysis cannot be relied upon as a basis to determine that Samsung is likely to resume sales at LTFMV.

In regard to petitioners' allegation of below-cost sales in Korea, we agree with Samsung that in the CTV industry, comparing the weighted-average cost of production to the weighted-average home market price on a screen size-specific basis is problematic because prices and costs of production of individual models within the same screen size category can vary widely due to the differences in the types and quantities of features contained in specific models. This reasoning is especially relevant in large and very large screen sizes, which tend to contain more features than smaller CTVs.

With respect to petitioners' comparison of prices for specific 28- and 32-inch models sold in the U.S. and Korean markets, we agree with Samsung that these comparisons are of limited value because these prices have not been adjusted for taxes, rebates, and other expenses and that some of the models compared to one another contain CPTs of different width/height ratios.

In addition, during its six years of *de minimis* margins, Samsung exported substantial quantities of subject merchandise in a varied product mix. *See* Samsung's submission dated February 13, 1998, at page 8. This fact pattern is different from Brass Sheet and Strip, where we denied partial revocation of the order because, among other factors, the respondent had ''severe decreases in shipments of brass sheet and strip to the U.S. since the imposition of the order,'' culminating in the respondent selling at not LTFMV a single model in a single transaction during the eighth administrative review of that order. Additional evidence that Samsung can compete in the U.S. market without LTFMV sales is that Samsung's shipments from Korea occurred while the won was appreciating.

Comment 8: Third Country Trade Restrictions

Petitioners state that Samsung's Korean CTV operations are extremely export-oriented and that the United States, due to its open economy, is the likely recipient of these exports. As evidence, petitioners note that the United States duty rate on the majority of imported CTVs is 5 percent, in contrast to the 14 percent external tariff found within the European Union (EU). More importantly, petitioners observe that the EU has placed antidumping duties against Korean and other Southeast Asian CTVs. Specifically, the EU imposed on Samsung antidumping duties of up to 10.5 percent on small CTVs and 13.7 percent on all other sizes that are shipped directly from Korea. Thus, petitioners conclude, Samsung faces cumulative ordinary and antidumping duties on exports to Europe of up to 27.7 percent, as compared to an antidumping duty deposit of zero and an ordinary duty rate of 5 percent on exports to the United States.

Petitioners argue that, contrary to Samsung's assertions, its strategy of localizing production within its major CTV markets around the world may have more to do with gaining access to markets with barriers to CTV imports than with relative advantages in terms of production or shipping costs. Although Samsung claimed in its questionnaire response that it has not faced any barriers to exporting CTVs, petitioners maintain that the recurring pattern of having sales within a third country jump significantly once the local facility began production supports the thesis that market barriers provided the incentive to establish local production. Therefore, petitioners conclude that because Samsung faces significant trade restrictions in third countries, as its localization strategy implicitly acknowledges, it has a strong incentive to ship its excess CTV production to the United States and, in combination with the other factors discussed by petitioners, sell this merchandise at LTFMV in the U.S. market.

Samsung does not dispute the regular and antidumping duty rates provided by petitioners for the EU and United States. However, Samsung notes that these European duties have been in effect since 1990 and have not compelled Samsung to export CTVs to the United States from Korea during the last eight years. In regard to barriers to trade in third countries, Samsung stated in its questionnaire response that it has not encountered any barriers to trade in third countries that have made it difficult to sell CTVs in those counties. Samsung claims that its localization strategy was adopted in order to reduce costs and meet demand in markets within each localized facility's geographic region.

*Department's Position:* Although the topic of third country trade restrictions goes more toward the issue of whether Samsung is likely to resume shipping, rather than dumping, we provide the following discussion in order to address fully all of petitioners' concerns.

We disagree with petitioners' argument that tariff barriers in major CTV markets will motivate Samsung to export CTVs to the United States from its Korean production facilities and sell such exports at LTFMV. Petitioners observe that Samsung's Korean exports face cumulative ordinary and antidumping duties in Europe of up to 27.7 percent, while, if the U.S. antidumping duty order is revoked, such exports are subject to the smaller 5 percent regular tariff in the United States. Therefore, petitioners state that it is reasonable to conclude that a large volume of Samsung's CTV exports from Korea will be shipped to the United States.

In past cases, we have examined trade restrictions in third country markets in making its determination on the likelihood of the respondent resuming sales at LTFMV. In TVs from Japan, we agreed with the petitioner's argument that since other countries (specifically, the EU) had instituted more restrictive import controls over consumer products, the Japanese producers would increasingly depend on sales in the U.S. market. *See* TVs from Japan at 35519. However, the issue of whether the Japanese producers had other, substantial CTV markets besides the U.S. and EU was not addressed in the final determination of that case. More recently, we have stated that it is important to examine whether the respondent is ''solely dependent on the U.S. for financial viability'' and if it made significant sales in other third countries when considering revocation. *See* Steel Wire Rope 1997 at 17174. In the case of Samsung, the facts demonstrate that the company has access to third country markets and, thus, does not rely solely on the U.S. market.

For example, petitioners' argument that Samsung has an incentive to resume shipments to the United States because it faces high import barriers in the EU, a major CTV market, fails to take into account Samsung's CTV operations in Eastern and Western Europe, which Samsung states serve the CTV markets of these two regions. *See* Samsung's February 24, 1997, submission at Appendix 1. The existence of these operations limits the importance of EU trade restrictions on Samsung's Korean-produced CTVs in our analysis of whether Samsung is not likely to resume dumping in the U.S. market in the absence of an antidumping duty order.

In addition, petitioners' argument does not take into account that Samsung's Mexican operations have served the U.S. market since 1991. In the context of the terminated anti-circumvention inquiry, the Department verified Samsung's Mexican CTV production facilities. As the verification report states, the Department found that these facilities include a CTV assembly plant, parts and components plant, CPT plant, a proposed glass plant, and several feeder plants established and operated by unrelated Korean suppliers to Samsung. *See* the memorandum to the file, dated August 12, 1998, that transmits the November 26, 1997, verification report to the record of this review. From these facilities, Samsung produces CTVs ranging from 13 to 31 inches that are sold throughout North, Central, and South America. During the first half of 1997, most of the Mexican-produced CTVs exported to the United States enter the country duty-free under NAFTA tariff preference provisions. Using the same logic employed by petitioners, that Samsung will export CTVs to the market with the lowest tariff barriers, we can only conclude that Samsung will continue to service the U.S. market from Mexico because CTVs produced in Mexico can enter the U.S. duty-free under NAFTA, provided they meet NAFTA rules of origin. In addition to its Korean and Mexican facilities, Samsung also has CTV production operations in West Europe, East Europe, East Asia, and South East Asia. *See* Samsung's February 24, 1997, questionnaire response at Appendix 1. Because Samsung has access to these markets based upon its localization process, the third country restrictions to trade are not significant in this case.

Comment 9: New Technologies—High-Definition Television

Petitioners contend that although this changed circumstances review should not be used as a surrogate scope inquiry, high-definition television (HDTV) and other new technologies, are within the scope of this order and the development of such technology should be factored into the Department's revocation analysis. Specifically, petitioners state that HDTV will be capable of producing a video image and receiving a television

signal, and that these features in and of themselves are sufficient to satisfy the scope requirements. In regard to Samsung's claim that HDTVs will include other features or be used for purposes other than receiving a broadcast signal, petitioners state that these claims were not dispositive in the *Final Affirmative Scope Ruling—Antidumping Duty Order on Color Television Receivers from Taiwan (A–583–009); Coach Master International Corporation,* 63 FR 805 (January 7, 1998), and should not be so here. Furthermore, petitioners assert that the Department has consistently found that new technologies, such as liquid crystal diode TVs, are included within the scope of the CTV order. *See, e.g., Television Receiving Sets, Monochrome and Color, from Japan,* 56 FR 66841 (December 26, 1991). Petitioners maintain that in these cases, uncertainties about the future marketing, prices, or demands have never been dispositive factors in deciding whether these new technologies are within the scope of the order.

Petitioners claim that Samsung has consistently denied throughout the course of this segment of the proceeding that it would be producing HDTVs, or any other new television technology, in Korea. As evidence for their assertion, petitioners cite excerpts from Samsung's questionnaire response and subsequent submissions where Samsung characterized its current state of HDTV development as still in the research and development stage, where mass production was not in the foreseeable future. In actuality, petitioners argue, Samsung has invested millions of dollars into developing this technology and has reached the point where mass production of HDTVs is scheduled to begin during the second half of 1998. In support of its argument, petitioners note that Samsung displayed a fully functional HDTV unit at the January 1998 consumer electronics show in Las Vegas, Nevada. Petitioners explain that the promotional literature Samsung distributed during the trade show described the new, proprietary digital television chipset architecture Samsung developed and discussed the long list of features the HDTV model will contain.

Petitioners also claim that Samsung's argument that HDTV production will not occur for many years away due to, in part, the long schedule for transition to digital broadcasting is suspect because Samsung, in its own promotional literature, includes the Federal Communications Commission's transition schedule, which states that by May 1999, 20 percent of the U.S. population will be able to receive digital signals and, by November 2000, digital signal broadcasts will cover 50 percent of the U.S. population. Petitioners maintain that these numbers indicate that in just over two years, half of the U.S. television market will be receiving digital signals and potentially be ready to purchase a digital receiver.

According to petitioners, the first type of HDTVs sold in the United States will be projection-style CTVs. Petitioners assert that because Samsung does not produce projection-style CTVs in Mexico, it does not currently have the capacity to assemble projection-style HDTVs in Mexico. However, since Samsung sells and presumably produces the projection-style CTVs in Korea, combined with the fact that Korea has recently adopted the advanced television systems committee (ATSC) standard for digital broadcast, petitioners conclude that Samsung has the ability and motivation to produce projection-style HDTVs in Korea for sale in the Korean market and export to the United States.

Petitioners also argue that HDTVs are likely to be sold in the United States at less than normal value. Petitioners base this allegation on an estimate by Thomson Consumer Electronics (Thomson) that the cost of manufacture for a projection-style HDTV will be a large multiple of the cost of manufacture for a 31-inch CTV. Starting with Samsung's 1996 cost of production for a 31-inch conventional CTV, petitioners convert this cost to U.S. dollars using the January 1998 exchange rate, and then inflate this amount by a large multiple to arrive at an estimate of Samsung's cost of production for a HDTV. Using Samsung's 1996 financial statement, petitioners calculate amounts for SG&A expenses, interest expenses, and profit. These amounts are added to their estimated cost of production to produce a final CV for HDTV. Petitioners then take Samsung's estimated retail U.S. price range for HDTVs and reduce it by a certain percentage to adjust for retail markup. Petitioners claim that without making further adjustments to the U.S. price to account for freight and other movement expenses involved in transporting the HDTVs from Korea to the United States, a CV-to-price comparison indicates that Samsung would be dumping its HDTVs in the United States.

Samsung argues that HDTV will be outside the scope of the order on Korean CTVs because this new technology does not meet the four criteria for determining whether ''later-developed-merchandise'' is within the scope of an outstanding order. First, with respect to physical characteristics, Samsung notes that HDTVs use a digital signal technology, while conventional CTVs use non-compatible analog technology. HDTV will have a 16:9 width/height ratio compared to a 4:3 ratio for a conventional CTV. HDTV will have advanced hardware and software that allows it to display roughly twice the resolution of a conventional CTV. Additionally, HDTV will have the ability for interactive use and receipt of data services. Second, Samsung claims that due to the better picture and sound quality, along with the data service capability, the expectations of an ultimate purchaser of a HDTV will be vastly different from those of a purchaser of a conventional CTV. Third, with respect to the ultimate use of HDTV, Samsung contends that it will differ significantly from a conventional CTV precisely because of the interactive function and the ability to receive data transmission, such as stock pricing, home shopping information, and electronic newspapers. Fourth, Samsung states that it is highly unlikely that it will sell HDTVs through the same channels of distribution as it sells conventional CTVs. Since HDTVs will have a price of over $5,000, Samsung will have to sell HDTVs through dealers which specialize in high-tech and luxury products, rather than its current distribution channel of companies selling more affordable products, such as Circuit City, Best Buy, Sears, and Wal-Mart. For these reasons, Samsung concludes, HDTVs will not be within the scope of the order on Korean CTVs and, therefore, the development of such technology should not be considered a factor in the Department's revocation analysis.

Samsung states that HDTV is a very new and complicated technology, and it will take many years for CTV producers to develop the ability to mass produce HDTV sets. As support, Samsung cites several press articles that indicate the HDTV market will be characterized by prohibitively high prices, low sales volume, and slow market penetration. For these reasons, Samsung states that it does not intend to produce HDTV in commercial quantities in the reasonably foreseeable future.

More specifically, Samsung states that commercial production cannot begin until it completes all three stages of research and development. Samsung states that it has completed only the first stage, development of a prototype, as evidenced by the functional unit displayed at the January 1998 consumer electronics trade show. Samsung claims that the second and third stages, respectively the development

verification test and the manufacturing verification test, have yet to begin. However, Samsung contends that these stages cannot begin until the ATSC approves the software standards for HDTV. Samsung claims that this approval is not expected until September 1998.

Samsung contends that in addition to the technical reasons preventing immediate commercial production, such production is not feasible until broadcasters have converted to digital signals. According to the regulations governing this transition, conversion to digital broadcasting in the United States is not scheduled for completion until the year 2002, at the earliest. Until the transition is completed, Samsung argues, the market in the United States will not be large enough to justify commercial production of HDTVs. Therefore, due to the technical restrictions and the long transition schedule, Samsung concludes that commercial production of HDTV in the United States is at least four years away.

Samsung next argues that when commercial production begins, it will occur in Mexico, rather than in Korea, because it makes economic sense to do so. Samsung claims that it will be more expensive to produce HDTVs in Korea, rather than Mexico, for the following reasons: (1) Samsung would have to pay freight costs on many of the components used in its HDTV design because most of the major components are manufactured in the United States and Japan, (2) shipping, transportation, and inventory charges would be higher due to the large size of rear-projection sets, and (3) Samsung would have to pay the regular 5 percent duty on finished CTVs if HDTV is ultimately determined to be within the scope of the CTV order. Samsung concludes that most of these expenses would be avoided if Samsung produced the HDTV units in Mexico. Lastly, Samsung contends that there is no material difference in the nature of the assembly facilities in Mexico and Korea, as the Department verified in the context of the terminated anti-circumvention inquiry. Samsung claims that in both facilities new HDTV production lines will need to be constructed and petitioners have not provided evidence to the contrary. Although petitioners argue that Samsung's existing production capacity in Korea for rear-projection convention CTVs offers an economic advantage to locating production of rear-projection HDTVs in Korea, Samsung states that petitioners have provided no evidence to substantiate their claim. Samsung states that petitioners have excellent information sources within the CTV industry and could have provided factual information concerning the characteristics or cost of an HDTV production line or the ability of a producer to utilize and/or convert an existing conventional rear-projection CTVs production line to produce HDTVs. According to Samsung, the fact that petitioners did not provide such evidence indicates that there is no credible reason why Samsung cannot produce HDTVs in Mexico.

Samsung argues that petitioners' estimate of the likelihood of Samsung dumping HDTVs in the United States is based on wholly unsubstantiated allegations concerning Samsung's price and cost structure, which has yet to be established because Samsung has not started to sell or commercially produce HDTVs. Specifically, Samsung states that petitioners have no concrete basis for their HDTV cost allegation, but instead must rely on a cost estimate certified by Thomson. Furthermore, Samsung states that petitioners' claim that Thomson's cost of manufacture of a projection-style HDTV is a large multiple of the cost of a 31-inch CTV, is inherently unreliable given the enormous technical differences between analog CTV and HDTV. Lastly, Samsung argues that petitioners' effort to adjust the expected U.S. retail price for HDTVs to the wholesale level by adjusting for a ''typical retail mark-up'' is problematic given that no retail or wholesale sales have been made by any producer.

*Department's Position:* This discussion should not be viewed as a surrogate scope inquiry. In an official scope inquiry, parties typically place on the record very technical data, including product specifications, of a product that has actually been produced and sold in the United States. There is no such data on the record in this segment of the proceeding. However, based on the presumption that the scope covers all CTVs unless expressly excluded, the Department will consider, as we did in TVs from Japan, the development of new technology in our analysis of whether it is not likely that Samsung would renew dumping. *See* TVs from Japan at 35519.

Although we agree with petitioners that HDTV is presumed to be subject merchandise within the scope of the order for purposes of this changed circumstances review, we cannot reasonably conclude, based on the record evidence, that Samsung is likely to sell HDTV at LTFMV, even if Samsung were to produce such merchandise in Korea. The fact that an industry is developing new technologies is not, by itself, a sufficient argument on which to base a claim that these new technologies are likely to be dumped. There must be credible evidence to indicate not only that these new technologies are soon to be introduced into the U.S. market, but also that such merchandise is likely to be sold at LTFMV. In TVs from Japan, we found that new technological trends in the television industry, such as LCD TVs, were likely to be developed and produced in Japan and that ''the incentive to sell such products at LTFMV will depend on competitive market pressures.'' *See* TVs from Japan at 35519. Furthermore, we stated that ''given the number of companies currently pursuing new technologies and the high production costs in Japan combined with the high value of the yen,'' we could not conclude that there was no likelihood of selling new products at LTFMV in the future. *Id.* at 35519. The Department found that the evidence on the record of that case indicated that new technologies were to be produced in the home market (Japan), the home market currency (the yen) was appreciating, home market production costs were high, and that competition would be strong given the number of companies pursuing such technology. Based on the totality of the circumstances in that case, the Department could not conclude that the respondents (Sanyo and Hitachi) were not likely to sell the new products at LTFMV in the future.

In this case, the petitioners' arguments with respect to sales of HDTV being sold at LTFMV are not persuasive. First, HDTV technology has been under development for more than 10 years and has yet to become commercially viable. Second, the fact that petitioners' estimate of Samsung's cost of production for HDTV is based on the cost of production for an 31-inch analog CTV, which is technically very different from HDTV, is problematic because it is highly speculative of the real costs of HDTVs. Samsung has not produced or sold commercial quantities of HDTV. Moreover, the estimates provided by petitioners cannot reasonably be relied upon because petitioners have not demonstrated any cost relation between 31-inch analog CTVs and HDTV, nor have they explained the derivation or calculation of the large multiple used in their analysis. Absent some reasonable explanation, the Department cannot rely on those highly speculative estimates as a valid indicator of the cost of production for HDTV.

Although in past cases we have found that new technology is developed in the home market (*i.e.*, TVs from Japan), we

cannot reach the same conclusion in this case. Specifically, we note that the bill of materials Samsung provided for its HDTV prototype revealed that none of the four major components (*i.e.*, the chipset, CPT, lens, and screen panel) were produced in Korea. In light of the won's depreciation, the cost of importing these components has risen and may be a disincentive to Samsung in keeping HDTV production in Korea. Therefore, based on the evidence on the record, we cannot conclude that HDTVs, once fully developed by Samsung, will be produced in Korea or dumped in the United States.

*Affirmative Final Determination of Changed Circumstances*

Based on the foregoing analysis, we determine, pursuant to Section 353.25(d) of the Department's regulations, that changed circumstances warrant partially revoking the antidumping duty order on CTVs from Korea with respect to merchandise exported by Samsung that is also manufactured by Samsung. Pursuant to our final results, we will instruct the U.S. Customs Service (Customs) to end the suspension of liquidation of merchandise subject to the order on CTVs from Korea, as it applies to Samsung, on or after the publication date of this notice of final determination, and to refund any estimated antidumping duties collected, for all unliquidated entries of such merchandise made on or after the publication date of this notice of final determination. We will also instruct Customs to pay interest on such refunds in accordance with Section 778 of the Act.

This final affirmative changed circumstances determination is in accordance with Section 751(b) of the Act and 19 C.F.R. 353.22(f).

Dated: August 26, 1998.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 98–23669 Filed 9–1–98; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–560–802]**

### Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**EFFECTIVE DATE:** September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mary J. Jenkins or Irene Darzenta Tzafolias, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1756 or (202) 482–0922, respectively.

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to 19 CFR part 351 (62 FR 27296; May 19, 1997).

*Amended Preliminary Determination*

We are amending the preliminary determination of sales at less than fair value for certain preserved mushrooms from Indonesia to reflect the correction of a ministerial error made in the margin calculations in that determination. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

*Case History*

On July 27, 1998, the Department preliminarily determined that certain preserved mushrooms from Indonesia are being, or are likely to be, sold in the United States at less than fair value (63 FR 41783; August 5, 1998).

On July 29, 1998, we disclosed our calculations for the preliminary determination to counsel for PT Dieng Djaya(Dieng)/PT Surya Jaya Abadi Perkasa (Surya), and PT Zeta Agro Corporation (Zeta). On August 3, 1998, we disclosed our calculations to counsel for petitioners.

On August 3, 1998, we received a submission, timely filed pursuant to 19 CFR 351.224(c)(2), from Dieng/Surya and Zeta alleging ministerial errors in the Department's preliminary determination. In their submission, Dieng/Surya and Zeta requested that these errors be corrected and an amended preliminary determination be issued reflecting these changes.

We did not receive ministerial error allegations from the petitioners. On August 11, petitioners filed comments on respondents' allegations. However, because it not the Department's practice to consider replies to comments submitted in connection with a preliminary determination under 19 CFR 351.224(c)(3), we did not consider these comments.

*Amendment of Preliminary Determination*

The Department's regulations provide that the Department will correct any significant ministerial error by amending the preliminary determination. See 19 CFR 351.224(e). A significant ministerial error is an error the correction of which, either singly or in combination with other errors: (1) would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin of greater than *de minimis*, or vice versa. *See* 19 CFR 351.224(g).

After analyzing Dieng/Surya and Zeta's submission, we have determined that a ministerial error was made in the margin calculation for Dieng/Surya and Zeta in the preliminary determination. Specifically, we inadvertently used programming language that incorrectly applied the number of cans per carton in the constructed value (CV) data base.

Dieng/Surya and Zeta also alleged that the Department made three additional ministerial errors by: (1) overlooking record evidence of an Indonesian respondent in the calculation of CV profit and selling expenses, (2) failing to calculate combined weighted-average export prices for Dieng/Surya, and (3) incorrectly calculating general and administrative expenses for CV. However, the Department has determined that none of these errors is in fact a ministerial error as defined in 19 CFR 351.224(f), and therefore, did not consider them at this time. See Memorandum to Louis Apple from The Team, dated August 20, 1998, for further discussion of Dieng/Surya and Zeta's ministerial error allegations and the Department's analysis.

Pursuant to 19 CFR 351.224(g)(1), the ministerial error acknowledged above for Zeta is not significant. Therefore, we have not recalculated the margin for Zeta. However, with regard to Dieng/Surya, because the correction of the ministerial error results in a difference between a weighted-average dumping margin of greater than *de minimis* and a weighted-average dumping margin of *de minimis*, the Department hereby amends its preliminary determination with respect to Dieng/Surya to correct this error. In addition, we have recalculated the ''All Others Rate.''

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded the *de minimis* margin from the calculation of the ''All Others Rate.''

The revised weighted-average dumping margins are as follows:

| Exporter/Manufacturer | Weighted-average margin percentage |
|---|---|
| PT Dieng Djaya/PT Surya Jaya Abadi Perkasa. | 0.42% (de minimis) |
| PT Zeta Agro Corporation. | 29.58% |
| All Others ..... | 29.58% |

*Suspension of Liquidation*

We will instruct the U.S. Customs to discontinue the suspension of liquidation of all entries of mushrooms from Indonesia produced/exported by PT Dieng Djaya/PT Surya Jaya Abadi Perkasa. In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to suspend liquidation of all other entries of mushrooms from Indonesia that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amount by which the normal value exceeds the U.S. price as show above. These instructions will remain in effect until further notice.

*International Trade Commission Notification*

In accordance with section 733(f) of the Act, we have notified the International Trade Commission of the amended preliminary determination.

This amended preliminary determination is published pursuant to section 777(i) of the Act and 19 CFR 351.224(e).

Dated: August 26, 1998.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 98–23668 Filed 9–1–98; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcement of a Partially Closed Meeting of the Manufacturing Extension Partnership National Advisory Board

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's (NIST's) Manufacturing Extension Partnership National Advisory Board (MEPNAB) will meet to hold a meeting on Thursday, September 17, 1998. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was set up, under the direction of the Director of NIST, to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by a state, federal and local partnership. The Board works closely with the MEP to provide input and advise on MEP's programs, plans, and policies. The purpose of this meeting is to delve into areas the Board selected at the previous meeting. The agenda includes a presentation by the co-chairs of the Next Generation Manufacturing Extension Partnership group under the United States Innovation Partnership on their vision for the future of manufacturing extension, MEP's work with client firms to increase their international competitiveness, and plans for a review of the process MEP uses to evaluate the centers. The portion of the meeting which involves personnel and proprietary budget information, will be closed to the public. All other portions of the meeting will be open to the public.

**DATE AND ADDRESS:** The meeting will convene on September 17, 1998, at 8:00 a.m. and adjourn at 3:30 p.m. and will be held at the Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, Washington, DC, Room 4830. The closed portion of the meeting is scheduled from 8:00–9:00 a.m.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration with the concurrence of the General Counsel Formally determined on August 12, 1998, pursuant to Section 10(d) of the Federal Advisory Committee Act, that these portions of the meeting may be properly closed because they are concerned with matters that are within the purview of 5 U.S.C. 522(c)(4), (6) and (9)(b). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

MEP's services to smaller manufacturers address the needs of the national market as well as the unique needs of each company. Since MEP is committed to providing this type of individualized service through its centers, the program requires the perspective of locally based experts to be incorporated into its national plans. The MEPNAB was established at the direction of the NIST Director to maintain MEP's focus on local and market-based needs. The MEPNAB was approved on October 24, 1996, in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2., to provide advice on MEP programs, plans, and policies; to assess the soundness of MEP plans and strategies; to assess the current performance against MEP program plans, and to function in an advisory capacity. The Board will meet three times a year and reports to the Director of NIST. This will be the third meeting of the MEPNAB in 1998.

**FOR FURTHER INFORMATION CONTACT:** Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–5033.

Dated: August 24, 1998.

**Robert E. Hebner,**

*Acting Deputy Director, NIST.*

[FR Doc. 98–23671 Filed 9–1–98; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Membership of the National Oceanic and Atmospheric Administration Performance Review Board

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of membership of NOAA Performance Review Board.

**SUMMARY:** In accordance with 5 USC, 4314(c)(4), NOAA announces the appointment of persons to serve as members of the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The

appointment of members to the NOAA PRB will be for periods of 24 months.

**EFFECTIVE DATE:** The effective date of service of appointees to the NOAA Performance Review Board is September 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Monica M.P. Matthews, Executive Resources Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0534 (ext. 204).

**SUPPLEMENTARY INFORMATION:** The names and position titles of the members of the NOAA PRB (*NOAA officials unless otherwise identified*) are set forth below:

James D. Belville: Director, NEXRAD Operational Support Facility, National Weather Service
Jeffrey R. Benoit: Director, Office of Ocean and Coastal Resource Management, National Ocean Service
Irwin T. David: Chief Financial Officer/ Chief Administrative Officer, National Weather Service
Margaret A. Davidson: Director, NOAA Center for Coastal Ecosystem Health, National Ocean Service
John T. Forsing: Director, Eastern Region, National Weather Service
Susan B. Fruchter: Counselor to the Under Secretary, Office of Policy and Strategic Planning
Margaret F. Hayes: Assistant General Counsel for Fisheries, Office of the General Counsel
Bruce B. Hicks: Director, Air Resources Laboratory, Office of Oceanic and Atmospheric Research
Jay S. Johnson: Deputy General Counsel for Fisheries, Enforcement and Regions, Office of the General Counsel
John E. Jones, Jr.: Deputy Assistant Administrator for Weather Services, National Weather Service
David M. Kennedy: Chief, Hazardous Materials Response and Assessment Division, National Ocean Service
Gerald R. Lucas: Director, Eastern Administrative Support Center, Office of Finance and Administration
Gary C. Matlock: Director, Office of Sustainable Fisheries, National Marine Fisheries Service
P. Krishna Rao: Senior Scientist for Environmental Satellite, Data and Information Service, National Environmental Satellite, Data and Information Service
James L. Rasmussen: Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research
Michael P. Sissenwine: Science and Research Director, Northeast Region, National Marine Fisheries Service
Louis W. Uccellini: Director, Office of Meteorology, National Weather Service
Rance A. Velapoldi: Chief, Surface and Microanalysis Science Division, Chemical Science and Technology Laboratory (National Institute of Standards and Technology)
James K. White: Executive Director for the Economics and Statistics Administration (Economics and Statistics Administration)
Gregory W. Withee: Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service
Helen M. Wood: Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data and Information Service
Sally J. Yozell: Deputy Assistant Secretary, Office of the Assistant Secretary

Dated: August 26, 1998.

**D. James Baker,**

*Under Secretary for Oceans and Atmosphere.*

[FR Doc. 98–23623 Filed 9–1–98; 8:45 am]

**BILLING CODE 3510–12–P**

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Meeting

**AGENCY:** National Assessment Governing Board; Education.

**ACTION:** Notice meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Design and Methodology Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

*Dates:* September 9, 1998.
*Time:* 10 a.m. to 12:00 noon.
*Location:* 800 North Capitol Street, NW., Suite #825.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washingon, DC 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001.

On September 9, 1998 in open session, 10:00 a.m. to 12:00 p.m., the Design and Methodology Committee will hold a teleconference meeting to approve the Year 2 Research Designs and an addendum to the Pilot Test Design for the Voluntary National Tests.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 98–23572 Filed 9–1–98; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### International Energy Agency Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet September 10, 1998, in Castelgondolfo, Italy.

**FOR FURTHER INFORMATION CONTACT:** Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202–586–6738.

**SUPPLEMENTARY INFORMATION:** In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on September 10, 1998, at the Conference Center of Agip Petroli, Villa Montecucco, Viale Bruno Buozzi, 14, 00040 Castelgondolfo, Italy, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Approval of Record Notes
2. Evolution of IEA Emergency Response Measures and the Changing Role of Companies

3. New Antitrust Coverage
4. Issues for the IEA Under Expanded Co-ordinated Emergency Response Measures (CERM) Coverage
5. IEA Emergency Response Exercise
6. Industry Supply Advisory Group (ISAG) Manager's Report
7. Alternatives to Using Group Discussions During a Crisis
8. 1999 Standing Group on Emergency Questions (SEQ) Work Program
9. IAB Administrative Issues

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, August 27, 1998.

**Mary Anne Sullivan,**

*General Counsel.*

[FR Doc. 98–23648 Filed 9–1–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[FE Docket No. 98–40–NG]**

### Office of Fossil Energy; Enron Capital & Trade Resources Corp.; Order Granting Long-Term Authorization to Import Natural Gas from Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Order.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Enron Capital & Trade Resources Corp. (ETC) long-term authorization to import up to 30,390 Mcf per day of natural gas from Canada. The authorization is for a 10-year term commencing November 1, 1998, through October 31, 2008, or for 10 years after the commencement of deliveries if deliveries begin after November 1, 1998. This gas may be imported from Canada at the international border point near Noyes, Minnesota (Emerson, Manitoba), or at alternative border points with transportation facilities accessible by ETC.

This Order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., August 27, 1998.

**John W. Glynn,**

*Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum Import and Export Activities, Office of Fossil Energy.*

[FR Doc. 98–23647 Filed 9–1–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[IC98–521–001 FERC–521]**

### Federal Energy Regulatory Commission

### Information Collection Submitted for Review and Request for Comments

August 28, 1998.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier notice issued may 20, 1998, 63 FR 28999, May 27, 1998.

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received on or before October 2, 1998.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

Michael Miller may be reached by telephone at (202) 208–1415, fax at (202) 273–0873, and by e-mail at michael.millerferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

**Description**

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERN–521 ''Headwaters Benefits''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* MOB No. 1902–0087. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Section 10(f) of the Federal Power Act (FBP). Section 10(f) of the FPA directs the Commission to determine the benefits downstream parties receive from the operation of storage reservoirs or other headwater improvements. The purpose of determining the benefits is for assessing the downstream beneficiaries for a part of the annual costs for the headwater project. The data required to be filed is specified by 18 Code of Federal Regulations (CFR) Sections 8.11 and 141.14.

5. *Respondent Description:* The respondent universe currently comprises on average, 15 respondents subject to the Commission's jurisdiction.

6. *Estimated Burden:* 600 total burden hours, 15 respondents, 1 response annually, 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 600 hours ÷ 2,088 hours per year x $109,889 per year = $31,577, average cost per respondent = $2,105.

**Statutory Authority:** Section 10(f) of the Federal Power Act (EPA), 16 U.S.C. 803.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23639 Filed 9–1–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–735–000]**

## Caprock Pipeline Company; Notice of Application

August 27, 1998.

Take notice that on August 21, 1998, Caprock Pipeline Company (Caprock), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–735–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon certain pipeline facilities in Texas and Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Caprock proposes to abandon in its entirety all of its interstate pipeline system located in Texas and Oklahoma partially by sale to Westar Transmission Company (Westar), an intrastate affiliate of Caprock, and partially by sale to Natural Gas Pipeline Company of America (Natural), an interstate affiliate of Caprock. It is stated that the facilities consist of the Gaines-Yoakum Pipeline (14.5 miles of 10-inch pipeline in Texas) being abandoned by sale to Westar and the Beckham-Wheeler Pipeline (1.88 miles of 20-inch pipeline in Beckham County Oklahoma, and Wheeler County, Texas), being abandoned by sale to Natural. It is asserted that both Westar and Natural will operate the facilities as part of their respective systems and will assume all service obligations and operational and economic responsibilities for the subject facilities.

It is explained that the facilities to be sold to Westar will be conveyed at $490,297, and that the facilities to be sold to Natural will be conveyed at $523,645, both amounts to be adjusted to the actual net book value on the date of transfer. Caprock asserts that the facilities sold to Westar will be nonjurisdictional following the transfer and requests a finding that they will be exempt from Commission regulation. Caprock states that there will be no interruption, reduction, or termination of service to existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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 or 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. Any 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 the 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 own 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 Caprock to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23592 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL98–53–000]**

## Cincinnati Gas & Electric Company, et al.; Notice of Comment Period

August 26, 1998.

At the Midwest Electric Pricing Issues conference held August 14, 1998, in Rosemont, Illinois, interested parties were invited to file written observations or comments on the issues addressed at that meeting. Any comments should be filed on or before September 14, 1998. They should be filed in Docket No. EL98–53–000.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23644 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT98–88–000]**

## Dynegy Midstream Pipeline, Inc.; Notice of Filing

August 28, 1998.

Take notice that on August 21, 1998, Dynegy Midstream Pipeline, Inc. (formerly Warren Transportation, Inc.), in conjunction with its request to redesignate the certificate of public convenience and necessity of Warren Transportation, Inc. to reflect the new name of the pipeline—Dynegy Midstream Pipeline, Inc.—filed a complete copy of its proposed FERC Gas Tariff, First Revised Volume No. 1 (Original Sheet Nos. 1 to 295).

Dynegy Midstream states that the proposed tariff is the current Warren Transportation Inc. tariff, revised only to reflect the new name of the pipeline on the tariff sheet headings and in the text of the tariff, and to incorporate changes pending in Docket Nos. RP98–280 and MT98–14.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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. 98–23642 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–736–000]**

## K N Interstate Gas Transmission Co.; Notice of Application

August 27, 1998.

Take notice that on August 21, 1998, K N Interstate Gas Transmission Co.

(K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–736–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon certain pipeline facilities in Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

K N proposes to abandon by sale to Westar Transmission Company, an intrastate affiliate, facilities comprising the western portion of the Buffalo Wallow Pipeline System, located in Hemphill County, Texas. K N states that Westar will operate the facilities as part of its intrastate system and agrees to assume all service obligations and operational and economic responsibilities for the facilities. It is explained that the facilities to be sold to Westar will be conveyed at $4,768,809, to be adjusted to the actual net book value on the date of transfer. K N asserts that the facilities sold to Westar will be nonjurisdictional following the transfer and requests a finding that they will be exempt from Commission regulation. K N states that the proposed abandonment will not result in any interruption, reduction, or termination of service to existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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 or 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. Any 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 the 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 own 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 K N to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23593 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–742–000]**

## Koch Gateway Pipeline Company; Notice of Application

August 27, 1998.

Take notice that on August 24, 1998, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–742–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon four obsolete natural gas transportation services formerly provided to Shell Oil Company (Shell), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, the services that Koch Gateway is proposing to abandon were performed under Koch Gateway's Rate Schedules X–32, X–35, X–36, and X–95. It is stated that Shell concurs with the proposed abandonments, and that no facilities are proposed to be abandoned. Koch Gateway avers that the abandonment of the inactive and obsolete services will relieve Koch Gateway of the associated certificated obligations and will have no impact on the operation of Koch Gateway's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1998, 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 or 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. Any 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission Rules of Practice and Procedure, a hearing will be held without further notice before the Commission's 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own 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 Koch Gateway to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23588 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–724–000]**

## Maritimes & Northeast Pipeline, L.L.C., Notice of Request Under Blanket Certificate

August 27, 1998.

Take notice that on August 13, 1998, as supplemented on August 20, 1998, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211(b)). Maritimes seeks authorization to install, own and operate a one-half mile, 16-inch diameter natural gas lateral line and certain other natural gas facilities in Cumberland County, Maine. These facilities will establish a new delivery point for Gorham Energy Limited Partnership (Gorham Energy) which is proposed to be in service on November 1, 1999. This request is made in accordance with the authority granted Maritimes in its blanket certificate issued in Docket No. CP96–178–000, under Part 157, Subpart F of the

Commissions' Regulations. The details of Maritimes' request are more fully set forth in the request which is on file with the Commission and open to public inspection.

Maritimes says that Gorham Energy has requested and Maritimes has agreed to establish a new delivery point near milepost 99 of the Joint Facilities in the Town of Gorham, Cumberland County, Maine. The Joint Facilities natural gas pipeline is currently under construction and will be operated by Maritimes and jointly owned by Maritimes and Portland Natural Gas Transmission System (PNGTS).[1]

Gorham Energy intends to build an 800 Megawatt electric power generation facility in Gorham, Maine (Gorham Plant), subject to its receipt of all applicable permits including this Commission's Certificate of Exempt Wholesale Generator status and approval of an Interconnection Agreement with Central Maine Power Company. Gorham Energy proposes to build an electric generating facility within a 260 acre site which it will acquire in Gorham from Regional Waste Systems, the current owner of the site. The Gorham Plant facilities will include dual-fuel fired turbines (principally natural gas), electric generation equipment, fuel oil storage, operations and maintenance buildings, electric switch gear, and plant roadways; all of which will occupy only about 19 acres of the site. The facilities will be capable of generating 800 MW of power for transmission into the grid at 345 kV. The site location takes advantage of the nearness of the existing electric transmission infrastructure and the Joint Facilities natural gas pipeline now under construction.

Maritimes proposes to construct and install a tap and side valve assembly, metering facilities, about 0.49 miles of 16-inch diameter lateral pipeline and associated auxiliary facilities. Construction is proposed to take place during summer and fall of 1999, and the project has an estimated cost of $2,300,000. Maritimes says the Gorham Energy will reimburse it for 100% of the costs and expenses incurred for installing the tap, lateral line, meter station, EGM and yard piping up to the insulating flange of Gorham Plant. Gorham Energy will construct all nonjurisdictional facilities downstream of the above facilities proposed to be constructed by Maritimes. The meter station, metering and certain auxiliary piping will be constructed, owned, operated, and maintained by Maritimes. The regulators, heaters, and other remaining natural gas facilities inside the Gorham Plant will be constructed, owned, operated and maintained by Gorham Energy.

After the installation of the facilities, Maritimes will transport up to 165,000 Dth/d of natural gas for Gorham Energy under Maritimes' Part 284 Blanket Certificate and its Rate Schedule MN365. Maritimes says that such transportation rights currently only apply to the lateral (from the interconnection with the Joint Facilities to Gorham Plant). Maritimes says that the rate to be charged Gorham Energy will reflect the fact that Gorham Energy is reimbursing Maritimes for the cost of the facilities and will be at or below the lateral line rate approved by the Commission for Phase II of Maritimes' project, a rate which is also less than the maximum rate approved by the Commission for Phase I of its Project.

Maritimes further says that Gorham Energy is responsible for arranging its own natural gas supply and transportation upstream of the Joint Facilities interconnection point. Gorham Energy has informed Maritimes that it will arrange for the transportation of natural gas supply from various supply sources to milepost 99 of the Joint Facilities (the interconnection of the Joint Facilities and the lateral proposed to be constructed by Maritimes herein). Such new transportation is said to be using only the currently certificated capacity on the Maritimes or PNGTS pipeline systems. Maritimes cites the existing certificates for itself and PNGTS which fix the certificated capacity of their systems at about 440,860 Mcf/d and 210,000 Mcf/d, respectively.

Maritimes says that peak day or annual commitments under firm service agreements between Maritimes and PNGTS and their respective customers will not be adversely affected by construction of the new facilities. Maritimes also say that existing Maritimes and PNGTS tariffs do not prohibit the addition of new delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention, and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 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. 98–23591 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

[1] Under its Joint Facilities Ownership Agreement with PNGTS, Maritimes gave notice to PNGTS of this proposed expansion. PNGTS indicated it did not wish to participate in the expansion, but even so, under the Ownership Agreement, PNGTS is entitled to a 0.000001 percent interest in these proposed facilities. Thus, this request is made on behalf of and at the request of PNGTS to the extent necessary to account for PNGTS's 0.000001 percent interest.

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–737–000]**

## Midcoast Interstate Transmission, Inc.; Notice of Request Under Blanket Authorization

August 28, 1998.

Take notice that on August 21, 1998, Midcoast Interstate Transmission, Inc. (Midcoast) 3230 Second Street, Muscle Shoals, Alabama 35661, filed in Docket No. CP98–737–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install and operate two new delivery points in Limestone County, Alabama, under Midcoast's blanket certificate issued in Docket No. CP85–359–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Midcoast proposes to install and operate the facilities to accommodate natural gas deliveries to the City of Athens Utilities Department (Athens). Transportation service for Athens will be provided pursuant to Rate Schedule FT of Midcoast's FERC Gas Tariff, Second Revised Volume No. 1. The two new delivery points will be known as Athens #2 and Athens #3. Midcoast will install, own and operate all facilities.

Midcoast states that this addition is not prohibited by its existing tariff, that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers, that its peak day and annual deliveries will not be affected and that the total volumes delivered will not exceed the total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity 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 within 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. 98–23640 Filed 9–1–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. OA96–19–002, ER97–1359–000, ER95–1686–000, ER95–496–000]**

## Northeast Utilities Service; Notice of Filing

August 24, 1998.

Take notice that on August 19, 1998, Northeast Utilities Service Company, in compliance with the order of the Federal Energy Regulatory Commission in Northeast Utilities Service Company, *et al., 83* FERC 61,184 (1998), submitted revised pages to the Northeast Utilities System Companies' Open Access Transmission Tariff. Copies of the compliance filing were served on all customers taking service under the tariff.

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 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 and protests should be filed on or before September 8, 1998. Protests will be considered by the Commission to determine 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. 98–23638 Filed 9–1–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–744–000]**

## Northern Natural Gas Company; Notice of Application for Abandonment

August 28, 1998.

Take notice that on August 25, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in the above docket an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations (18 CFR 157.7 and 157.18), requesting permission and approval to abandon as non-jurisdictional facilities, by sale to El Paso Offshore Gathering and Transmission Company (El Paso), certain non-contiguous pipeline facilities, with appurtenances, located in Matagorda Island, Offshore Texas known as the Seagull Shoreline Laterals (SSL facilities), all as more fully set forth in the request which is on file with the Commission and open to public inspection. Specifically these facilities include:

(1) MATAGORDA ISLAND 623 A: (TOS–84071) approximately 2 miles of 16-inch pipeline and appurtenant facilities, extending from the platform in MAT 623 ''A'' to an underwater connection in MAT 623 ''B''.

(2) MATAGORDA ISLAND 623 B & 624: (TOS–83431 & TOS 83421) approximately 4 miles of 24-inch pipeline with associated metering and appurtenant facilities from the ''B'' platform in MAT 623 to EL Paso's facilities in MAT 624, and approximately 0.4 miles of 10-inch pipeline from MAT 624 to a subsea tap on the 24-inch line in MAT 623.

(3) MATAGORDA ISLAND 622 C: (TOS–84961) approximately 3 miles of 24-inch pipeline with associated metering and appurtenant facilities from MAT 622 ''C'' to the ''B'' platform in MAT 623.

(4) MATAGORDA ISLAND 638: (TOS–85411) approximately 7 miles of 16-inch pipeline with associated metering and appurtenant facilities, extending from the platform in MAT 638 ''B'' to an underwater connection in MAT 622 ''C''.

Northern will sell these facilities to EL Paso for $3,100,000 as adjusted per the sales agreement at closing.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 proceedings. Any 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 the jurisdiction conferred upon the 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 or if the Commission on its own review of the matter, finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If the Commission 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 Northern to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23641 Filed 9–1–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–293–001]**

## Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1998.

Take notice that on August 25, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original

Volume No. 1, the following tariff sheets, with an effective date of August 1, 1998:

Substitute Second Revised Sheet No. 6
Substitute Third Revised Sheet No. 6A

Williams states that it filed its third quarter report of GSR costs on July 1, 1998, in the above referenced docket. By letter order issued July 30, 1998, the Commission directed Williams to file revised tariff sheets which consider sections 154.107(c) and (d) of the Commission's regulations and alleviate its concerns regarding the confusion resulting from the method of presentation of Reservation Surcharges in its April 30 compliance filing. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' 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. 98–23643 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–4290–000, et al.]**

## Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 25, 1998.

Take notice that the following filings have been made with the Commission:

### 1. Niagara Mohawk Power Corporation

[Docket No. ER98–4290–000]

Take notice that on August 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Indeck-Ilion, L.P. This Transmission Service Agreement specifies that Indeck-Ilion, L.P., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Indeck-Ilion, L.P., to enter into separately scheduled transactions under which NMPC will provide transmission service for Indeck-Ilion, L.P., as the parties may mutually agree.

NMPC requests an effective date of August 11, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Indeck-Ilion, L.P.

*Comment date:* September, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 2. California Independent System Operator Corporation

[Docket No. EC96–19–039 and ER96–1663–040]

Take notice that on August 20, 1998, the California Independent System Operator Corporation (ISO), submitted a letter in the above-captioned dockets, modifying the earliest proposed effective date for the proposed Amendment No. 11 to the ISO Tariff to September 21, 1998.

The ISO states that this filing has been served on all parties on whom the ISO's initial filing in these dockets was served.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 3. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER98–4289–000]

Take notice that on August 20, 1998, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, a Market-Based Wholesale Power Sales Rate Schedule, which would allow Montana-Dakota to engage in wholesale sales of energy and/or capacity at market-determined prices.

Copies of the filing have been provided to the Montana Public Service Commission, Montana Consumer Counsel, North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Wyoming Public Service Commission.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 4. Niagara Mohawk Power Corporation

[Docket No. ER98–4291–000]

Take notice that on August 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Indeck-Ilion, L.P. This Transmission Service Agreement specifies that Indeck-Ilion, L.P., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Indeck-Ilion, L.P., to enter into separately scheduled transactions under which NMPC will provide transmission service for Indeck-Ilion, L.P. as the parties may mutually agree.

NMPC requests an effective date of August 11, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Indeck-Ilion, L.P.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 5. Niagara Mohawk Power Corporation

[Docket No. ER98–4292–000]

Take notice that on August 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Indeck-Olean, L.P. This Transmission Service Agreement specifies that Indeck-Olean, L.P. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Indeck-Olean, L.P., to enter into separately scheduled transactions under which NMPC will provide transmission service for Indeck-Olean, L.P., as the parties may mutually agree.

NMPC requests an effective date of August 11, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Indeck-Olean, L.P.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**6. Niagara Mohawk Power Corporation**

[Docket No. ER98–4293–000]

Take notice that on August 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Indeck-Olean, L.P. This Transmission Service Agreement specifies that Indeck-Olean, L.P., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Indeck-Olean, L.P., to enter into separately scheduled transactions under which NMPC will provide transmission service for Indeck-Olean, L.P., as the parties may mutually agree.

NMPC requests an effective date of August 11, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Indeck-Olean, L.P.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**7. Rochester Gas and Electric Corporation**

[Docket No. ER98–4294–000]

Take notice that on August 20, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Central Hudson Enterprises Corporation (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule No. 3, Original Volume No. 1 (Power Sales Tariff), accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 14, 1998, for Central Hudson Enterprises Corporation's Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**8. UGI Utilities, Inc.**

[Docket No. ER98–4295–000]

Take notice that on August 20, 1998, UGI Utilities, Inc., tendered for filing a proposed tariff sheet for inclusion in the pool-wide open-access transmission tariff of the Pennsylvania-New Jersey-Maryland Interconnection, L.L.C. (PJM).

The tariff sheet tendered by UGI sets forth UGI's transmission revenue requirement as included in the rate for the PP&L Group Zone filed by PP&L, Inc., and set for hearing in consolidated Dockets Nos. ER97–4829–000, ER97–3189–007, and EL98–25–000. The tariff sheet tendered by UGI states that UGI's revenue requirement as set forth in the tariff sheet will be modified as necessary to comply with any changes to the UGI revenue requirement ordered in Dockets Nos. ER97–4829–000, *et al.* The UGI tariff sheet further states that the UGI revenue requirement set forth therein (as it may be modified to comply with the outcome of Dockets Nos. ER97–4829–000, *et al.*) shall be UGI's revenue requirement for purposes of the distribution of revenues by PJM under Section 5.3 of the Transmission Owners Agreement on file as PJM Rate Schedule No. 22.

UGI requests waiver of the Commission's notice requirements to permit the UGI tariff sheet to take effect on April 1, 1998, the effective date of the PJM restructuring and the PP&L Group Zone rate. Because UGI's revenue requirement will be established in Dockets Nos. ER97–4829–000, et al., UGI also requests waiver of the requirements of §§ 35.12 and 35.13 of the Commission's Regulations.

Copies of the filing were served upon the parties listed in the service list for Dockets Nos. ER97–4829–000, et al., and on the Pennsylvania Public Utility Commission.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. Duke Energy Oakland LLC**

[Docket No. ER98–4296–000]

Take notice that on August 20, 1998, in accordance with Section 35.13, (18 CFR 35.13), Duke Energy Oakland LLC (DEO), submitted for filing the revised sheets of its Must-Run Rate Schedule to make technical corrections to its Must-Run Rate Schedule.

DEO requests that the revised Reliability Must-Run sheets be permitted to become effective July 1, 1998.

Copies of the filing were served upon the California ISO, the Public Utilities Commission of the State of California and all parties to the underlying consolidated proceedings.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. Entergy Services, Inc.**

[Docket No. ER98–4297–000]

Take notice that on August 20, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing a Letter Amendment to the Interconnection and Operation Agreement between Entergy Mississippi and LSP Energy Limited Partnership (LSP).

Entergy Services also requests that the Letter Amendment be made effective October 19, 1998.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. Entergy Services, Inc.**

[Docket No. ER98–4298–000]

Take notice that on August 20, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and PPG Industries, Inc.

Entergy Services requests waiver of notice requirements to permit the Interconnection Agreement to be made effective July 28, 1998.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Entergy Services, Inc.**

[Docket No. ER98–4299–000]

Take notice that on August 20, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and Dow Chemical Company.

Entergy Services requests waiver of notice requirements to permit the Interconnection Agreement to be made effective as of July 2, 1998.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. Duke Energy Moss Landing LLC**

[Docket No. ER98–4300–000]

Take notice that on August 20, 1998, in accordance with Section 35.13, (18 CFR 35.13), Duke Energy Moss Landing LLC (DEML), submitted for filing the revised sheets of its Must-Run Rate Schedule to make technical corrections to its Must-Run Rate Schedule.

DEML requests that the revised Reliability Must-Run sheets be permitted to become effective July 1, 1998.

Copies of the filing were served upon the California ISO, the Public Utilities Commission of the State of California and all parties to the underlying consolidated proceedings.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Mountainview Power Company**

[Docket No. ER98–4301–000]

Take notice that on August 20, 1998, Mountainview Power Company tendered for filing pursuant to Rule 205, (18 CFR 385.205), a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule FERC No. 1, to be effective upon issuance of the Commission's order.

Mountainview Power Company intends to sell electric power at wholesale, including sales of ancillary services. In transactions where Mountainview Power Company sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. Rate Schedule FERC No. 1, provides for the sale of energy and capacity at agreed prices.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Riverside Canal Power Company**

[Docket No. ER98–4302–000]

Take notice that on August 20, 1998, Riverside Canal Power Company tendered for filing pursuant to Rule 205, (18 CFR 385.205), a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule FERC No. 1, to be effective upon issuance of the Commission's order.

Riverside Canal Power Company intends to sell electric power at wholesale, including sales of ancillary services. In transactions where Riverside Canal Power Company sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. Rate Schedule FERC No. 1, provides for the sale of energy and capacity at agreed prices.

*Comment date:* September 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. UtiliCorp United Inc.**

[Docket No. ES98–44–000]

Take notice that on August 10, 1998, UtiliCorp United Inc. (UtiliCorp), submitted an application under Section 204 of the Federal Power Act for authorization to issue 565,000 shares of its Common Stock pursuant to UtiliCorp Employee Stock Option Plan.

UtiliCorp also requests an exemption from the Commission's competitive bidding and negotiated offer requirements of 18 CFR 34.2.

*Comment date:* September 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Northeast Utilities Service and Appalachian Power Company**

[Docket Nos. OA96–19–002, ER97–1359–000, ER95–1686–000, R96–496–000, (Consolidated)]

Take notice that on August 19, 1998, Northeast Utilities Service Company, in compliance with the order of the Federal Energy Regulatory Commission in Northeast Utilities Service Company, et al., 83 FERC 61,184 (1998), submitted revised pages to the Northeast Utilities System Companies' Open Access Transmission Tariff. Copies of the compliance filing were served on all customers taking service under the tariff.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. 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 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 the comment date. 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 these filings are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23590 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER92–65–001, et al.]**

## Northeast Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

August 24, 1998.

Take notice that the following filings have been made with the Commission:

**1. Northeast Utilities Service Co.**

[Docket No. ER88–463–001, ER90–373–000, ER90–390–000, EL90–39–000]

Take notice that on August 19, 1998, Northeast Utilities Service Company, in compliance with the order of the Federal Energy Regulatory Commission in Northeast Utilities Service Company, *et al.*, 83 FERC 61,184 (1998), submitted revised pages to the transmission service agreements filed in the above-referenced dockets. Copies of the compliance filing were served on the customers taking service under the agreements.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**2. Northeast Utilities Service Company**

[Docket No. ER92–65–001]

Taken notice that on August 19, 1998, Northeast Utilities Service Company, in compliance with the order of the Federal Energy Regulatory Commission in Northeast Utilities Service Company, *et al.*, 83 FERC 61,184 (1998), submitted revised pages to the transmission service agreement filed in the above-referenced docket. Copies of the compliance filing were served on the customer taking service under the agreement.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**3. Northeast Utilities Service Company**

[Docket No. ER92–66–001]

Take notice that on August 19, 1998, Northeast Utilities Service Company, in compliance with the order of the Federal Energy Regulatory Commission in Northeast Utilities Service Company, *et al.*, 83 FERC 61,184 (1998), submitted revised pages to the transmission service agreement filed in the above-referenced docket. Copies of the compliance filing were served on the customer taking service under the agreement.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**4. Northeast Utilities Service Company**

[Docket No. ER93–219–004]

Take notice that on August 19, 1998, Northeast Utilities Service Company, in compliance with the order of the Federal Energy Regulatory Commission in Northeast Utilities Service Company, *et al.*, 83 FERC 61,184 (1998), submitted revised pages to the transmission service agreement filed in the above-referenced docket. Copies of the compliance filing were served on the

customer taking service under the agreement.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**5. PJM Interconnection, L.L.C.**

Docket No. ER97–3189–011]

Take notice that on August 19, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing revised tariff sheets in compliance with the Commission's order in PJM Interconnection, L.L.C., 84 FERC 61,051 (1998).

PJM requests an effective date for the tariff revisions submitted with the compliance filing of April 1, 1998, consistent with the effective date of the revised PJM Tariff.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**6. California Independent System Operator Corporation**

[Docket No. ER98–1310–001]

Take notice that on August 19, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 2, to the Participating Generator Agreement between the ISO and El Sequndo Power, LLC (El Segundo), for acceptance by the Commission. The ISO states that Amendment No. 2, modifies the Participating Generator Agreement by extending the date by which El Segundo must obtain certification by the ISO in accordance with Section 4.3.2 of the agreement.

The ISO requests waiver of the 60-day prior notice requirements, so that Amendment No. 2, may become effective as of July 1, 1998.

The ISO states that this filing has been served on all parties listed on the Restricted Service List in the above-referenced docket.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**7. California Independent System Operator Corporation**

[Docket No. ER98–1933–001]

Take notice that on August 19, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1, to the Participating Generator Agreement between the ISO and Long Beach Generation LLC (Long Beach) for acceptance by the Participating Generator Agreement by extending the date by which Section 4.3.2 of the agreement.

The ISO states that this filing has been served on all parties listed on the Restricted Service List in the above-referenced docket.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. 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 the comment date. 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 these filings are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23594 Filed 9–1–98; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL98–71–000, et al.]**

## PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

August 21, 1998.

Take notice that the following filings have been made with the Commission:

**1. PJM Interconnection, L.L.C.**

[Docket No. EL98–71–000]

Take notice that on August 14, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing a Petition For Temporary Waiver of Annual Charges.

PJM states that the petition was served on all the members of PJM Interconnection, L.L.C. and all state commissions within the PJM region.

*Comment date:* September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**2. Emerald People's Utility District v. Bonneville Power Administration**

[Docket No. EL98–70–000]

Take notice that Emerald People's Utility District tendered for filing a complaint against the Bonneville Power Administration for violation of its Open Access Transmission Tariff.

*Comment date:* September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**3. Williams Energy Services Company, Entergy Power Marketing Corp., Duke/Louis Dreyfus, L.L.C., NIPSCO Energy Services Inc., Colonial Entergy, Inc., Colonial Entergy, Inc., and Applied Resources Integrated Services, Incorporated**

[Docket No. ER95–305–016, Docket No. ER95–1615–011, Docket No. ER96–108–012, Docket No. ER96–1431–008, Docket No. ER97–1968–003, Docket No. ER97–1968–004, Docket No. ER97–2604–003, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On April 30, 1998, Williams Energy Services Company filed certain information as required by the Commission's March 10, 1995, order in Docket No. ER95–305–000.

On May 1, 1998, Entergy Power Marketing Corp. filed certain information as required by the Commission's July 4, 1995, order in Docket No. ER95–1615–000.

On May 1, 1998, Duke/Louis Dreyfus, L.L.C. filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–108–000.

On April 29, 1998, NIPSCO Energy Services Inc. filed certain information as required by the Commission's May 29, 1996, order in Docket No. ER96–1431–000.

On May 5, 1998, Colonial Energy, Inc. filed certain information as required by the Commission's April 9, 1997, order in Docket No. ER96–1968–000.

On May 5, 1998, Colonial Energy, Inc. filed certain information as required by the Commission's April 9, 1997, order in Docket No. ER96–1968–000.

On May 1, 1998, Applied Resources Integrated Services, Incorporated filed certain information as required by the Commission's June 17, 1997, order in Docket No. ER97–2604–000.

**4. Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Co., Metropolitan Edison Company, Pennsylvania Electric Company, PP&L, Inc., Potomac Electric Power Company, and Public Service Electric and Gas Co.**

[Docket No. ER97–3189–012]

Take notice that on August 18, 1998, Atlantic City Electric Company, Baltimore Gas and Electric Company,

Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PP&L, Inc., Potomac Electric Power Company, Public Service Electric and Gas Company and UGI Utilities, Inc., submitted changes to the Transmission Owners Agreement in compliance with the Commission's July 20, 1998, Order in *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,051 (1998).

Copies of the filing have been served on the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**5. Southern New Hampshire Hydroelectric**

[Docket No. ER98–2615–000]

Take notice that on August 17, 1998, Southern New Hampshire Hydroelectric tendered for filing a Notice of Withdrawal in the above-referenced docket.

*Comment date:* September 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

**6. Consolidated Edison Solutions, Inc.**

[Docket No. ER98–3729–000]

Take notice that on August 18, 1998, Consolidated Edison Solutions, Inc. (Solutions), tendered for filing a revision to the filing that it originally made in the above-docket on July 14, 1998.

Solutions request that the Commission permit the effective date of the service agreement to remain August 1, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**7. Florida Power & Light Company**

[Docket No. ER98–4185–000]

Take notice that on August 11, 1998, Florida Power & Light Company tendered for filing executed service agreements filed in Docket Nos. ER97–1742–000, ER97–3823–000, ER98–1699–000 and ER98-3284–000.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**8. Allegheny Power Generation Marketing**

[Docket No. ER98–4213–000]

Take notice that on August 12, 1998, Allegheny Power Generation Marketing tendered for filing a summary of activity for the quarter ended June 30, 1998, in the above-referenced docket.

*Comment date:* September 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. Southwest Power Pool**

[Docket No. ER98–4262–000]

Take notice that on August 18, 1998, Southwest Power Pool (SPP), tendered for filing two executed service agreements with Energy Clearinghouse Corporation (Energy Clearinghouse) for Short-Term Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Firm Transmission Service under the SPP Open Access Transmission Tariff.

Copies of this filing were served upon Energy Clearinghouse.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. MidAmerican Energy Company**

[Docket No. ER98–4263–000]

Take notice that on August 18, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Ames Municipal Electric System (Ames Municipal) dated July 31, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 31, 1998, for the Agreement with Ames Municipal, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Ames Municipal, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. New England Power Pool**

[Docket No. ER98–4272–000]

Take notice that on August 18, 1998, the New England Power Pool (NEPOOL), Executive Committee submitted the Thirty-Seventh Agreement Amending New England Power Pool Agreement, amending the definition of ''Power Year'' and making necessary related changes in the agreement.

The NEPOOL Executive Committee states that copies of these materials were sent to the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. California Independent System Operator Corporation**

[Docket No. ER98–4273–000]

Take notice that on August 18, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Sierra Pacific Industries and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Sierra Pacific and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of August 3, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. Consolidated Edison Energy, Inc.**

[Docket No. ER98–4274–000]

Take notice that on August 18, 1998, Consolidated Edison Energy, Inc. (Con Edison Energy), tendered for filing a service agreement enabling it to make sales of capacity and/or energy to its regulated electric utility affiliates under Con Edison Energy's market-based rate tariff.

Con Edison Energy requests an effective date of September 1, 1998.

Con Edison Energy states that a copy of this filing has been served by mail upon the New York State Public Service Commission.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Vitol Gas & Electric LLC**

[Docket No. ER98–4275–000]

Take notice that on August 18, 1998, Vitol Gas & Electric LLC (VG&E), submitted for filing its Notice of Termination, effective July 2, 1998, of the forward contracts between VG&E and The Power Company of America, L.P. (PCA), entered into between VG&E and PCA under the Electric Power Service Agreement, dated as of August 1, 1996, between VG&E and PCA.

Notice of the termination previously was provided to and service has been made upon PCA.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Central Maine Power Company**

[Docket No. ER98–4276–000]

Please take notice that on August 18, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Griffin Energy Marketing, L.L.C. Service will be

provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

CMP requests that the Commission waive notice requirements to permit service under the Agreement to become effective August 18, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. Central Maine Power Company**

[Docket No. ER98–4277–000]

Take notice that on August 18, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with the New York Power Authority. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

CMP requests that the Commission waive notice requirements to permit service under the agreement to become effective August 18, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Central Maine Power Company**

[Docket No. ER98–4278–000]

Take notice that on August 18, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Northeast Energy Services, Inc. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

CMP requests waiver of Commission notice requirements and request that the agreement become effective August 1, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. California Independent System Operator Corporation**

[Docket No. ER98–4279–000]

Take notice that on August 18, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between Sierra Pacific Industries and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Sierra Pacific and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of August 12, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. Deseret Generation & Transmission Co-operative**

[Docket No. ER98–4281–000]

Take notice that Deseret Generation & Transmission Co-operative's Transmission Function on August 19, 1998, tendered for filing an executed umbrella Short-Term Firm Point-to-Point service agreement with Deseret Generation and Transmission Co-operative's Merchant Function under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 19, 1998. Deseret's open access transmission tariff is currently on file with the Commission in Docket no. OA97–487–000. Deseret's Merchant Function has been provided a copy of this filing.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**20. Washington Water Power Company**

[Docket No. ER98–4282–000]

Take notice that on August 19, 1998, Washington Water Power Company, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission Rules and Regulations, an executed Long Term Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9., with The Montana Power Trading & Marketing Company.

WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**21. Northeast Utilities Service Company**

[Docket No. ER98–4283–000]

Take notice that on August 19, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement for Firm Power Sales under the NU System Companies' Sales for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Central Hudson Enterprises Corporation.

NUSCO requests that the Service Agreement become effective August 18, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**22. Central Maine Power Company**

[Docket No. ER98–4284–000]

Take notice that on August 19, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Florida Power & Light Company. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

CMP requests that the Commission waive notice requirements to permit service under the Agreement to become effective as of August 19, 1998.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**23. Orange and Rockland Utilities, Inc.**

[Docket No. ER98–4285–000]

Take notice that on August 19, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement under which O&R will provide capacity and/or energy to SCANA Energy Marketing, Inc. (SCANA).

O&R requests waiver of the notice requirement so that the service agreement with SCANA becomes effective as of August 10, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and SCANA.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**24. Orange and Rockland Utilities, Inc.**

[Docket No. ER98–4286–000]

Take notice that on August 19, 1998, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and Cinergy Capital & Trading, Inc. (Customer) for Non-Firm Point-to-Point Transmission Service. The Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 30, 1998, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**25. Orange and Rockland Utilities, Inc.**

[Docket No. ER98–4287–000]

Take notice that on August 19, 1998, Orange and Rockland Utilities, Inc.(O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement under which O&R will provide capacity and/or energy to ERI Services, Inc. (ERI Services).

O&R requests waiver of the notice requirement so that the service agreement with ERI Services becomes effective as of August 1, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and ERI Services.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**26. CogenAmerica Parlin Inc.**

[Docket No. ER98–4288–000]

Take notice that on August 19, 1998, CogenAmerica Parlin Inc. (Parlin), tendered for filing a notice of succession in operations pursuant to 18 CFR 35.16 in order to reflect its name change from NRG Generating (Parlin) Cogeneration Inc.

*Comment date:* September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. 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 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 the comment date. 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 these filings are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23595 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 11060–000 Idaho]**

## J.M. Miller Enterprises, Inc.; Notice of Availability of Draft Environmental Assessment

August 27, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original, minor license for the proposed Sahko Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project would be located on the Kastelu Drain, an irrigation return ditch also known as Southside 39 Drain, near Filer, Idaho in Twin Falls County. The DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Nan Allen, Environmental Coordinator, at (202) 219–2938, or E-mail nan.allen@ferc.fed.us.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–23589 Filed 9–1–98; 8:45 am]

**BILLING CODE 6717–01–M**

## EXECUTIVE OFFICE OF THE PRESIDENT

## Office of Science and Technology Policy

## Meeting of the President's Committee of Advisors on Science and Technology

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES AND PLACE:** September 17, 1998, Washington, DC. Call Joan P. Porter at (202) 456–6101 for information on location.

**TYPE OF MEETING:** Open.

**PROPOSED SCHEDULE AND AGENDA:** The President's Committee of Advisors on Science and Technology (PCAST) will meet in open session on Thursday, September 17, 1998, at approximately 1:00 p.m. to discuss (1) topics of Congressional concern, (2) international S&T issues, and (3) state perspectives on S&T issues. This session will end at approximately 5:30 p.m.

**PUBLIC COMMENTS:** There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. Written comments are welcome anytime prior to or following the meeting. Please notify Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101 or fax your requests/comments to (202) 456–6026.

**FOR FURTHER INFORMATION CONTACT:** For information regarding time, place, and agenda, please call Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101, prior to 3:00 p.m. on Friday, September 11, 1998. Please note that public seating for this meeting is limited, and is available on a first-come first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by the Assistant to the President for Science and Technology, and by John Young, former President and CEO of the Hewlett-Packard Company.

Dated: August 27, 1998.

**Barbara Ann Ferguson,**

*Administrative Officer, Office of Science and Technology Policy.*

[FR Doc. 98–23561 Filed 9–1–98; 8:45 am]

BILLING CODE 3170–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

August 26, 1998.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments November 2, 1998. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0623.

*Title:* Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization.

*Form Number:* FCC 600.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit; Individuals or Households; Not-for-Profit institutions; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 54,143.

*Estimated Time Per Response:* 4 hours.

*Total Annual Burden:* 216,572 hours.

*Frequency of Response:* On occasion reporting requirements.

*Needs and Uses:* This form is used by various applicants in accordance with 47 CFR Part 22 (Public Mobile Services), Part 24 (Personal Communications Services), Part 74 (Remote Pickup and Low Power Broadcast Auxiliary), Part 90 (Land Mobile) and Part 95 (IVDS). Statutory authority for this collection of information is contained in 47 U.S.C. 154(i) and 309(j), as amended.

The number of respondents is being adjusted as a result of re-evaluation of receipts and an adjustment of previously estimated use for auction purposes. FCC Form 600 was previously filed by winners of FCC auctions (long form application filed by Broadband and Narrowband PCS, IVDS, Cellular Unserved, 900 MHz SMR) and it was anticipated that it would be used for upcoming auctions. With the development of the Universal Licensing System (ULS), auction winners are now filing FCC Form 601 (a ULS form) in lieu of FCC Form 600. Therefore, the number of respondents and burden hours where estimates were previously provided for auction use are being deleted.

We estimate a significant decrease in the number of respondents from 194,769 to 54,153 and a total annual burden decrease from 779,076 hours to 216,612 hours.

The information will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 98–23627 Filed 9–1–98; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

August 26, 1998.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments November 2, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0649.

*Title:* Section 76.58 Notification.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents:* 11,000.

*Estimated Time Per Response:* 0.5 hours—1 hour.

*Frequency of Response:* On occasion reporting requirements; Third party disclosure.

*Total Annual Burden:* 1,800 hours.

*Total Annual Cost to Respondents:* $6,000.

*Needs and Uses:* Section 76.58 contains various notification requirements that were initially set forth by the Commission in 1993 pursuant to its must-carry provisions. Cable operators were obligated to undergo these notifications for the first time in 1993. Some of the notifications (those contained in Sections 76.58(d) and (e)) were one-time-only requirements from 1993 and are not ongoing requirements. The notices are used by broadcast stations to ascertain and exercise their must-carry rights.

*OMB Control Number:* 3060–0651.

*Title:* Section 76.9 Order to show cause; forfeiture proceeding.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; Individuals or households; State, Local or Tribal governments.

*Number of Respondents:* 10 (5 petitions × 2 parties each).

*Estimated Time Per Response:* 40 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 400 hours.

*Total Annual Cost to Respondents:* $100.

*Needs and Uses:* Section 76.9 states that upon petition by any interested person, the Commission may (1) Issue an order requiring a cable television operator to show cause why it should not be directed to cease and desist from violating the Commission's rules; and (2) Initiate a forfeiture proceeding against a cable television operator for violation of the Commission's rules. This collection (OMB 3060–0651) accounts for the paperwork burden associated with all aspects of the Section 76.9 petition process. Information contained in the petitions is used by the Commission to determine whether or not the Commission's rules have been violated.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 98–23628 Filed 9–1–98; 8:45 am]

**BILLING CODE 6712–01–U**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 17, 1998.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Mack Roberts, M.D. and Alma D. Roberts Family Limited Partnership, Mack Roberts, M.D., General Partner, and Alma D. Roberts, General Partner*, all of Monticello, Kentucky; to retain voting shares of Monticello Bankshares, Inc., Monticello, Kentucky, and thereby indirectly retain voting shares of Monticello Banking Company, Monticello, Kentucky, and Bank of Clinton County, Albany, Kentucky.

Board of Governors of the Federal Reserve System, August 28, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–23675 Filed 9–1–98; 8:45 am]

**BILLING CODE 6210–01–F**

## 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 September 28, 1998.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. National City Bancshares, Inc.*, Evansville, Indiana; to merge with Progressive Bancshares, Inc., Lexington, Kentucky, and thereby indirectly acquire The Progressive Bank, N.A., Lexington, Kentucky.

*2. Simmons First National Corporation*, Pine Bluff, Arkansas; to merge with American Bancshares of Arkansas, Inc., Charleston, Arkansas, and thereby indirectly acquire American State Bank, Charleston, Arkansas.

**B. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Business Holding Corporation*, Baton Rouge, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Business Bank of Baton Rouge, Baton Rouge, Louisiana (in organization).

**C. Federal Reserve Bank of San Francisco** (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Eggemeyer Advisory Corp., Castle Creek Capital L.L.C., Castle Creek Capital Partners Fund-I, L.P.*, all of Rancho Santa Fe, California; to acquire more than 5 percent of the voting shares of Peninsula Bank of San Diego, San Diego, California.

*2. Frontier Financial Corporation*, Everett, Washington; to merge with Valley Bancorporation, Sumner, Washington, and thereby indirectly acquire Bank of Sumner, Sumner, Washington.

*3. Western Bancorp*, Newport Beach, California; to acquire 100 percent of the voting shares of Peninsula Bank of San Diego, San Diego, California.

Board of Governors of the Federal Reserve System, August 28, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–23674 Filed 9–1–98; 8:45 am]

BILLING CODE 6210–01–F

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standard Advisory Board

**AGENCY:** General Accounting Office.

**ACTION:** Notice of public hearing on October 5 and 6 and Board meeting on October 6.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Monday and Tuesday, October 5 and 6, 1998 from 9:00 a.m. to 5:00 p.m. in room *7C13* of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The purpose of the hearing is to hear testimony from interested parties on the Proposed Statement of Recommended Standards for *Accounting for Social Insurance*, published February 20, 1998. The Standard contains proposed standards for social insurance programs that address accounting for Social Security, Medicare, Railroad retirement benefits, Black Lung benefits, and Unemployment Insurance. The Board wishes to obtain in-depth views on the various issues pertaining to the proposed Statement.

Persons interested in testifying should contact either Wendy Comes, FASAB Executive Director; or Richard Fontenrose, Project Director. Such contact should be made no later than one week prior to the hearing. Also, they should at the same time provide a short biography and written copies of their prepared testimony prior to the hearing.

Following the end of the public hearing on October 6, the Board may meet to discuss a possible amendment to SFFAS No. 5, *Accounting for Liabilities of the Federal Government,* dealing with concerns expressed by some attorneys and auditors regarding legal representation letters.

Any interested persons may attend the hearing and the meeting as an observer. Board discussions and reviews are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St., N.W., Suite 3B18, Washington, D.C. 20548, or call (202) 512–7357; or Richard Fontenrose, Project Director, at (202) 512–7358. E-Mail to: FontenroseR.fasab@gao.gov.

**Authority:** Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: August 28, 1998.

**Robert W. Bramlett,**

*Acting Executive Director.*

[FR Doc. 98–23655 Filed 9–1–98; 8:45 am]

BILLING CODE 1610–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Announcement 99014]**

### Grants for Injury Control Research Centers; Notice of Availability Of Funds for Fiscal Year 1999

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Control Research Centers (ICRCs) for fiscal year (FY) 1999.

This program announcement addresses the priority areas of Violent and Abusive Behavior and Unintentional Injuries.

The purposes of this program are:

1. To support injury prevention and control research on priority issues as delineated in: Healthy People 2000; Injury Control in the 1990's: A National Plan for Action; Injury in America; Injury Prevention: Meeting the Challenge; and Cost of Injury: A Report to the Congress;

2. To support ICRCs which represent CDC's largest national extramural investment in injury control research and training, intervention development, and evaluation;

3. To integrate collectively, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively;

4. To identify and evaluate current and new interventions for the prevention and control of injuries;

5. To bring the knowledge and expertise of ICRCs to bear on the development and improvement of effective public and private sector programs for injury prevention and control; and

6. To facilitate injury control efforts supported by various governmental agencies within a geographic region.

#### B. Eligible Applicants

This announcement will provide funding for applicants in regions which do not have funded ICRCs and for applicants in regions which have funded centers which must re-compete for funding.

Eligible applicants are limited to organizations in Region 2 (New Jersey, New York, Puerto Rico, and Virgin Islands), Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Region 6 (Louisiana, New Mexico, Oklahoma, Texas, and Arkansas), Region 9 (Arizona, California, Hawaii, and Nevada) and Region 10 (Alaska, Idaho, Oregon, and Washington).

Eligible applicants include all nonprofit and for-profit organizations in Regions 2, 3, 4, 5, 6, 9, and 10. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Non-academic applicant institutions should provide evidence of a collaborative relationship with an academic institution.

**Note:** ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator.

**Note:** Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

#### C. Availability of Funds

Approximately $3,750,000 is expected to be available FY 1999 to fund a combination of new and re-competing research center projects, depending on the outcome of the review process.

It is expected that the awards will begin on or around September 1, 1999, and will be made for a 12 month budget period within a project period of up to three years for new research centers and five years for re-competing research centers.

Funding estimates may vary and are subject to change. Continuation awards within the project period will be made

on the basis of satisfactory progress and the availability of funds.

New research center awards will not exceed $500,000 per year (total of direct and indirect costs) with a project period not to exceed three years. Depending on availability of funds, re-competing research center awards may range from $750,000 to $1,500,000 per year (total of direct and indirect costs) with a project period not to exceed five years. The range of support provided is dependent upon the degree of comprehensiveness of the center in addressing the phases of injury control (i.e., Prevention, Acute Care, and Rehabilitation) as determined by the Injury Research Grants Review Committee (IRGRC).

Incremental levels within this range for successfully re-competing research centers will be determined as follows:

Core funding (included in figures below)—Up to $750,000
One phase funded ICRC—Up to $1,000,000
(addresses one of the three phases of injury control)
Two phase funded ICRC—Up to $1,250,000
(addresses two of the three phases of injury control)
Comprehensive ICRC—Up to $1,500,000
(addresses all three phases of injury control)

The existing funded centers in Regions 1, 3, 7, and 8 may submit proposals for supplemental awards to expand/enhance existing projects, to add a new phase(s) to an existing ICRC grant, or to add biomechanics project(s) that support one or more phases. The request should not exceed $250,000 per phase (total of direct and indirect costs) per year. Funding is subject to program need and the availability of funds.

**Note:** The ''Core'' projects, consistent with an ICRC's demonstrated strengths, can relate to any of the phases of injury control, i.e., prevention, acute care, and rehabilitation, as well as biomechanics, and/or epidemiology. These projects (generally 3–5 major projects of 1–5 year's duration) are expected to progress to the level of development to allow for submission for additional and/or alternative funding.

Funding preference will be given to re-competing Injury Control Research Centers. These centers, established and on-going, serve as a resource for Injury Control related issues for their States and regions.

**Note:** The ICRC model as described in the preceding paragraphs remains valid. It is not anticipated that funding will be available to provide any phase funding for re-competing research centers in FY99. Re-competing research center awards will be for core funding only. If additional funds become available, an announcement will be made soliciting supplemental phase funding proposals or special emphasis projects from existing ICRC's.

**D. Program Requirements**

The following are applicant requirements:

1. Applicants must demonstrate and apply expertise in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) as a core component of the center. Applicants may choose not to support additional phases with core funding. Comprehensive ICRCs must have all three phases supported by core funding.

2. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

3. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health. The director must have no less than 30 percent effort devoted solely to this project with an anticipated range of 30 to 50 percent.

4. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

5. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

6. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs. An ICRC is encouraged to involve biomechanicists in its research. This, again, may be achieved through collaborative relationships as it is no longer a requirement that all ICRCs have biomechanical engineering expertise.

7. Applicants must have established curricula and graduate training programs in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

8. Applicants must demonstrate the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

9. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the State or region in which the ICRC is located. Cooperation with private-sector programs is encouraged.

10. Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, e.g., minority communities.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

**E. Application Content**

Applications for support of an ICRC should follow the PHS-398 (Rev. 5/95) application and Errata sheet, and should include the following information:

1. Face page
2. Description (abstract) and personnel
3. Table of contents
4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant as well as breakdown budgets for individual projects within the grant.
5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.
6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.
7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.
8. Resources and environment.
9. Research plan including:

a. A proposed theme for the ICRC's injury control activities. The proposed activities should be clearly described in terms of need, scientific basis, expected

interactions, and anticipated outcomes, including the expected effect on injury morbidity and mortality. In selecting the theme, applicants should consider the findings in Injury In America and the Year 2000 Objectives for the Nation.

A comprehensive ICRC can address all three phases of injury control within a single theme. For example, an ICRC with a rehabilitation theme can address prevention, acute care, and rehabilitation within the overall theme of rehabilitation.

b. A detailed research plan (design and methods) including hypothesis and expected outcome, value to field, and specific, measurable, and time-framed objectives consistent with the proposed theme and activities for each project within the proposed grant.

Include for each project in the research plan section of the application: These core projects should be described in enough detail to allow for a thorough review (limited to 10–15 pages) but are not expected to be at the fully developed level of detail of an ''Individual Research Grant (RO1).''

- Title of Project.
- Project Director/Lead Investigator,
- Institution(s).
- Categorization as to ''Prevention, Acute Care, Rehabilitation, or Biomechanics.''
- Categorization as to ''Major Project, Developmental Project, Pilot Project, etc.''
- Categorization as to ''New or Ongoing Project.''
- Cost/Year (Estimate).
- Research Training? Names, Degrees of Persons Trained or in Training.
- Key Words.
- Brief Summary of Project (Abstract).

c. A detailed evaluation plan which should address outcome and cost-effectiveness evaluation as well as formative, efficacy, and process evaluation.

d. A description of the core faculty and its role in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRC's objectives.

e. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part, and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center or the project, both structurally and operationally. ICRC's should report to an appropriate organizational level (e.g. dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activity and ensuring oversight of the process of interdisciplinary activity.

f. Documentation of the involved public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

**F. Submission and Deadline**

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before November 12, 1998, submit to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #99014, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Atlanta, Georgia 30305–2209.

Applications shall be considered as meeting the deadline if they are received at the above address on or before the deadline date; or sent on or before the deadline date, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

**G. Evaluation Criteria**

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by the Injury Research Grants Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

*1. Review by the Injury Research Grants Review Committee (IRGRC)*

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend the application for further consideration or not for further consideration. As a part of the review process, applicants may be asked to travel to CDC for a meeting with the committee.

Factors to be considered by IRGRC include:

a. The specific aims of the application, e.g., the long-term objectives and intended accomplishments.

b. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

c. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives.

d. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

e. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

f. The extent of consultation, technical assistance, and training in identifying, implementing, and/or evaluating intervention/control measures that will be provided to public and private agencies and institutions, with emphasis on State and local health departments.

g. Details of progress made in the application if the applicant is submitting a re-competing application. Documented examples of success

include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

*2. Review by CDC Advisory Committee for Injury Prevention and Control (ACIPC)*

Factors to be considered by ACIPC include:

a. The results of the peer review.

b. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.

c. National and programmatic needs and geographic balance.

d. Overall distribution of the thematic focus of competing applications; the nationally comprehensive balance of the program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics and epidemiology).

e. Budgetary considerations, the ACIPC will establish annual funding levels as detailed under the heading, Availability of Funds.

*3. Applications for Supplemental Funding for Existing CDC Injury Centers*

Existing CDC Injury Centers may submit an application for supplemental awards to support research work or activities. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the ACIPC.

*4. Continued Funding*

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly work plans are being met;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and

f. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by State and local governments and private sector organizations.

**H. Other Requirements**

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress report annually;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Atlanta, Georgia 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application kit.

AR98–1—Human Subjects Certification
AR98–2—Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9—Paperwork Reduction Act Requirements
AR98–10—Smoke-Free Workplace Requirement
AR98–11—Healthy People 2000
AR98–12—Lobbying Restrictions
AR98–13—Prohibition on Use of CDC funds for Certain Gun Control Activities
AR98–20—Conference Activities within Grants/Cooperative Agreements

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under Sections 301, 391, 392, 393, and 394 of the Public Health Service Act [42 U.S.C. 241, 280b, 280b–1, 280b–1a, and 280b–2], as amended. Program regulations are set forth in 42 CFR Part 52. The catalog of Federal Domestic Assistance number is 93.136.

**J. Where to Obtain Additional Information**

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. A complete program description and information on application procedures are contained in the application package.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 or Internet address: lgt1@cdc.gov.

Programmatic technical assistance may be obtained from Tom Voglesonger, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–58, Atlanta, GA 30341–3724, telephone (770) 488–4265 or Internet address: tdv1@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov

Please refer to Announcement 99014 when requesting information and submitting an application.

Dated: August 27, 1998.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–23624 Filed 9–1–98; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

*Name:* National Vaccine Advisory Committee (NVAC).

*Times and Dates:* 9 a.m.–2 p.m., September 28, 1998; 8 a.m.–12:30 p.m. September 29, 1998.

*Place:* Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each by either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

*Purpose:* This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

*Matters to be Discussed:* Agenda items will include updates on the National Vaccine Program Office (NVPO) activities; a report from the Division of Vaccine Injury Compensation; a discussion on the impact of changes in Federal funding of vaccine programs, the Food and Drug Administration, National Immunization Program and Association of State and Territorial Health Officers; a report from the Assistant Secretary for Health and Surgeon General; a discussion on the current status of NIH efforts to develop a vaccine to prevent AIDS; a report from the task force on community preventive services; status of NVAC papers, strategies to sustain immunization coverage; a report fostering non-traditional sites for promoting adult immunization, and case studies of vaccine development; a discussion on the progress in influenza pandemic preparedness; potential utility of new influenza vaccines, blueprint strategy for tuberculosis vaccine development; reports from the Immunization Registries Workgroup, progress toward a strategic plan, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage and Subcommittee on Vaccine Safety; a discussion on future agenda items.

*Name:* Subcommittee on Future Vaccines.

*Time and Date:* 2 p.m.–5 p.m., September 28, 1998.

*Place:* Hubert H. Humphrey Building, Room 703, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

*Matters to be Discussed:* Agenda items will include discussions regarding ''Orphan Vaccines'' How can we expedite the development of certain vaccines? Follow-up of discussion on indemnification for phase 1 clinical trials.

*Name:* Subcommittee on Immunization Coverage.

*Time and Date:* 2 p.m.–5 p.m., September 28, 1998.

*Place:* Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

*Matters to be Discussed:* Agenda items will include updates on the status of the Immunization Coverage paper, ''Strategies to Sustain Immunization Coverage'', adult immunization at non-traditional sites, and a discussion of adolescent frame work for immunization.

*Name:* Subcommittee on Vaccine Safety.

*Time and Date:* 2 p.m.–5 p.m., September 28, 1998.

*Place:* Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

*Matters to be Discussed:* Agenda items include a discussion on the review of the draft public health service vaccine safety action plan.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Felecia D. Pearson, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333, telephone 404/639–4450.

Dated: August 27, 1998.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–23666 Filed 9–1–98; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

#### Proposed Project

*Title:* Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) and Detailed Model Plan submitted every 3 years. Abbreviated applications to be submitted in alternate years.

*OMB No.:* 0970–0075.

*Description:* States, including the District of Columbia, tribes, tribal organizations and territories applying for LIHEAP block grant funds must submit an annual application that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. A detailed application must be submitted every 3 years.

*Respondents:* State, Territories and Tribal Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Detailed Model Plan | 65 | 1 | 1 | 65 |
| Abb. Model Plan | 115 | 1 | .33 | 38 |

*Estimated Total Annual Burden Hours:* 103.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 27, 1998.

**Bob Sargis,**

*Acting Reports Clearance Officer.*

[FR Doc. 98–23606 Filed 9–1–98; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request Proposed Project

*Title:* Financial Institution Data Match.

*OMB No.:* New.

*Description:* Section 372 of Pub. L. 104–193, requires State to establish procedures under which the State Child support enforcement (IV–D) agency shall enter into agreements with financial institutions doing business in the State for the purpose of securing information leading to the enforcement of child support orders. States will develop and operate, a data match system in which each financial institution will provide quarterly the name, record address, social security number of taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support. H.R. 3130, the ''Child Support Performance and Incentive Act of 1998'', section 506 amends section 452 and 466(a)(17)(A)(i) of the PRWORA of 1996 to permit the Secretary of Health and Human Services, through the Federal Parent Locator Service (FPLS), to aid State CSE agencies in coordinating data matches with multi-state financial institutions.

*Respondents:* State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Financial Institution Data Match | 54 | 5,065 | .5 | 2,532 |

Estimate Total Annual Burden Hours: 2,532.

In compliance with the requirements of Section 3606(C)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden to the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 27, 1998.

**Bob Sargis,**

*Acting reports Clearance Officer.*

[FR Doc. 98–23607 Filed 9–1–98; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–420–1050–01 24 1A]**

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collecting the information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On June 18, 1998, BLM published a notice in the **Federal Register** (63 FR 33385) requesting comments on this proposed collection. The comment period closed on August 17, 1998. BLM did not receive any comments from the public in response to that notice. Copies of the proposed collection of information and related documents and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond within 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

**Nature of Comments**

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether or not the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*Title:* Grazing Lease or Permit Application; Grazing Permit.

*OMB Approval Number:* 1004–NEW.

*Abstract:* BLM proposes to collect information from Alaska Native permittees under its Reindeer Grazing Program to assess the compatibility of grazing on the land with multiple-use objectives for the area.

*Bureau Form Number:* 4201–1, Grazing Lease or Permit Application; 4132–2, Grazing Permit.

*Frequency:* Once.

*Description of Respondents:* Alaska Natives, groups of Alaska Natives, or associations or corporations of Alaska Natives who want to graze reindeer on public lands in Alaska that are vacant and unappropriated.

*Annual Responses:* 6.

*Annual Burden Hours:* 7.5.

*Bureau Clearance Officer:* Carole Smith, (202) 452–0367.

Dated: August 18, 1998

**Carole J. Smith,**

*Bureau of Land Management, Information Clearance Officer.*

[FR Doc. 98–23598 Filed 9–1–98; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98N–0363]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 8, 1998 (63 FR 36921). The document announced an opportunity for public comment on the proposed collection of certain information by the agency. The document published with an incorrect address. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Carolyn C. Harris, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 98–18145, appearing on page 36921, in the **Federal Register** of July 8, 1998, the following correction is made: On page 36921, in the third column, under the ''**ADDRESSES**'' caption, beginning in the fifth line ''12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857'' is corrected to read ''5630 Fishers Lane, rm. 1061, Rockville, MD 20852''.

Dated: August 26, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–23584 Filed 9–1–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Technical Electronic Products Radiation Safety Standards Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Technical Electronic Products Radiation Safety Standards Committee.

*General Function of the Committee*: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

*Date and Time*: The meeting will be held on September 23, 1998, 8:30 a.m. to 6 p.m., and September 24, 1998, 8:30 a.m. to 3:45 p.m.

*Location*: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person*: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On September 23, 1998, the committee will: (1) Discuss possible proposed amendments to performance standards for fluoroscopic imaging systems (21 CFR 1020), and (2) hear presentations on x-ray scanning security devices and the indoor tanning industry. On September 24, 1998, the committee will: (1) Discuss electronic article surveillance systems and metal detectors, and the potential for electromagnetic interference with the operation of medical devices, and (2) hear a presentation on medical telemetry systems and the impact of changes in communications standards.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1998. On September 23, 1998, oral presentations from the public will be scheduled between approximately 11:15 a.m. and 12 m., and between approximately 4:30 p.m. and 5:15 p.m., and on September 24, 1998, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 15, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 25, 1998.

**Randolph Wykoff,**

*Acting Deputy Commissioner for Operations.*

[FR Doc. 98–23585 Filed 9–1–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 96N–0373]**

### Agency Information Collection Activities; Announcement of OMB Approval; Request for Information From U.S. Processors that Export to the European Community

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Request for Information From U.S. Processors that Export to the European Community'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 1, 1998 (63 FR 29738), the agency announced that the proposed information collection had been submitted to OMB for review and

clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0320. The approval expires on July 31, 2001.

Dated: August 25, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–23581 Filed 9–1–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request

**SUMMARY:** Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), National Institute of Environmental Health Sciences (NIEHS), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 5, 1998, page 24814 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

*Title:* Hazardous Waste Worker Training—42 CFR part 65. *Type of Information Collection Request:* Revision of OMB No. 0925–0348 and expiration date 09/30/98). *Need and Use of Information Collection:* This request for OMB review and approval of the information collection is required by regulation 42 CFR part 65(a)(6). The NIEHS has been given major responsibility for initiating a worker safety and health training program under Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) for hazardous waste workers and emergency responders. A network of non-profit organizations that are committed to protecting workers and their communities by delivering high-quality, peer-reviewed safety and health curricula to target populations of hazardous waste workers and emergency responders has been developed.

During the first ten years of the NIEHS Worker Training program (FY 1987–97), the NIEHS has successfully supported 20 primary grantees who have trained over 1,140,000 workers across the country and presented nearly 60,000 classroom and hands-on training courses, which have accounted for almost 20 million contact hours of actual training. Generally, the grant will initially be for one year, and subsequent continuation awards are also for one year at a time.

Grantees must submit a separate application to have the support continued for each subsequent year. Grantees are to provide information in accordance with S65.4(a), (b), (c) and 65.6(a) on the nature, duration, and purpose of the training, selection criteria for trainees' qualifications, and competency of the project director and staff, cooperative arrangements in the case of joint applications, the adequacy of training plans and resources, including budget and response to meeting training criteria in OSHA's Hazardous Waste Operations and Emergency Response Regulations (29 CFR 1910.120 and 29 CFR 1910.121). The information collected is used by the Director through officers, employees, experts, and consultants to evaluate applications based on technical merit to determine whether to make awards.

*Frequency of Response:* Biannual. *Affected Public:* Non-profit organizations. *Type of Respondents:* Grantees. The annual reporting burden is as follows: *Estimated Number of Respondents:* 20; *Estimated Number of Responses per Respondent:* 2; *Average Burden Hours per Response:* 8; and *Estimated Total Annual Burden Hours Requested:* 320. The annualized costs to respondents is estimated at: $7,000. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Joseph T. Hughes, Jr., Director, Worker Education and Training Program, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–0217 or E-mail your request, including your address to hughes3@niehs.nih.gov.

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received October 2, 1998.

Dated: August 17, 1998.

**Samuel Wilson,**

*Deputy Director, NIEHS.*

[FR Doc. 98–23576 Filed 9–1–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of 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 meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contract Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council, Council Review Committee.

*Date:* September 16, 1998.

*Closed:* 6:00 PM to 9:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Tia Queta Restaurant, 4839 Del Ray Avenue, Bethesda, MD 20814.

*Contact Person:* Constance W. Atwell, PHD, Director, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Federal Building, Room 1014, 7550 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9248.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Date:* September 17–18, 1998.

*Open:* September 17, 1998, 8:30 AM to 3:00 PM.

*Agenda:* Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and other administrative and program developments.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Closed:* September 17, 1998, 3:00 PM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Open:* September 18, 1998, 8:00 AM to 9:00 AM.

*Agenda:* Meeting with NIMH Council to discuss collaborative research.

*Place:* National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 18, 1998, 9:00 AM to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Constance W. Atwell, PHD, Director, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Federal Building, Room 1014, 7550 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 26, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–23574 Filed 9–1–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 24–25, 1998. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on September 24, 1998, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will reconvene on September 25, 1998, at approximately 8:30 a.m. and will adjourn at approximately 5:00 p.m. The meeting will be open to the public. Agenda items will include: (1) Discussions of recently submitted human gene transfer protocols, including two prototypic in utero transfer protocols, (2) data management activities related to human gene transfer clinical trials, and (3) other matters to be considered by the Committee. The two prototypic in utero gene transfer protocols are entitled: In Utero Gene Transfer for the Treatment of ADA-Deficient SCID and In Utero Gene Transfer for the Treatment of Alpha-Thalassemia. The purpose for discussing these two protocols are: (1) To provide a framework for continued discussion of the science, safety, and ethical issues at the December 7–8 Gene Therapy Policy Conference (GTPC) entitled: Gene Transfer in Prenatal Medicine; and (2) to stimulate the development of a guidance document for this novel area of research within the context of the NIH Guidelines. The discussion at this meeting should be considered as the first of many deliberations on these two protocols, as well as on the general issue of in utero gene transfer research; subsequent discussions will deal more substantively with each of the issues identified in this initial discussion. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 26, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–23573 Filed 9–1–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG1 1FCN–8 (03)M.

*Date:* August 31, 1998.

*Time:* 2:00 PM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Samuel Rawlings, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Microbiological and Immunological Sciences Special Emphasis Panel.

*Date:* September 8, 1998.

*Time:* 2:00 PM to 3:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William C. Branch, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Microbiological and Immunological Sciences Special Emphasis Panel ZRG5 BM–2 16.

*Date:* September 10, 1998.

*Time:* 10:00 AM to 11:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William C. Branch, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

*Name of Committee:* Microbiological and Immunological Sciences Special Emphasis Panel ZRG5 BM–2 16.

*Date:* September 11, 1998.

*Time:* 10:00 AM to 11:30 AM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William C. Branch, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

*Name of Committee:* Cell Development and Function Initial Review Group Molecular Cytology Study Section.

*Date:* October 1–2, 1998.

*Time:* 8:00 AM to 5:00 PM.

*Agenda;* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

*Contact Person:* Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 26, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–23575 Filed 9–1–98; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–838055

*Applicant:* Ecological Specialists, St. Peters, Missouri; Heidi L. Dunn, President.

The applicant requests an amendment to their permit for take (capture and release; collect dead specimens) activities of listed freshwater mussels to add to the scope of permitted activities the state of Indiana and the following species: clubshell (*Pleurobema clava*), fanshell [(*Cyprogenia stegaria* (=*irrorata*)], and northern riffleshell (*Epioblasma torulosa rangiana*). Take activities are currently authorized in Iowa, Minnesota, and Wisconsin for Higgins' eye pearlymussel (*Lampsilis higginsi*) and winged mapleleaf mussel (*Quadrula fragosa*) for biological survey purposes. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT-TE002079–0

*Applicant:* The Nature Conservancy, Wisconsin Chapter, Madison, Wisconsin; Peter McKeever, Director.

The applicant requests a permit to take (capture and release, collect voucher specimens, and salvage dead specimens) Hine's (=Ohio) emerald dragonfly (*Somatochlora hineana*) in the state of Wisconsin. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5332); FAX: (612/713–5292).

Dated: August 26, 1998.

**Matthias A. Kerschbaum,**

*Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 98–23619 Filed 9–1–98; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–010–07–1020–00–241A]**

### Northwest Colorado Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** The next meeting of the Northwest Colorado Resource Advisory Council will be held on Thursday, September 24, in the Bureau of Land Management Conference Room in Grand Junction, Colorado.

**DATES:** Thursday, September 24, 1998.

**ADDRESSES:** For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3037.

**SUPPLEMENTARY INFORMATION:** The Northwest Resource Advisory Council

will meet on Thursday, September 24, 1998, in the Grand Junction District Conference Room, 2815 H. Road, Grand Junction, Colorado.

Newly-appointed Resource Advisory Council Members will be introduced at the meeting. Other agenda items include a discussion about the U.S. Forest Service joining the advisory council, a discussion about proposed statewide recreation guidelines, and subcommittee reports.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 24, 1998.

**Mark T. Morse,**

*District Manager, Craig and Grand Junction Districts.*

[FR Doc. 98–23654 Filed 9–1–98; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–067–1990–00 (0002)]**

### Southeast New Mexico Playa Lakes Coordinating Committee Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Southeast New Mexico Playa Lakes Coordinating Committee Meeting.

**DATES:** September 29, 1998, beginning at 10:00 a.m.

**FOR FURTHER INFORMATION CONTACT:** Gary Bowers, Acting Field Office Manager, Bureau of Land Management, 620 E. Greene Street, Carlsbad, NM 88220 (505) 887–6544.

**SUPPLEMENTARY INFORMATION:** The Committee is responsible for coordinating investigations and mitigation measures needed to resolve the issue of wildlife mortality on the playas in southeastern New Mexico. The agenda will include discussing action measures to bring closure to this issue and discuss whether there is a need to continue with the Committee. The meeting will be held at the Carlsbad Field Office, 620 E. Greene St., Carlsbad, NM. Summary minutes will be maintained in the Carlsbad Field Office and will be available for public inspection during regular business hours (7:45 a.m.–4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: August 26, 1998.

**Gary Bowers,**

*Acting Field Office Manager.*

[FR Doc. 98–23622 Filed 9–1–98; 8:45 am]

BILLING CODE 4310–VA–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–017–98–1430–00; COC–60216]**

### Notice of Intent To Amend the White River Resource Management Plan, Colorado

Notice of Exchange Proposal (COC–61936)

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of Intent To Amend the White River Resource Management Plan; Notice of Exchange Proposal.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, White River Resource Area, Colorado, will be preparing an Environmental Assessment-level plan amendment to the White River Resource Management Plan. The plan amendment will assess impacts of complete revocation of the Oil Shale Withdrawal (PLO 4522) as it affects lands within the jurisdictional boundaries of the White River Resource Area. The applicable decision in the Resource Management Plan, approved July 1, 1997, was to modify the withdrawal to allow discretionary actions.

Notice is hereby given that the Bureau of Land Management (BLM) is considering an exchange of public lands in Garfield County for private lands owned by Union Oil Company of California, also in Garfield County, pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The following public lands are being considered for exchange by the United States:

**Sixth Principal Meridian, Colorado**

T. 4 S., R. 95 W., 6th P.M.,
Sec. 22, W½;
Sec. 23, SE¼NW¼, E½SW¼;
Sec. 34, SW¼.
T. 5 S., R. 95 W.,
Sec. 4, lots 5 and 7.
T. 5 S., R. 96 W.,
Sec. 15, SE¼NE¼.
T. 6 S., R. 96 W.,
Sec. 21, NE¼SW¼.
Containing 753.38 acres.

The following private lands are being considered for exchange to the United States:

**Sixth Principal Meridian, Colorado**

T. 4 S., R. 95 W.,
Sec. 35, S½S½N½, S½;
Sec. 36, S½S½N½, S½.
Containing 800 acres.

The actual acreage transferred may be adjusted, based on values as determined by an appraisal.

The above-noted environmental assessment will also address the exchange proposal. The described public lands are identified in the Resource Management Plan as Category II lands for the purposes of land tenure adjustment. They are suitable for disposal by exchange, but not by direct sale under Section 203 of the Federal Land Policy and Management Act. Since the Oil Shale Withdrawal precludes disposal by any method, it must be modified or revoked to complete the proposed exchange. Based on an initial determination that the potential for non-discretionary actions within the withdrawn area is low, review of revoking the withdrawal is now deemed reasonable.

If a patent to the above described public lands is issued pursuant to an exchange, it will be subject to valid existing rights, and the United States will reserve the oil, gas, and coal. Any water rights appurtenant to and used on the respective parcels would be conveyed, provided that water rights used elsewhere, or not appurtenant to the specified parcels would be reserved. Union will convey only the surface estate in the offered parcels.

As a part of this exchange, Union would also convey to the United States a non-exclusive easement over segments of the Cow Creek Road crossing private parcels not subject to the exchange proposal. They would also reserve a non-exclusive easement for roads crossing the offered parcels.

**DATES:** Written comments will be accepted for a period of 30 days following the publication of this notice.

**ADDRESSES:** Comments should be sent to the Area Manager, Bureau of Land Management, White River Resource Area, 73544 Highway 64, Meeker, CO 81641.

**FOR FURTHER INFORMATION CONTACT:** Vern Rholl, BLM White River Resource Area, 970–878–3601.

**SUPPLEMENTARY INFORMATION:** Approximately 491,734 acres of public land within the White River Resource Area are withdrawn ''from lease or disposal'' and closed to the mining laws, to protect federal oil shale resources. Executive Order 5327, dated April 15, 1930, withdrew all those lands owned by the United States within the lands described in Appendix I, Table I–7, of the Draft White River Resource Management Plan. In order to perform discretionary actions, and in particular, the exchange of lands, the Resource Management Plan stated that the withdrawal would be modified. The oil shale values would still be protected from non-discretionary actions. However, in reviewing the potential for the occurrence of such actions, it is now questionable whether protection via a withdrawal is necessary. Under the actions contemplated in this notice, the Resource Management Plan would be amended to allow revocation of the withdrawal, the withdrawal would be revoked, and certain of those lands formerly protected would be exchanged for other lands, or interests in land.

Dated: August 21, 1998.

**John J. Mehlhoff,**

*Area Manager.*

[FR Doc. 98–23653 Filed 9–1–98; 8:45 am]

BILLING CODE 4310–JB–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 22, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 17, 1998.

**Carol D. Shull,**

*Keeper of the National Register.*

**Colorado**

Larimer County

McGraw Ranch (Rocky Mountain National Park MPS), McGraw Ranch Rd., Estes Park vicinity, 98001163

**Florida**

Santa Rosa County

Big Heart West (Archeological Properties of the Naval Live Oaks Reservation MPS), Address Restricted, Gulf Breeze vicinity, 98001167

Butcherpen Mound (Archeological Properties of the Naval Live Oaks Reservation MPS), Address Restricted, Gulf Breeze vicinity, 98001165

First American Road in Florida (Archeological Properties of the Naval Live Oaks Reservation MPS), Gulf Islands National Seashore-Naval Live Oaks Area, Gulf Breeze vicinity, 98001168

Naval Live Oaks Cemetery (Archeological Properties of the Naval Live Oaks Reservation MPS), Address Restricted, Gulf Breeze vicinity, 98001166

Naval Live Oaks Reservation (Archeological Properties of the Naval Live Oaks Reservation MPS), Gulf Islands National Seashore-Naval Live Oaks Area, Gulf Breeze vicinity, 98001169

Third Gulf Breeze (Archeological Properties of the Naval Live Oaks Reservation MPS), Address Restricted, Gulf Breeze, 98001164

**Georgia**

Cobb County

Marietta National Cemetery (Civil War Era National Cemeteries MPS), 500 Washington Ave., Marietta, 98001170

**Idaho**

Bear Lake County

Georgetown Relief Society Hall, 161 3rd NW St., Georgetown, 98001171

Gooding County

Owsley Bridge, Approx. 200 yds. N of Jct. Old US 30 and Bell Rapids Rd., Hagerman vicinity, 98001172

Lincoln County

Shoshone Historic District (Boundary Increase), 115 N. Greenwood St., Shoshone, 98001173

**Kansas**

Douglas County

Strong Hall, 213 Strong Hall, U. of Kansas, Jct. Jayhawk Dr. and Poplar Ln., Lawrence, 98001174

Finney County

900 Block North Seventh Street Historic District, 901, 905, 907, 909, 911 N. 7th St., Garden City, 98001175

**Louisiana**

Orleans Parish

American Chicle Company Building, 8311 Fig St., New Orleans, 98001176

**New Jersey**

Bergen County

Dutch Reformed Church in the English Neighborhood, 1040 Edgewater Ave., Ridgefield Borough, 98001181

Monmouth County

Duggan, Frederic A, First Aid and Emergency Squad Building, 311 Washington Ave., Spring Lake, 98001177

**Ohio**

Cuyahoga County

Body Block, 4925–4955 Payne Ave., 1692–1696 E. 55th St., Cleveland, 98001178

Lucas County

Hillcrest Hotel, 1603 Madison Ave., Toledo, 98001179

Warren County

Miami Monthly Meeting Historic District, Vicinity of 4th and High Sts., Waynesville, 98001180

**Tennessee**

McNairy County

Big Hill Pond Fortification, (Archeological Resources of the American Civil War in Tennessee MPS), John Howell Rd. and Southern RR., Pocahontas vicinity, 98001182

Wray's Bluff Fortification, (Archeological Resources of the American Civil War in Tennessee MPS), Address Restricted, Pocahontas vicinity, 98001183

**Texas**

Hidalgo County

Lomita Boulevard Commercial Historic District, (Mission, Hidalgo County MPS), 400 to 700 Blocks S. Conway Blvd., Mission, 98001184

A Move has Been Requested for the Following Resource:

**California**

San Mateo County

Watkins—Cartan House, 25 Isabella Ave., Atherton, 78000768

[FR Doc. 98–23614 Filed 9–1–98; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Office for Victims of Crime

### Agency Information Collection Activities; Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; Reinstatement, with no change, of a previously approved collection for which approval has expired; Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 2, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address the following points:

(1) Does the proposed information collection instrument include all relevant program performance measures?

(2) Does the proposed information to be collected have practical utility?

(3) Does the proposed information to be collected 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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1534.

The proposed collection is listed below:

(1) *Type of information collection.* Reinstatement, with no change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection.* Victims of Crime Act, Crime Victim Assistance Subgrant Award Report.

(3) The agency form number if any, and the applicable component of the Department sponsoring the collection. Form: OJP Admin Form 7390/2A (rev. 11–95). Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State government. Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 53 respondents to complete a 3 minute subgrant award report, however a State can be responsible for entering subgrant data for as many as 186 programs to as few as 10 programs. Additionally, 4 respondents will be submitting 14 subgrant award reports manually, estimated time 2 hours per report.

(6) An estimate of the total burden (in hours) associated with the collection: The combined estimated total hours (manual and electronic submission) for the 57 respondents to submit information is 189 hours (150 electronic submissions +28 hours manual submissions).

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: August 27, 1998.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 98–23567 Filed 9–1–98; 8:45 am]

**BILLING CODE 4410–18–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**ACTION:** Notice Inviting Proposals for Youth Offender Demonstration Projects.

**SUMMARY:** This notice contains all of the necessary information and forms to apply for grant funding. The U.S. Department of Labor, Employment and Training Administration is authorized to award grants to provide services aimed at youth who are or have been under criminal justice supervision or involved in gangs. In setting aside these funds, Congress noted ''the severe problems facing out-of-school youth in communities with high-poverty and unemployment and the inter-relatedness of poverty, juvenile crime, child abuse and neglect, school failure, and teen pregnancy.'' The Department of Labor (DOL) has worked with the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the Department of Justice (DOJ) in deciding to use these funds for three categories of projects to serve youth offenders. They are, I. Model Community Projects; II. Education and Training for Youth Offenders Initiatives; and III. Community-Wide Coordination Projects.

All proposals must by submitted by the Service Delivery Area (SDA). Applicants can only apply under one of these categories which must be clearly identified on the face sheet of the application.

**DATES:** Application will be accepted commencing September 2, 1998. The closing date for receipt of applications is December 1, 1998, at 4 P.M. (Eastern Time) at the address below.

**ADDRESSES:** Applications must be mailed to Ms. Denise Roach, U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C. 20210, Reference: SGA/DAA 98–015.

**FOR FURTHER INFORMATION CONTACT:** Question should be faxed to Ms. Denise Roach, Division of Acquisition and Assistance, Fax (202) 219–8739. This is not a toll-free number. All inquiries should include the SGA number (DAA 98–015) and a contact name and phone number. This solicitation will also be published on the Internet, on the Employment and Training Administration's Home page at http://www.doleta.gov. Award notifications will also be published on the Home Page.

**SUPPLEMENTARY INFORMATION:** Funding for these awards is authorized under the Job Training Partnership Act (JTPA), Title IV, Pilot and Demonstration. Applicants must clearly identify which category they are applying for. This information must appear on the face sheet of the application. It is strongly recommended that your application be submitted using the face sheet included in appendix ''A'', as this will greatly enhance our review process. As a condition for award, applicants must agree to participate in the DOJ evaluation of these demonstration effort.

Funding for this evaluation will be provided to an independent contractor by DOJ. Therefore, no funds awarded under this grant should be set aside for this purpose.

Demonstration sites will be required to collect and maintain participant records through administrative data so that this can be a learning experience for DOL and DOJ. In order to keep participant records, the Standardized Program Information Report (SPIR) required for JTPA Title II programs must be used. The DOJ evaluation will evaluate the process experiences in implementing this youth offender program. However if additional resources become available, the evaluator may also examine intermediate outcomes for the youth. Each applicant must provide an assurance that they will cooperate with the evaluator and provide access to the data necessary to the evaluation.

**Category I—Model Community Projects**

These demonstrations will be set in high-poverty neighborhoods where comprehensive, community-wide approaches to dealing with youth have already been established. Grant awards will be provided to set up a combination of gang prevention and gang suppression projects; alternative sentencing and community service projects for youth offenders; to support existing case management and job placement services for youth on probation or returning to the community from corrections facilities. These neighborhood-wide projects will then serve as models for other high-poverty, high-crime communities in the country.

**Eligible Applicants**

This award category will be limited to those SDAs that have received grants under DOL's Youth Opportunity Unlimited (YOU), Youth Fair Chance (YFC), or Opportunity Areas for Out-of-School Youth (OASY) demonstrations. Organizations that operate DOJ's Safe Futures or Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression demonstrations, can also apply through their SDAs. These organizations should contact their Mayor's Office for a listing of the SDAs in their area. Applicants should outline how they will involve residents, youth and others of the community in planning and involvement in the effort.

**Program Components**

Grant funds must be used to build upon an existing system currently serving out-of-school youth, youth offenders or at-risk youth in gangs or prone to joining gangs. Youth employment and developmental activities funded under this grant shall be used for a structured set of activities focused sharply on getting youth offenders and gang members ages 14–24 either into long-term employment at wage levels that will prevent future dependancy and/or break the cycle of crime and juvenile delinquency that contributes to recidivism and non-productive activities. This overall strategy needs to be responsive to the particular problems of youth offenders and gang members in high-poverty areas. Efforts should be made to integrate youth into educational and alterative school programs when appropriate.

Any new service must also be developed and implemented focusing primarily on the needs of youth involved in the juvenile justice system and gangs. Employment, education, criminal justice and community-based youth programs should become an interrelated component of the project. In developing this interrelated system, grant funds shall be used to create a youth offender and gang prevention advisory board that participates in the coordination of all activities and provides input and community support to the project's leadership.

**Investment of Applicant and Partners**

Applicants should use partnerships both (1) to enhance the youth offender programs funded under this grant and (2) to provide complementary programs so as to link services within the target community and provide a diversity of options for all youth offenders within the target area. These partnerships must agree to:

- Implement a training and employment program for youth offenders and gang members in the target area.
- Coordinate with the private sector to develop a specified number of career-track jobs for target area youth offenders.
- Establish alternative sentencing and community service options for youth offenders and gang members in the target area.
- Expand gang suppression activities in the target area.
- Establish a gang prevention advisory board for the target area.

*Funding Availability:* The Department expects to award (5) grants approximately $1.5 million each under this category.

*Category* #1 Rating Criteria: Each application under this category will be evaluated against the following rating criteria:

- Need in target neighborhood, as demonstrated by severity of gang problem, the number of youth offenders residing in target community and the inability for existing services to include youth offenders and gang members (35 points)
- Plan and capacity for conducting project including plan for preventing recidivism (40 points)
- Level of investments of schools and other public sector partners (10 points)
- Level of investments of private sector partners, including commitments for private-sector jobs (5 points)
- Linkages and coordination of services (10 points)

**Category II—Education and Training for Youth Offenders Initiative**

These projects would provide comprehensive school-to-work education and training within juvenile corrections facilities, and would also provide follow-up services and job placements as youth leave these facilities and returned to the community. Again, the comprehensive services developed under this project will serve as a model for other juvenile corrections facilities across the country.

**Eligible Applicants**

The State Juvenile Corrections Agency is the eligible applicants and should identify a juvenile corrections facility within their State where the project will operate. DOJ is considering a formal random assignment evaluation of the effectiveness of the enhanced services being provided under this category. Therefore, juvenile corrections facilities proposed as demonstration sites must have a minimum of 100 youth in residence.

Your application must show the involvement/commitment of the following partners: the SDA which is the administrative entity for Job Training Partnership Act program; the state School-to-Work partnership; the local School-to-Work Partnership to which a majority of the youth offenders will return if clearly defined; and representatives of major employer networks connected to the school-to work effort.

**Program Components**

Grant funds shall be used to build upon an existing system currently serving youth offenders. Youth employment and developmental activities funded under this grant shall be used for a structured set of activities focused sharply on getting youth offenders and gang members ages 14–24 either into long-term employment at wage levels that will prevent future

dependancy and/or break the cycle of crime and juvenile delinquency that contributes to recidivism and non-productive activities. This overall strategy needs to be responsive to the particular problems of youth offenders and gang members in juvenile corrections facilities.

Programs must be designed to raise the quality of work and learning for incarcerated juvenile offenders, and strengthen follow-up services and aftercare, including mentoring for youth returning to their communities by building connections to local workforce development and School-to-Work systems. This includes the development of a reformed and intensive corrections education program, vocational training with ties to vocational development and youth employment services. The jointly developed curriculum should include input from corrections education, the state School-to-Work partnership, local school districts and employer networks connected to the school-to-work effort. Projects are also encouraged to work with Job Corps centers. In the development of a school-to-work based education curriculum. This curriculum should be linked to the curriculum developed for the communities to which youth offenders will return once leaving juvenile corrections and structured in such a way as to enable the youth to transition from the institution to the community and continue in a sequential manner with their educational and vocational development.

Grant funds should be coordinated with existing programs to provide case management and aftercare for youth returning to communities from juvenile corrections to facilitate community reintegration, healthy lifestyle choices and educational success and skills development. In addition, grant funds may be used for staff and teacher training in order to facilitate an effective system of connected classroom-based and work based activities. The Federal Bonding Program and the Work Opportunity Tax Credit (WOTC) should be considered as necessary tools to assist with youth offender employment placements. Information regarding these programs will be made available upon award of his grant. Additional funding sources may include Juvenile Justice and Delinquency Prevention Act formula grants funds and Juvenile Accountability Incentive Block Grant (JAIBG) funds. JAIBG funds should be used to compliment those available through this grant to upgrade training facilities within permanent juvenile corrections facilities.

**Investment of Applicants and Partners**

Applicants should use partnerships both (1) to enhance the youth offender program funded under this grant and (2) to provide complementary programs which make residence communities better able to provide after-care services for all returning youth offenders. The State recipient of a JAIBG award are strongly encouraged to contribute, in the form of a cash match, 10% of the total program cost, except when the JAIBG funds are used for construction of permanent corrections facilities. Partners under this category shall agree to:

- Implement a school-to-work program in the target juvenile corrections facility.
- Provide case management and after-care services to youth offenders returning to their communities.
- Develop linkages to local school-to-work efforts with assistance from the State School-to-Work Partnership.

*Funding Availability:* The Department expects to award (2) grants approximately $1.125 million each for Education and Training for Youth Offenders Initiatives under this competition.

*Category Rating Criteria:* Each application for funding under this category will be reviewed and rated against the following criteria:

- Need in target juvenile corrections facility and state juvenile corrections system, as demonstrated by the effectiveness of current curriculum, the number of youth offenders who stand to benefit, and rate of recidivism (25 points)
- Plan and capacity for conducting project including aftercare services and plan for preventing recidivism (40 points)
- Level of investments of schools and other public sector partners including School-to-Work partnerships (15 points)
- Level of investments of private sector partners, including commitments for private-sector jobs (10 points)
- Recidivism prevention plan (10 points)

**Category III—Community-Wide Coordination Projects**

This program component will fund smaller grants for communities within small to medium-sized cities with high-poverty and high-crime. These projects will work with local youth service providers to develop linkages that will strengthen the coordination of prevention and recovery services for youth offenders. Linkages to existing community programs such as the Job Training Partnership Act (JTPA) year-round youth training and summer jobs for at-risk youth, School-to-Work Programs, and other federal programs could contribute to juvenile crime prevention.

**Eligible Applicants**

Service Delivery Areas (SDAs) within high-crime communities with a population of at least 100,000 and not greater than 400,000 and a significant youth gang and youth crime problem are eligible to apply. Applicants should provide documentation from their local law enforcement agency showing support the existence of an existing or emerging gang problem and other serious youth crime problems. The SDA is the administrative entity for Job Training Partnership Act programs.

**Program Components**

Grant funds shall be used to build upon an existing systems currently serving in-school and out-of-school youth, youth offenders or youth in gangs or prone to joining gangs. Youth employment and developmental activities funded under this grant shall be used for a structured set of activities focused sharply on getting youth offenders and gang members ages 14–24 either into long-term employment at wage levels that will prevent future dependancy and/or break the cycle of crime and juvenile delinquency that contributes to recidivism and non-productive activities. This overall strategy needs to be responsive to the particular problems of youth offenders and gang members in high-poverty, high-crime areas. Efforts should be made to integrate youth into educational and alterative school programs when appropriate. The Federal Bonding Program and the Work Opportunity Tax Credit (WOTC) should be considered as necessary tools to assist with youth offender employment placements. Information regarding these programs will be made available upon award of this grant.

**Investment of Applicants and Partners**

Applicants should use partnerships both (1) to enhance the youth offender programs funded under this grant and (2) to provide complementary programs so as to make the target community an available service area for all youth offenders. Applicants also should agree to a good faith effort to continue projects started under this grant beyond the 24-month grant period. Partners should also agree to:

- Build upon existing employment and training, recreation, conflict resolution and other youth crime and

gang prevention programs to include youth offenders and gang members.

- Establish alternative sentencing and community service options for target area youth and gang members.
- Establish or continue gang suppression activities within the target area.

*Funding Availability:* The Department expects to award six (6) grants approximately $300,000 each to Community-Wide Coordination Projects under this competition.

*Category Rating Criteria:* Applications received for funding under this category shall be rated against the following criteria:

- Need in target neighborhood, as demonstrated by severity of gang problem, the number of youth offenders residing in target community (30 points)
- Plan and capacity for conducting project including plan for preventing recidivism (30 points)
- Level of investments of schools and other public sector partners (10 points)
- Level of investments of private sector partners, including commitments for private-sector jobs (10 points)
- Current youth offender programs and youth crime prevention strategies (10 points)
- Linkages and coordination of services (10 points)

*Period oF Performance:* The period of performance for all grants awarded under this competition will be for 24 months from the date the grant is awarded.

**Application Submittal**

All applicants must submit an original and three (3) copies of their proposal, with original signatures. The applications shall be divided into two distinct parts. Part I—which contains Standard Form (SF) 424, ''Application for Federal Assistance, and Budget Information Sheet.'' (See appendix ''A''. All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funds. Applicants shall indicate on the SF–424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant or loan. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the technical proposal that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Rating Criteria. Applicants MUST limit the program narrative section to no more than 10 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirement may not be considered.

**Late Applications**

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail next Day Service to address not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and federal holidays. The term ''post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

**Hand Delivered Proposals**

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date at the specified address.

*Telegraphed and/Faxed Applications Will Not Be Honored.* Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and *must be received* by the above specified date and time.

**Review and Selection Process**

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the established criteria under each Category. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF–424. The final decision on awards will be based on what is most advantageous to the Federal Government, taking into account factors such as geographic diversity, mix of EZs and ECs, and demographic characteristics.

Signed this 28th day of August, 1998.

**Janice E. Perry,**

*Grant Officer, Department of Labor, ETA.*

BILLING CODE 4510–30–P

**Attachments**

## Appendix "A"

# FACE SHEET

Application for Funding Under SGA/DAA 98-015

"Youth Offenders Demonstration Project"

Name of Applicant:_____

Contact Person: _____

Phone Number: _____

Category: (Please check one)

___ Category I - Model Community Projects

___ Category II - Education & Training for Youth Offenders Initiatives

___ Category III - Community-Wide Coordination Projects

# APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| | | | |
|---|---|---|---|
| | | 2. DATE SUBMITTED | Applicant Identifier |
| 1. TYPE OF SUBMISSION:<br>Application ☐ Construction ☐ Non-Construction | Preapplication ☐ Construction ☐ Non-Construction | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, State and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code): |

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

| 13. PROPOSED PROJECT: | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| | | |

| d. Signature of Authorized Representative | e. Date Signed |
|---|---|
| | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). |
| 3. | State use only (if applicable) |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided.<br>- "New" means a new assistance award.<br>- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities. |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

## *PART II - BUDGET INFORMATION*

*SECTION A - Budget Summary by Categories*

| | (A) | (B) | (C) |
|---|---|---|---|
| *1. Personnel* | $ | $ | $ |
| *2. Fringe Benefits (Rate %)* | | | |
| *3. Travel* | | | |
| *4. Equipment* | | | |
| *5. Supplies* | | | |
| *6. Contractual* | | | |
| *7. Other* | | | |
| *8. Total, Direct Cost (Lines 1 through 7)* | | | |
| *9. Indirect Cost (Rate %)* | | | |
| *10. Training Cost/Stipends* | | | |
| *11. TOTAL Funds Requested (Lines 8 through 10)* | $ | $ | $ |

*SECTION B - Cost Sharing/ Match Summary (if appropriate)*

| | (A) | (B) | (C) |
|---|---|---|---|
| *1. Cash Contribution* | $ | | |
| *2. In-Kind Contribution* | | | |
| *3. TOTAL Cost Sharing / Match (Rate %)* | | | |

*NOTE:* *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

## INSTRUCTIONS FOR PART II - BUDGET INFORMATION

### SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

### SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 98–23646 Filed 9–1–98; 8:45 am]
BILLING CODE 4510–30–C

## NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

### The U.S. National Commission on libraries and Information Science; Sunshine Act Meetings

**TIME, DATE, AND PLACE:** September 27, 1998, 1:00–5:00 p.m., The Hotel Washington (Capital Room), 515 15th Street, NW, Washington, DC.

**MATTERS TO BE DISCUSSED:** NCLIS committees, programs and plans, Legislative update, Plans, NCLIS/National Museum Services Board Meeting.

September 28, 1998—9:00 a.m–12:30 p.m., Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW (M–09), Wash., DC, NCLIS/National Museum Services Board Meeting

September 28, 1998—2:00–4:15 p.m., The Hotel Washington (Capital Room)

**MATTERS TO BE DISCUSSED:** Library Statistics Program, NCLIS/NMSB Joint Meeting, NCLIS FY 1998 fiscal statement, FY 1999 program plans, Administrative matters, Comments, NCLIS liaisons, guest and observers.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: August 27, 1998.

**Robert S. Willard,**

*NCLIS Executive Director.*

[FR Doc. 98–23758 Filed 8–31–98; 2:36 pm]

**BILLING CODE 7527–01–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[98–113]**

### Notice of Agency Report Forms Under OMB Review

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). Information collection is required to ensure proper use of and disposition of rights to inventions made in the course of, and data developed under NASA contracts.

**DATES:** All comments should be submitted on or before November 2, 1998.

**ADDRESSES:** All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

*Title:* Cost reduction Proposals under the NASA FAR Supplement

*OMB Number:* 2700–0094

*Type of review:* Revision of a currently approved Collection

*Need and Uses:* This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives on current and follow-on contracts.

*Affected Public:* Business or other for-profit, Not-for-profit institutions

*Number of Respondents:* 9

*Responses Per Respondent:* 1.25

*Annual Responses:* 11.25

*Hours Per Request:* 45

*Annual Burden Hours:* 506

*Frequency of Report:* on occasion

**Donald J. Andreotta,**

*Deputy Chief Information Officer (Operations), Office of the Administrator.*

[FR Doc. 98–23676 Filed 9–1–98; 8:45 am]

**BILLING CODE 7510–01–U**

## OFFICE OF MANAGEMENT AND BUDGET

### Budget Analysis Branch; Sequestration Update Report

**AGENCY:** Office of Management and Budget—Budget Analysis Branch.

**ACTION:** Notice of Transmittal of Sequestration Update Report to the President and Congress.

**SUMMARY:** Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

**FOR FURTHER INFORMATION CONTACT:** Ellen Balis, Budget Analysis Branch—202/395–4574.

Dated: August 27, 1998.

**Stephen A. Weigler,**

*Deputy Associate Director for Administration.*

[FR Doc. 98–23637 Filed 9–1–98; 8:45 am]

**BILLING CODE 3110–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–2, SEC File No. 270–21, OMB Control No. 3235–0026

Form N–5, SEC File No. 270–172, OMB Control No. 3235–0169

Form N–8A, SEC File No. 270–135, OMB Control No. 3235–0175

Rule 17f–5, SEC File No. 270–259, OMB Control No. 3235–0269

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

*Form N–2—Registration Statement of Closed-end Management Investment Companies*

Form N–2 is the form used by closed-end management investment companies (''closed-end funds'') to register as investment companies under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and to register their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''). Section 5 of the Securities Act [15 U.S.C. 77e] requires the filing of a registration statement prior to the offer of securities to the public and that the statement be effective before any securities are sold. The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities.

A closed-end fund is required to register as an investment company under Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)]. Form N–2 permits a closed-end fund to provide investors with a prospectus covering essential information about the fund when the fund makes an initial or additional offering of its securities. More detailed information is provided to interested investors in the Statement of Additional Information (''SAI''). The

SAI is provided to investors upon request and without charge.

The Commission uses the information provided in Form N–2 registration statements to determine whether closed-end funds have complied with the requirements of the Investment Company Act.

We estimate that closed-end funds file 44 initial registration statements and 39 amendments to registration statements—a total of 83 filings—on Form N–2 each year. Based on consultations with a sample of recent filers, we estimate that the hour burden to prepare and file an initial Form N–2 filing is 500 hours and the hour burden to prepare an amendment is 100 hours. The total hour burden for all closed-end funds filing Form N–2 is 25,900 hours per year.

Filing a registration statement on Form N–2 is mandatory for closed-end funds before making a public offering. Responses will not be kept confidential.

*Form N–5—Registration Statement of Small Business Investment Companies*

Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Administration and has been notified by the Administration that the company may submit a license application, to register its securities under the Securities Act and to register as an investment company under section 8 of the Investment Company Act. The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements to the Securities Act and Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is two and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total of 704 hours. Providing the information on Form N–5 is mandatory. Responses will not be kept confidential.

*Form N–8A—Notification of Registration of Investment Companies*

Form N–8A is the form that investment companies file to notify the Commission of the existence of active investment companies. After an investment company has filed its notification of registration under section 8(a) of the Investment Company Act, the company is then subject to the provisions of the Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state of organization, form of organization, classification, if it is a management company, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing simultaneously its notification of registration and registration statement, Form N–8A requires only that the registrant file the cover page (giving its name, address and agent for service of process) and sign the form in order to effect registration.

The Commission uses the information provided in the notification on Form N–8A to determine the existence of active investment companies and to enable the Commission to administer the provisions of the 1940 Act with respect to those companies. Each year approximately 266 investment companies file a notification on Form N–8A, which is required to be filed only once by an investment company. The Commission estimates that preparing Form N–8A requires an investment company to spend approximately one hour so that the total burden of preparing Form N–8A for all affected investment companies is 266 hours.

The collection of information on Form N–8A is mandatory. The information provided on Form N–8A is not kept confidential.

*Rule 17f–5—Custody of Investment Company Assets Outside the United States*

Rule 17f–5 under the Investment Company Act permits registered management investment companies (''funds'') to maintain their assets in custody arrangements outside the United States. The Commission adopted comprehensive amendments to rule 17f–5 on May 12, 1997.[1] The amendments became effective on June 16, 1997, but funds are not yet required to comply with most of the amendments.[2] Funds may comply with either prior rule 17f–5 or with the rule as amended in 1997 until February 1, 1999.[3]

Before rule 17f–5 was amended in 1997, the rule permitted funds to maintain their assets with certain foreign banks and securities depositories subject to certain conditions. The fund's board of directors had to approve (i) each country where fund assets were maintained, (ii) each foreign bank or depository that held the assets, and (iii) a written contract that had to contain specified provisions governing each foreign custody arrangement. Notes to the rule listed factors that the board was required to consider when investing assets in foreign countries and placing them with foreign custodians. The rule also required the fund board to monitor each foreign custody arrangement and to approve it at least annually.

As amended in 1997, rule 17f–5 permits a fund's board of directors to play a more traditional oversight role by delegating its responsibilities for foreign custody arrangements to a U.S. or foreign bank custodian or the fund's investment adviser or officers (collectively with the board, the ''foreign custody manager''). The board can delegate different responsibilities to different persons. The board must find that it is reasonable to rely on each delegate it selects. The delegate must agree to exercise reasonable care, prudence, and diligence or to adhere to a higher standard of care in performing the delegated responsibilities. The board must require the delegate to provide, at times that the board deems reasonable and appropriate, written reports that notify the board when the fund's assets are placed with a particular foreign custodian and when any material change occurs in the fund's foreign custody arrangements.

When the foreign custody manager selects a particular ''eligible foreign

[1] See Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) [62 FR 26923 (May 16, 1997)].

[2] The original compliance date for the 1997 amendments was June 16, 1998. The Commission has extended this compliance date for most of the amendments to February 1, 1999. The extension does not apply to the amended definitions of ''eligible foreign custodian,'' ''qualified foreign bank,'' and ''U.S. bank,'' for which the compliance date remains June 16, 1998.

[3] Certain amended definitions would apply under either version of the rule. See *supra* note 2.

custodian,'' [4] the foreign custody manager must determine that, based on its consideration of specified factors, the fund's assets will be subject to reasonable care if maintained with that custodian. The foreign custody manager also must determine that, based on the same factors, the written contract that governs each custody arrangement with the foreign custodian (or the set of depository rules or practices or the combination of a contract and rules or practices) will provide reasonable care for fund assets. The written contract (or equivalent rules or practices) must contain either certain specified provisions, or other provisions that provide the same or a greater level of care for fund assets. In addition, the foreign custody manager must establish a system to monitor the contract that governs each custody arrangement and the appropriateness of maintaining the fund's assets with a particular foreign custodian.

The collections of information required under rule 17f–5 are intended to further the protection of fund assets held in foreign custody arrangements permitted under the rule, which are more flexible than the foreign custody arrangements permitted under the Act. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board considers carefully each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight.

The requirement that each custody arrangement be governed by a written contract (or equivalent rules or practices) that contains specified provisions or other provisions that provide an equivalent level of care is intended to ensure that each arrangement is subject to certain minimal contractual safeguards.[5] The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the foreign custody manager periodically reviews each custody arrangement and takes any action necessary or appropriate when changes in circumstances could threaten fund assets.

The Commission estimates that during the first year when funds are required to comply with the 1997 amendments to rule 17f–5, the boards of directors of approximately 3,690 portfolios that use foreign custody arrangements will delegate responsibility for their arrangements to approximately 15 U.S. bank custodians and approximately 650 investment advisers.[6]

The Commission estimates that the board of each portfolio will expend approximately 2 burden hours during the first year in determining that the board may reasonably rely on each of two delegates to evaluate the portfolio's foreign custody arrangements, for a total of 7,380 burden hours for all 3,690 portfolios. The Commission estimates that each U.S. custodian bank will expend approximately (i) 400 burden hours in determining for some 250 portfolios that a written contract containing required terms governs each foreign custody arrangement and that each contract will provide reasonable care for fund assets; (ii) 96 burden hours in establishing a system for monitoring custody arrangements and contracts; and (iii) 400 burden hours in providing periodic reports to fund boards; for a total of 13,440 burden hours for all 15 U.S. bank custodians. The Commission estimates that each investment adviser will expend approximately (i) 10 burden hours in determining for some 6 portfolios that a written contract containing required terms governs each foreign custody arrangement and that each contract will provide reasonable care for fund assets; (ii) 24 burden hours in establishing a system for monitoring certain arrangements and contracts; and (iii) 10 burden hours in providing periodic reports to fund boards; for a total of 28,600 burden hours for all 650 investment advisers.

The total annual burden of the rule's paperwork requirements for all portfolios, U.S. bank custodians, and investment advisers therefore is estimated to be 49,420 hours. This estimate represents an increase of 40,680 hours from the prior estimate of 8,740 hours. Approximately 30,680 hours of the increase are attributable to updated information about the number of affected portfolios and other entities, and to a more accurate calculation of the component parts of some information burdens. Approximately 10,000 hours of the increase are attributable to the adoption of rule amendments not fully addressed in the prior estimate.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Officer Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 25, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–23612 Filed 9–1–98; 8:45 am]

**BILLING CODE 8010–01–M**

[4] ''Eligible foreign custodians'' under the rule generally include foreign banks and trust companies, national or transnational securities depositories, and majority-owned subsidiaries of U.S. banks or bank holding companies. The compliance date for this amended definition of eligible foreign custodian remains June 16, 1998.

[5] The requirement that the foreign custody manager determine that the custody contract (or equivalent rules or practices) will provide reasonable care for fund assets is intended to ensure that the foreign custody manager weights the adequacy of contractual obligations when it determines whether the foreign custodian will maintain the fund's assets with reasonable care.

[6] The Commission estimates that these 3,690 portfolios are divided among approximately 1,327 registered funds within approximately 650 fund complexes that may share the same board of directors, U.S. bank custodian, investment adviser, or all these entities. The board of directors and its foreign custody delegates for a fund complex could therefore meet rule 17f–5's requirements by making similar arrangements for an average of 6 portfolios at the same time. The Commission also estimates that each portfolio has foreign custody arrangements with an average of 10 foreign custodians (i.e., 1 bank and 1 securities depository in each of 5 countries).

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–23414; File No. 812–11158]**

## Life & Annuity Trust, et al.; Notice of Application

August 26, 1998.

**AGENCY:** Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'').

**SUMMARY:** Applicants seek an order pursuant to Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of Life & Annuity Trust (''Trust'') and shares of any other investment company or portfolio that is designed to fund insurance products and for which Wells Fargo Bank (''Wells Fargo'') may serve in the future, as investment manager, investment adviser, or administrator (''Future Trusts'') (the Trust together with Future Trusts are the ''Trusts'') to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies and by qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

**APPLICANTS:** Life & Annuity Trust and Wells Fargo Bank, N.A.

**FILING DATE:** The application was filed on May 28, 1998. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 21, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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 Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission: 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o C. David Messman, Esq., Wells Fargo Bank, 111 Sutter Street, 18th Floor, San Francisco, CA 94104.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Olson, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (202–942–8090).

**Applicants' Representations**

1. The Trust is a Delaware business trust that is registered under the 1940 Act as an open-end management investment company. The Trust consists of six separate portfolios (each a ''Fund''), each of which has its own investment objective or objectives, and policies.

2. Wells Fargo, a bank as defined in Section 2(a)(5) of the 1940 Act, is a wholly owned subsidiary of Wells Fargo & Company, and serves as the investment adviser and administrator to the Trust.

3. Shares representing interests in each Fund are currently offered to insurance companies (each a ''Current Participating Insurance Company'') as an investment vehicle for separate accounts supporting Variable Contracts.

4. The Trust intends to offer shares representing interests in each Fund, and any other portfolios established by the Trust (''Future Portfolios'') (Fund, together with Future Portfolios are the ''Portfolios'' or each a ''Portfolio''), to separate accounts of both the Current Participating Insurance Companies and other insurance companies (''Other Insurance Companies'') to serve as the investment vehicle for Variable Contracts. The Current Participating Insurance Companies and Other Insurance Companies that elect to purchase shares of one or more Portfolios are collectively referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies have or will establish their own separate accounts (''Separate Accounts'') and design their own Variable Contracts. Applicants also propose that the Portfolios may offer and sell their shares directly to Qualified Plans or Plans outside the separate account context.

**Applicants' Legal Analysis**

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be sold to and held by: (a) separate accounts funding variable annuity and variable life insurance contracts issued by the same life insurance company or any affiliated insurance companies (''mixed funding''); (b) separate accounts funding variable annuity or variable life insurance contracts issued by unaffiliated insurance companies (''shared funding''); and (c) Qualified Plans.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. Rule 6e–2(b)(15) provides these exemptions only where all of the assets of the UIT are shares of management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company. Therefore, the relief granted by Rule 62–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers it shares to a variable annuity or flexible premium variable life insurance separate account of the same company.

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) similarly provides partial exemptions from Section 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer to sell their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both, or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T) permits mixed funding while not permitting shared funding.

5. In addition, neither Rule 6e–2 nor Rule 6e–3(T) contemplate that shares of the underlying portfolio funding Variable Contracts might also be soled to Qualified Plans. The use of a common management investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and the Qualified Plans, is referred to herein

as ''extended mixed and shared funding.''

6. Applicants state that current tax law permits the Trust to increase its asset base by selling its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Fund. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in such portfolios must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of Qualified Plans to hold shares of an investment company portfolio, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company portfolio as an adequately diversified underlying investment for variable contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii).

7. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations which made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e-2(b)(15)(i) and (ii) and Rules 6e-3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations imposed on mixed and shared funding by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

9. Applicants state that the partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the 1940 Act from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that those 1940 Act rules further recognize that it also is unnecessary to apply Section 9(a) of the 1940 Act to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is not regulatory purpose in extending the Section 9(a) monitoring requirements because of extended mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans use the Trusts. Applicants argue that applying the monitoring requirements of Section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose.

10. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. It is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

11.Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed.

12. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rule 6e-2 and 6e-3(T) under the 1940 Act.

13. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T) under the 1940 Act).

14. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants, Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

15. Where a named fiduciary to a Qualified Plan appoints an investment

manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their direction. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

16. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not required to pass-through voting privileges.

17. Applicants state that even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applicants do not believe that such control would disadvantage other investors in such Portfolio to any greater extent than is the case where any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

18. Where a Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract holders. The purchase of shares of Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

19. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

20. Applicants state that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Portfolios. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

21. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

22. Applicants state that a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Trust's election, to withdraw its Separate Account's investment in such Portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Portfolios.

23. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

24. Applicants state that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Portfolio. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional Portfolios serving diverse goals.

25. Applicants do not believe that the sale of the shares of the Portfolios to qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

26. As noted above, Section 817(h) of the Code imposes certain diversification

standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed in the Treasury Department, adequately diversified.

27. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest.

28. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or qualified Plan is unable to net purchase payments to make the distributions, the separate Account and qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

29. Applicants determined it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Accounts and to Qualified Plans. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with a Trust concerning participation in the relevant Portfolio. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Portfolios would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

30. Applicants further concluded that the ability of the Trusts to sell shares of Portfolios directly to Qualified Plans does not create a senior security. ''Senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and Separate Accounts only have rights with respect to their respective shares of the Portfolios. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

31. Applicants submit that there are no conflicts between the contract owners of the Separate Accounts and of the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

32. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interests in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by the Separate Accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

33. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners. Applicants recognize that the foregoing is not an all inclusive list, but rather is representative of issues which they believe are relevant. Applicants believe that the sale of shares of the Portfolios to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Portfolios with respect to Qualified Plans is not substantially dissimilar from the Portfolio's anticipated use, in that Qualified Plans, like Variable Contracts, are generally long-term retirement vehicles.

34. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Portfolio, as a common investment media for variable contracts, would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of Wells Fargo, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Therefore, making the Portfolios available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing,

which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Portfolios to Qualified Plans, in addition to the Separate Accounts, will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

35. Applicants submit that, regardless of the type of shareholder in a Fund or Future Portfolio, Wells Fargo is or would be contractually and otherwise obligated to manage the Fund or such Future Portfolio solely and exclusively in accordance with that portfolio's investment objectives, policies and restrictions as well as any guidelines established by the Board of Trustees or Directors of such Trust (the ''Board''). Wells Fargo will work with a pool of money and will not take into account the identity of the shareholders. Thus, each Fund and any Future Portfolio will be managed in the same manner as any other mutual fund.

36. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. As noted above, Applicants assert that mixed and shared funding will not have any adverse Federal income tax consequences.

**Applicants' Conditions**

Applicants have consented to the following conditions:

1. A majority of the Board of each Trust, or Trusts, will consist of persons who are not ''interested persons'' of such Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable Federal or state, insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g), if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, Wells Fargo, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonable practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or in the case of insurance company participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.* annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participating voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trusts, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust or Wells Fargo be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if: (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer; or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligations to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust are not trusts of the type described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Trust will notify all Participants that separate account prospectus disclosure regarding potential risk of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) shares of Trust may be offered to insurance company separate accounts for both variable annuity and variable life insurance contracts and, if applicable to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust, if applicable may conflict; and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the Order requested in the Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the Application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio that includes these conditions to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

**Conclusion**

For the reasons summarized above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Johathan Katz,**

*Secretary.*

[FR Doc. 98–23611 Filed 9–1–98; 8:45 am]

**BILLING CODE 8010–01–M**

## SMALL BUSINESS ADMINISTRATION

**[License No. 07/07–0101]**

### Bome Investors, Inc.; Notice of Issuance of a Small Business Investment Company License

On February 26, 1997, an application was filed by Bome Investors, Inc. at 8000 Maryland Avenue, Suite 1190, St. Louis, Missouri 63105, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA

issued License No. 07/07–0101 on May 22, 1998, to Bome Investors, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 26, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–23659 Filed 9–1–98; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice No. 2878]**

### Shipping Coordinating Committee, Subcommittee for Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee will conduct an open meeting on Tuesday, September 22, 1998, at 10 am in Room 3328 of the Nassif Federal Building, 400 7th Street, SW., Washington, DC. Members of the public may attend these meetings up to the seating capacity of the room.

The meeting is intended to provide a means for the public to participate in the formulation of the United States input on a proposal to develop international measures regarding the use of antifoulant paints on ships, which is being considered by the International Maritime Organization (IMO).

If you have any questions please do not hesitate to contact Lieutenant Junior Grade Christopher L. Boes, U.S. Coast Guard Headquarters (G–MSO–4), 2100 2nd Street, SW., Washington, DC 20593–0001, Telephone: (202) 267–0713.

Dated: August 19, 1998.

**Susan K. Bennett,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 98–23579 Filed 9–1–98; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF STATE

**[Public Notice No. 2879]**

### Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Fire Protection; Notice of Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Friday, September 18, 1998, at 9:30 AM, in room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593. The purpose of the meeting will be to prepare for discussions anticipated to take place at the Forty-third Session of the International Maritime Organization's Subcommittee on Fire Protection, to be held January 11–15, 1999.

The meeting will focus on proposed amendments to the 1974 SOLAS Convention for the fire safety of commercial vessels. Specific discussion areas include: Ro-ro ferry safety, comprehensive review of SOLAS Chapter II–2, revision of the fire safety aspects of the IMO High Speed Craft Code, fire fighting systems in machinery spaces, role of the human element, and prohibition of PFCs in shipboard fire-extinguishing systems.

Members of the public wishing to make a statement on new issues or proposals at the meeting are requested to submit a brief summary to the U.S. Coast Guard five days prior to the meeting.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may obtain more information regarding the meeting of the SOLAS Working Group on Fire Protection by writing: Office of Design and Engineering Standards, Commandant (G–MSE–4), U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593, or by calling: Mr. Bob Markle at (202) 267–1444.

Dated August 19, 1998.

**Susan K. Bennett,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 98–23580 Filed 9–1–98; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

**SUMMARY:** Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

**FOR FURTHER INFORMATION CONTACT:** Stewart R. Miller, Transport Standards Staff (ANM–110), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; phone (425) 227–1255; fax (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

#### Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

#### The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

*Pressurization and Pneumatic Systems*

The following differeces between Part 25 and JAR 25 and their associated guidance material have been identified as having a potentially significant impact on airplane design and cost.

Task: *Pressurization and Pneumatic Systems.* Section 25.1438 of the FAR and JARs 25X1436 and 25.1438 currently require different proof and burst pressure multipliers under specific established normal and abnormal conditions. The JAR also distinguishes between high and low pressure pneumatic systems. In harmonizing 25.1438, consideration must be given to JAR 25X1436 due to the relationship between part 25.1438 of the FAR and JAR 25X1436.

For the above task the working group is to review airworthiness, safety, cost, and other relevant factors related to the specified differences, and reach consensus on harmonized part 25/JAR 25 regulations and guidance material.

The FAA expects ARAC to forward its recommendation(s) to the FAA by July 31, 2000.

#### ARAC Acceptance of Tasks

ARAC has accepted the tasks and has chosen to establish a new Mechanical Systems Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the

working group's resommendations, it forwards them to the FAA as ARAC recommendations.

**Working Group Activity**

The Mechanical Systems Harmonization Working Group is expeced to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale suppporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

**Participation in the Working Group**

The Mechanical Systems Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than October 5, 1998. The requests will be reviewed by the assistant chair and the assistant executive director, and the individuals will be advised whether or not the request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to ensure the ability of the working group to meet any assigned deadline(s). Members are expected to keep their management chain advised of working group activities and decisions to ensure that the agreed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for a vote.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Mechanical Systems Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 27, 1998.

**Joseph A. Hawkins,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 98–23632 Filed 9–1–98; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–98–17]**

### 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.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before September 17, 1998.

**ADDRESS:** 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–CMTS@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:** Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, 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).

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* 29285.
*Petitioner:* Mr. Peter F. Fichter.
*Sections of the FAR Affected:* 14 CFR 61.153(a)
*Description of Relief Sought:* To permit Mr. Fichter to obtain an airline transport pilot certificate before reaching his 23rd birthday.

*Docket No.:* 29217.
*Petitioner:* Mr. Dwight E. Reber.
*Sections of the FAR Affected:* 14 CFR 21.25(a)(2) and 133.19(a)(1).
*Description of Relief Sought:* To permit Mr. Reber to operate a Russian military Kamov Ka–25 helicopter in the restricted category and evaluate it under part 133 for market production test.

*Docket No.:* 29169.
*Petitioner:* Clay Lacy Aviation, Inc.
*Section of the FAR Affected:* 14 CFR 135.152(a).

*Description of Relief Sought:* To permit Clay Lacy to operate its Gulfstream II aircraft under part 135 without it being equipped with an approved digital flight data recorder.

**Dispositions of Petitions**

*Docket No.: 28590.*
*Petitioner:* Human Flight, Inc.
*Sections of the FAR Affected:* 14 CFR 105.43(a)
*Description of Relief Sought/ Disposition:* To permit employees, representatives, or other volunteer 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. Grant, August 5, 1998, Exemption No. 6650A.

*Docket No.:* 28079.
*Petitioner:* General Electric Aircraft Engines.
*Sections of the FAR Affected:* 14 CFR 21.325(b)(1).
*Description of Relief/Disposition:* To permit General Electric Aircraft Engines (GEAE) to obtain export airworthiness approvals for Class I products manufactured under GEAE Production Certificate No. 107 at the Universal Maintenance Center of P.T. Industri Pesawat Terbang Nurtanio in Bandung, Indonesia. Grant, July 16, 1998, Exemption No. 6139B.

*Docket No.:* 24800.
*Petitioner:* Tennessee Air Cooperative, Inc.
*Sections of the FAR Affected:* 14 CFR 103.1(e)(1).
*Description of Relief Sought/ Disposition:* To permit Tennessee Air Cooperative, Inc., to operate powered ultralight vehicles with an empty weight of up to 350 pounds to accommodate physically disabled persons. Grant, July 2, 1998, Exemption No. 5001E.

[FR Doc. 98–23631 Filed 9–1–98; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application (98–04–C–00–CRW) to Impose and use the Revenue From a Passenger Facility Charge (PFC) at the Yeager Airport, Charleston, West Virginia

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before October 2, 1998.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airports Circle, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy C. Murnahan, Assistant Airport Director for the Central West Virginia Regional Airport Authority at the following address: 100 Airport Road—Suite 175, Charleston, West Virginia 25311–1080.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central West Virginia Regional Airport Authority under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airports Circle, Beaver, West Virginia, 25813 (tel. (304) 252–6216). The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 18, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Central West Virginia Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 17, 1998.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.
*Proposed charge effective date:* January 1, 1999.
*Proposed charge expiration date:* January 1, 2001.
*Total estimated PFC revenue:* $1,257,285.

Brief description of proposed projects:
—Update Master Plan
—Remodel Restrooms at Terminal Building
—Jetway Modification
—Purchase security computers and cameras
—Purchase Fire Fighting Equipment
—Terminal Arpon Expansion (Phase I)
—Seal Coat Main Apron Asphalt
—Purchase Terminal Chiller Unit
—Rehabilitate Taxiways B & C

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

Part 135 charter Operator for hire to the general public and Part 121 charter Operator for hire to the general public.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in Jamaica, New York on August 26, 1998.

**Thomas Felix,**

*Manager, Planning & Programming Branch, Airports Division, Eastern Region.*

[FR Doc. 98–23630 Filed 9–1–98; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–98–4381]**

### Notice of Receipt of Petition for Decision That Nonconforming 1993–1998 Mercedes-Benz 600 SEL Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1993–1998 Mercedes-Benz 600 SEL passenger cars are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1998 Mercedes-Benz 600 SEL passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for

importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is October 2, 1998.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 492. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1993–1998 Mercedes-Benz 600 SEL passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1993–1998 Mercedes-Benz 600 SEL passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicles safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993–1998 Mercedes-Benz 600 SEL passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1993–1998 Mercedes-Benz 600 SEL passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993–1998 Mercedes-Benz 600 SEL passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 291 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1993–1998 Mercedes-Benz 600 SEL passenger cars comply with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicles are not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W.,

Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 493.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 27, 1998.

**Marilynne Jacobs,**

*Dirctor, Office of Vehicle Safety Compliance.*

[FR Doc. 98–23608 Filed 9–1–98; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Ex Parte No. 552 (Sub-No. 2)]**

### Railroad Revenue Adequacy—1997 Determination

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of decision.

**SUMMARY:** On September 2, 1998, the Board served a decision announcing the 1997 revenue adequacy determinations for the Nation's Class I railroads. Three carriers (Illinois Central Railroad Company, Norfolk Southern Railroad Company, and Soo Line Railroad Company) are found to be revenue adequate.

**EFFECTIVE DATE:** This decision is effective September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

**SUPPLEMENTARY INFORMATION:** The Board is required to make an annual determination of railroad revenue adequacy. A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 1997, determined to be 11.8% in *Railroad Cost of Capital—1997,* STB Ex Parte No. 558 (Sub-No. 1) (STB served July 20, 1998). In this proceeding, the Board applied the revenue adequacy standards to each Class I railroad, and it found 3 carriers, Illinois Central Railroad Company, Norfolk Southern Railroad Company, and Soo Line Railroad Company, to be revenue adequate.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] The decision is also available on the Board's internet site, www.stb.dot.gov.

#### Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: August 24, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–23672 Filed 9–1–98; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, and 9789(SP)

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, and 9789(SP), Electronic Federal Tax Payment System (EFTPS).

**DATES:** Written comments should be received on or before November 2, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instuctions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Federal Tax Payment System (EFTPS).

*OMB Number:* 1545–1467.

*Form Number:* Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, and 9789(SP).

*Abstract:* These forms are used by business and individual taxpayers to enroll in the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service uses to accept electronically transmitted federal tax payments. EFTPS (1) establishes and maintains a taxpayer data base which includes entity information from the taxpayers or their banks, (2) initiates the transfer of the tax payment amount from the taxpayer's bank account, (3) validates the entity information and selected elements for each taxpayer, and (4) electronically transmits taxpayer payment data to the IRS.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, and state, local, or tribal governments.

*Estimated Number of Respondents:* 11,640,000.

*Estimated Time Per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 3,879,630.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 27, 1998.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 98–23568 Filed 9–1–98; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Commitee on Prosthetics and Special-Disabilities Programs (Committee) will be held Tuesday and Wednesday, September 1–2, 1998, at VA Headquarters, 810 Vermont Avenue, NW., Washington, DC. The September 1 session will convene at 8:00 a.m. and adjourn at 4 p.m. in Room C7C and the September 2 session will convene at 8:00 a.m. and adjourn at 12:00 noon in Room 630. On the morning of September 1, the Committee will receive briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their activities over the last six months. In the afternoon, the Committee will receive a briefing on the data collection methodology used in the Report to Congress on Maintaining Capacity to Provide for the Specialized Treatment and Rehabilitative Needs of Disabled Veterans. On the morning of September 2, the Committee will be given a status report on the development of outcome measures for the special disability programs. The Committee will finish with a discussion on its recommendations with input from VHA senior manager (Chief Patient Care Services Officer.) The purpose of the Committee on Prosthetics and Special-Disabilities Programs is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public. For those wishing additional information, contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Notice of availability of the Executive Summary of this meeting will be published in the **Federal Register** in the near future.

Dated: August 25, 1998.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 98–23615 Filed 9–1–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
September 2, 1998

Part II

# Department of Education

**Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications); Notice**

## DEPARTMENT OF EDUCATION

**[CFDA Nos. 84.116A; 84.116B]**

## Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

*Purpose of Program:* To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

*Eligible Applicants:* Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

*Deadline for Transmittal of Preapplications:* October 22, 1998.

*Deadline for Transmittal of Final Applications:* March 19, 1999.

**Note:** All applicants must submit a preapplication to be eligible to submit a final application.

*Deadline for Intergovernmental Review:* May 18, 1999.

*Applications Available:* September 2, 1998.

*Available Funds:* The Administration's request for the Fund for the Improvement of Postsecondary Education for FY 1999 is $22,500,000. Of this amount, it is anticipated that approximately $6,500,000 will be available for an estimated 80 new awards under the Comprehensive Program. The Congress has not yet completed action on the FY 1999 appropriation. The estimates in this notice assume passage of the Administration's request.

*Estimated Range of Awards:* $15,000 to $150,000 per year.

*Estimated Average Size of Awards:* $80,000.

*Estimated Number of Awards:* 80.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

### Priorities

*Invitational Priorities*

While applicants may propose any project within the scope of 20 U.S.C. 1135(a), pursuant to 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1*—Projects to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for low-income and underrepresented minority students, whose retention and completion rates continue to lag disturbingly behind those of other groups.

*Invitational Priority 2*—Projects to improve campus climates for learning by creating an environment that is safe, welcoming, and conducive to academic growth for all students.

*Invitational Priority 3*—Projects to support innovative reforms of undergraduate, graduate, and professional curricula that improve not only what students learn, but how they learn.

*Invitational Priority 4*—Projects to make more productive use of resources to improve teaching and learning; and to increase learning productivity—that is, to transform programs and teaching to promote more student learning relative to institutional resources expended.

*Invitational Priority 5*—Projects to support the professional development of full-and part-time faculty by assessing and rewarding effective teaching; promoting new and more effective teaching methods; and improving the preparation of graduate students who will be future faculty members.

*Invitational Priority 6*—Projects to promote innovative school-college partnerships and to improve the preparation of K–12 teachers, in order to enhance students' preparation for, access to, and success in college.

*Invitational Priority 7*—Projects to disseminate innovative postsecondary educational programs which have already been locally developed, implemented, and evaluated.

### Selection Criteria

In evaluating preapplications and final applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

*Preapplications.* In evaluating preapplications, the Secretary uses the following selection criteria:

(a) *Need for project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

*Final Applications.* In evaluating final applications, the Secretary uses the following selection criteria:

(a) *Need for the project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *The quality of the management plan.* The Secretary reviews each proposed project for the quality of its management plan, as determined by the plan's adequacy to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) *Quality of project personnel.* The Secretary reviews each proposed project for the quality of project personnel who will carry out the proposed project, as determined by the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(f) *Adequacy of resources.* The Secretary reviews each proposed project for the adequacy of its resources, as determined by the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For preapplications (preliminary applications) and final applications (applications), the Secretary gives equal weight to each of the selection criteria. Within each of these criteria, the Secretary gives equal weight to each of the factors.

*For Applications or Information Contact:* Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue SW, Room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 358–3041 to order applications; or (202) 708–5750, between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, for information. Individuals may also request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address FIPSE@ED.GOV. Individuals may obtain the application text from Internet address http://www.ed.gov/offices/OPE/FIPSE/. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

*Electronic Access to This Document*

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http://ocfo.ed.gov/fedreg.htm
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, at 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

**Note:** The official version of a document is the document published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 1135–1135a–3.

Dated: August 27, 1998.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 98–23605 Filed 9–1–98; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday
September 2, 1998

Part III

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 21, 27, 29, and 91**

**Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 21, 27, 29, and 91**

**[Docket No. FAA–98–4390; Notice No. 98–12]**

**RIN 2120–AG53**

# Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend the general operating rules pertaining to flight plan requirements for flight by helicopters under instrument flight rules (IFR) by revising the alternate airport weather planning requirements, the weather minima necessary to designate an airport as an alternate on an IFR flight plan, and the fuel requirements for helicopter flight in IFR conditions. This proposed rule is needed because current rules discourage helicopter operations under instrument flight rules in marginal weather conditions. This proposed rule would increase safety by allowing helicopter operators access into the IFR system commensurate with the unique flight characteristics of helicopters.

**DATES:** Comments must be received on or before October 2, 1998.

**ADDRESSES:** Comments on this proposed rulemaking may be delivered or mailed, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–98–4390, 400 Seventh St., SW, Rm. Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** William H. Wallace, General Aviation Commercial Division (AFS–804), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3771.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, economic, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. 98–4390.'' The postcard will be date stamped and mailed to the commenter.

## Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 202–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the FAA's Office of Rulemaking a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

## I. Background

*Unique IFR Flight Capabilities of Helicopters*

The current IFR flight plan filing rules were issued to provide safe landing weather minima in IFR conditions for airplanes operating under IFR. Apart from the distinction in § 91.167 concerning the amount of fuel a helicopter must carry versus the fuel an airplane must carry, flight planning requirements, including alternate airport weather minima, are the same for airplanes and helicopters even though the operating characteristics of these aircraft are quite different.

Helicopters fly shorter distances at slower speeds than large airplanes, and generally remain in the air for shorter periods between landings. Therefore, a helicopter is less likely to fly into unanticipated, unknown or unforecast weather. The relatively short duration of the typical helicopter flight leg means that the departure weather and the helicopter's destination weather are likely to be within the same weather system.

*Current Helicopter Instrument Flight Rules*

Section 91.169 of title 14 of the Code of Federal Regulations (CFR) requires that, unless otherwise authorized by air traffic control (ATC), each person filing an instrument flight rule (IFR) flight plan must include, among other things, an alternate airport designation, unless the exceptions in § 91.169 (b) are met. These exceptions specify that a person need not designate an alternate airport on an IFR flight plan if 14 CFR part 97 prescribes a standard instrument approach procedure for the first airport of intended landing and, for at least 1 hour before and 1 hour after the estimated time of arrival at that airport, weather reports or forecasts indicate that the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

In addition, § 91.169 (c)(1) states that unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless the current weather forecast indicates that, at the estimated time of arrival at the alternate airport, the ceiling and visibility will be at or above the following weather minima: At airports for which an instrument approach procedure has been published in 14 CFR part 97, the alternate minima specified in that procedure or, if none are specified, for precision approach procedures, a ceiling of 600 feet and visibility of 2 statute miles; for nonprecision approach procedures, a

ceiling of 800 feet and visibility of 2 statute miles. Section 91.169 (c) (2) states that if no instrument approach procedure for the alternate airport has been published in 14 CFR part 97, the ceiling and visibility minima are those that allow descent from the minimum enroute altitude (MEA), approach, and landing under basic VFR.

In addition, to fly under IFR conditions, a person operating a civil aircraft must comply with the IFR fuel requirements of § 91.167. Section 91.167 requires that an aircraft must carry enough fuel (considering weather reports and forecasts and weather conditions) to—(1) complete the flight to the first airport of intended landing, (2) fly from that airport to the alternate airport, and (3) fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

Section 91.167 (b) specifies that the requirement to have sufficient fuel to fly to the alternate airport does not apply if 14 CFR part 97 prescribes a standard instrument approach procedure for the first airport of intended landing and, for at least 1 hour before and 1 hour after the estimated time of arrival at that airport, weather reports or forecasts indicate that the ceiling will be 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

*Helicopter Visual Flight Rules*

In contrast to IFR flight minima, a helicopter operator may fly VFR in Class G airspace clear of clouds if flying at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision (14 CFR 91.155 (b)(1)). In Classes C and D airspace, and in Class E airspace below 10,000 feet mean sea level (MSL), VFR flight is not permitted in an aircraft, including a helicopter, when the flight visibility is less than three statute miles and the distance from the clouds is less than 500 feet below, 1,000 feet above, or 2,000 feet horizontal (14 CFR 91.155 (a)). In Class B airspace, VFR flight is permitted where a helicopter is clear of clouds with three miles flight visibility. Section 91.157—*Special VFR Weather Minimums*, allows special VFR operations under other weather minima and requirements than those allowed by § 91.155. As a result, a helicopter may operate under VFR in weather conditions that would otherwise preclude the operator from filing an IFR flight plan under § 91.169 because the alternate weather minima criteria cannot be met. Often, IFR-equipped and certified helicopters are safely flown by IFR-rated pilots under VFR in weather that might be characterized as marginal VFR. Although such operations are permitted, the FAA would prefer to make the benefits of IFR operation available to helicopters that would otherwise fly in marginal VFR conditions. Therefore, the FAA is proposing to revise the weather minima for the designation of alternate airports to allow helicopter operators to take advantage of the IFR system. In addition, the FAA is proposing to revise the fuel reserve requirements for helicopter flight into IFR conditions.

The FAA is proposing to change the weather criteria in § 91.167(b)(2) for determining whether a helicopter operating in IFR conditions must carry enough fuel to fly from the first airport of intended landing to an alternate airport. Currently, additional fuel to fly to an alternate airport need not be carried if part 97 prescribes a standard instrument approach and if, for at least one hour before and one hour after the estimated time of arrival, the ceiling is at least 2,000 feet above airport elevation and the visibility is at least 3 statute miles. Under proposed § 91.167(b)(2), a helicopter operator would not have to carry additional fuel to fly from the first airport of intended landing to an alternate airport if—(1) part 97 prescribes a standard instrument approach procedure for that airport; (2) weather reports or forecasts, or any combination of them, indicate that, at the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling would be at least 1,000 feet above the airport elevation, or 400 feet above the lowest approach minima; and (3) the visibility would be at least 2 statute miles. Thus, the proposed rewrite of § 91.167 would change the existing requirements for helicopter operations in two ways. First, it would eliminate the current requirement that weather reports or forecasts indicate that certain weather minima exist for at least 1 hour before the estimated time of arrival. Second, although the FAA proposes to retain a requirement that weather forecasts or reports indicate that certain weather minima exist at the estimated time of arrival and for 1 hour after the estimated time of arrival, those ceiling and visibility minima would be reduced.

Under § 91.169 (b)(2), the FAA is proposing to change the existing requirement that each person filing an IFR flight plan must include an alternate airport unless part 97 prescribes ceiling and visibility reports for at least 1 hour before and 1 hour after the estimated time of arrival. The proposal would eliminate the current requirement that weather reports or forecasts indicate that certain weather minima exist for at least 1 hour before the estimated time of arrival. The proposal would also reduce the requirements that the ceiling be at least 2,000 feet above airport elevation with visibility at least 3 statute miles to requirements for a ceiling of 1,000 feet above airport elevation, or 400 feet above the lowest approach minima (whichever is higher), with visibility at least 2 statute miles.

As to situations involving flight to airports for which an instrument approach procedure has been published for part 97, the proposed rule would revise § 91.169 (c)(1) to reduce the alternate airport weather minima for helicopter flight plan filing purposes as follows: (1) for precision approaches, ceiling 400 feet and visibility of 1 statute mile, but never lower than the approach to be flown, and (2) for non-precision approaches, ceiling of 600 feet and visibility 1 statute mile, but never lower than the approach to be flown.

*Safety Benefits of IFR Operation*

Aircraft operating under IFR are part of the national IFR system, which includes the air traffic monitoring and control structure. This system assures that both pilots and air traffic controllers know where the aircraft is and can work together to avoid hazards and complete the flight safely. In addition, immediate assistance is available in the event of an emergency. Accident data collected by the National Transportation Safety Board (NTSB) shows that weather-related accidents occur far more frequently under VFR than IFR. Between 1987 and 1996, a total of 275 weather-related helicopter accidents occurred, 202 during flights for which no VFR flight plan had been filed, and 68 during flights for which a VFR flight plan had been filed. During this same period, only five weather-related helicopter accidents occurred during flights for which an IFR plan had been filed. The NTSB data strongly suggest that helicopter flights conducted under IFR are less likely to have weather-related accidents than helicopter flights conducted under VFR flight plans or those conducted without a flight plan.

In 1988, the NTSB published a report, entitled ''Commercial Emergency Medical Service Helicopter Operations,'' which was initiated because the accident rate for EMS operations was twice the rate experienced by part 135 on-demand helicopter operations and one and one-half times the rate for all turbine-powered helicopters. The NTSB determined that marginal weather and inadvertent flight into instrument meteorological conditions (IMC) were

the most serious hazards that EMS helicopters encounter. The report states:

> The Board believes that although the IFR system is not designed optimally for IFR helicopters and that the nature of the EMS helicopter mission further complicates this problem, the safety advantages offered by IFR helicopters flown by current and proficient pilots are great enough that EMS programs should seriously consider obtaining this capability.
>
> The NTSB also made the following observations:
>
> Due to their speed and endurance, fixed-wing aircraft can fly to their destination, fly another 100 miles to an alternate airport, and then fly 45 minutes at cruise with little difficulty—the capability called for by the IFR alternate airport requirements. A helicopter, however, would have difficulty meeting these requirements; it is a relatively slow aircraft with limited endurance due to its high fuel consumption. Thus, the IFR alternate airport requirements are one major reason why many EMS helicopter programs are reluctant to invest in IFR-capable aircraft and pilots.
>
> The Safety Board believes there is merit in the argument that the current alternate airport requirements, while appropriate for airplanes, are overly restrictive for helicopters; in the case of EMS helicopters, the restrictions coupled with the lower VFR minimums applicable to these operations, result mainly in discouraging the wider use of IFR-capable helicopters.

Thus, the FAA believes that lowering the alternate airport weather minima for IFR filing purposes will encourage helicopter operators to use the IFR system and reduce the number of weather-related, VFR accidents.

*Anticipated Secondary Benefits of IFR Operation*

In addition to the safety benefits discussed above, this proposed rulemaking is expected to result in certain environmental and economic benefits. Environmental benefits may result because IFR flights generally are conducted at higher altitudes and therefore create less overflight sound than VFR helicopter flights in marginal weather conditions. Similarly, enhancing helicopter access to the IFR system is expected to result in increased utilization of existing IFR-certified and equipped helicopters, thereby yielding economic benefits in terms of greater returns on investment, and more efficient use of equipment, time and other resources. Economic costs and benefits are discussed below under ''Economic Evaluation Summary.''

*History of This Rulemaking*

Over the past 15 years, there have been specific recommendations from industry, and from joint efforts of the FAA and industry regarding regulatory changes to safely expand helicopter access to the IFR system. The FAA has been addressing these recommendations by working with industry to identify regulations that prevent safe helicopter operations in the IFR environment.

In 1975, the FAA issued Special Federal Aviation Regulation (SFAR) No. 29, which authorizes the Administrator to approve the carriage in IFR operations of less than the 45 minutes, but not less than the 30 minutes, of additional fuel reserve required by § 91.23 (c) (now 91.167(a)(3)) and to issue approvals for limited IFR operations for certain transport category rotorcraft that are certified to only operate under VFR. In 1979, the FAA undertook the Rotorcraft Regulatory Review Program (44 FR 3250; Jan. 15, 1979), which was a comprehensive review of rotorcraft operations and certification.

In an NPRM issued March 13, 1985 (50 FR 10144), the FAA proposed to amend § 91.23 (now § 91.167) to reduce the fuel reserve requirement for helicopters from 45 minutes to 30 minutes, the ceiling requirement for helicopters from 2,000 feet to 1,000 feet, and the visibility requirement for helicopters from 3 miles to 1 mile. No changes were proposed to § 91.83 (now § 91.169). As the FAA stated in the preamble to the NPRM, the basis for the proposed reductions was that a helicopter has the unique ability to reduce airspeed safely on approach to as low as 40 knots, and is therefore provided reduced visibility minima in part 97. The proposal went on to say that because the helicopter, with its reduced minima, has a better probability of completing the flight to the planned destination it should be allowed a reduced fuel reserve. In the 1985 NPRM, the FAA also stated that it had gained sufficient experience with operations under SFAR No. 29 to conclude that reducing the required fuel reserve would not decrease the level of safety.

On November 7, 1986 (51 FR 40692), the FAA published a final rule which adopted the proposal under § 91.23 to reduce the fuel reserve. The FAA did not, however, adopt the proposal to reduce the ceiling and visibility minima because a report entitled ''Weather Deterioration Models Applied to Alternate Airport Criteria (Report No. DOT/FAA/RD 81/92 (September 1981) had stated that ''any reduction in alternate airport requirements should be offset by limiting the duration of the flight for which the reduced requirements apply'' (p. 4–1). The findings in that report, however, were preliminary, and in the 17 years that have passed since it was issued, the FAA's experience with helicopter IFR flight plan filing criteria indicates that the preliminary concern for reduced helicopter ceiling and visibility minima was over emphasized.

In 1982, the United States Army adopted reduced IFR alternate airport weather planning minima and alternate airport selection criteria for both helicopters and airplanes. The Army's criteria of a ceiling 400 feet above the weather planning minimum required for the approach to be flown, and visibility one mile greater than the weather planning minimum required for the approach to be flown has been used for over 16 years and thousands of flight hours with no mishap associated with weather planning criteria. The U.S. Army's experience demonstrates that reducing helicopter ceiling and visibility minima for IFR flight planning results in a level of safety equivalent to the current rule and offers greater operational flexibility for helicopter operators.

In August 1993, a workshop conducted by the FAA with industry, called the Extremely Low Visibility Instrument Rotorcraft Approaches (ELVIRA) Workshop, resulted in a list of ''Ten Most Wanted'' changes (see ''Extremely Low Visibility IFR Rotorcraft Approach (ELVIRA) Operational Concept Development, Final Report,'' Report No. DOT/FAA/RD–94/1,I. (March 1994)). The unprioritized list of 10 desired IFR system enhancements included ''Rotorcraft Specific Minima'' for determining the need for, and availability of, alternate airports for flight plan filing purposes ( ELVIRA report, p. 3).

Since rotorcraft are for the most part range-limited, their destination airport and alternate airport will most likely be in the same air mass and consequently will have similar weather. In the ELVIRA final report (p. 34), the FAA noted that the current regulations result in a ''severe penalty in the productivity of helicopters operating under IFR.'' In addition, the FAA observed that ''with certain weather conditions it is often impossible for the helicopter operator to gain access to the current IFR system, while VFR flight is allowed. * * * [C]hanging this [the alternate airport minimums] to 400–1 for a [helicopter] precision approach and 600–1 for a [helicopter] non-precision approach procedure, will enable many more [helicopter] IFR operations to take place while maintaining the same level of safety'' (pp. 34–35).

On February 23, 1995, Helicopter Association International (HAI) petitioned the FAA for an exemption

from § 91.169 (c)(1)(i), which provides that alternate airport minima for a precision approach are a ceiling of 600 feet and visibility of 2 statute miles. The petition asked the FAA to allow lower alternate airport weather minima for IFR flight planning.

On April 24, 1996, HAI filed an amendment to its petition for exemption from § 91.169 (c)(1)(i), proposing, in part, to limit operations under the requested exemption to those conducted by certain operators named in the amended petition. The stated purpose of this amendment was the further ''accumulation of data to prove the operational safety of the use of such minimums.'' In addition, the FAA has received 13 other petitions requesting amendments to §§ 91.169 and 91.167 to allow helicopter operations with reduced alternate weather requirements.

The FAA's action on this NPRM responds to the petitions for exemption from HAI and others. With the publication of this NPRM, the FAA is closing the docket on HAI's petition for exemption, and on the petitions submitted by HAI and others for various amendments to §§ 91.169 and 91.167 and related regulations.

*ARAC Working Group Recommendation*

The Aviation Rulemaking Advisory Committee (ARAC) was established by the FAA to provide industry information and expertise during the rulemaking process. In October 1991, an IFR Fuel Reserve Working Group of the ARAC, General Aviation Operations Issues, was assigned the task to ''evaluate the advantages and disadvantages of revising the fuel reserve requirements for flight under instrument flight rules'' (56 FR 51744; Oct. 15, 1991). Later the working group also evaluated—(1) the advantages and disadvantages of revised precision and non-precision instrument approach minima and alternate weather minima, considering the operational capability of the helicopter to decelerate before and during arrival at the Decision Height or Minimum Descent Altitude, including circling approaches; and (2) whether or not this capability reduces risk and the probability of a missed approach and the need to proceed to an alternate and meet the resulting regulatory alternate fuel requirement. The working group, which consisted of representatives from helicopter associations, helicopter manufacturers, helicopter pilot associations, helicopter operators, and government agencies, met numerous times between January 1992 and October 1997. This proposed rule is based on ARAC's recommendation that was submitted to the FAA in November 1997.

In their document, ARAC recommended that the FAA revise the weather minima used to determine whether carriage of additional fuel to reach an alternate airport is needed when flying in IFR conditions. Specifically, ARAC suggested revising paragraph (b)(2) of § 91.167—Fuel requirements for flight in IFR conditions, to state that: ''* * * weather reports or prevailing weather forecast or combination of them indicate * * * for helicopters, at the estimated time of arrival, the ceiling will be 1,000 feet above the airport elevation or 400 feet above the lowest approach minima, whichever is higher; and * * * at the estimated time of arrival, the visibility will be at least 2 statute miles.'' The ARAC's suggested revisions would create different ceiling and visibility criteria for helicopters (as opposed to those for airplanes), and would also change the requirement that those ceiling and visibility criteria be in effect for at least 1 hour before and 1 hour after the estimated time of arrival.

ARAC also recommended that IFR flight plan requirements for helicopters be amended by revising the alternate airport weather planning requirements and weather minima necessary when designating an alternate airport on an IFR flight plan. ARAC suggested that the FAA revise paragraph (b) of § 91.169—IFR flight plan: Information required, to state that, if 14 CFR part 97 prescribes ''. . . a standard instrument approach procedure for the first airport of intended landing and the weather reports or prevailing weather forecast or combination of them indicate . . . for helicopters, at the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport or heliport elevation or 400 feet above the lowest approach minima, whichever is higher; and . . . at the estimated time of arrival, the visibility will be at least 2 statute miles.''

Under § 91.169 (c), ARAC again suggested creating different IFR alternate weather minima for helicopters performing precision and nonprecision approaches (as opposed to those for airplanes). The new criteria would apply when it would be necessary to include an alternate airport in an IFR flight plan. Ceiling and visibility conditions at the alternate airport would be for ''current prevailing weather forecasts . . . at the estimated time of arrival'' (when no instrument approach procedure has been specified in 14 CFR part 97 for an alternate airport). The helicopter minima recommended by ARAC are as follows. For a ''precision approach procedure . . . for helicopters, [c]eiling 400 feet and visibility 1 statute mile'' and for a ''nonprecision approach procedure . . . for helicopters, [c]eiling 600 feet and visibility 1 statute mile.''

The FAA agrees with most of ARAC's recommendations, except the elimination of the requirement under § § 91.167 (b)(2) and 91.169 (b) that weather report and forecast data be in effect for 1 hour after the estimated time of arrival. The FAA is proposing to keep that requirement. See ''Discussion of Proposed Rule'' below

## II. Discussion of the Proposed Rule

Based largely on ARAC's recommendations, the FAA proposes to amend the general operating rules pertaining to flight plan requirements for flight by helicopters under IFR by revising the: (1) alternate airport weather planning requirements; (2) weather minima necessary to designate an airport as an alternate on an IFR flight plan; and (3) fuel requirements for helicopter flight into IFR conditions.

The proposal reflects the differences in operational characteristics between airplanes and helicopters by maintaining the current requirements for airplanes while reducing the forecast ceiling and visibility minima for helicopters. Under the FAA's proposed § 91.167 (b), fuel requirements for helicopter flights to an alternate airport in IFR conditions would not apply to helicopters if weather reports or forecasts, or any combination of them, indicate that, at the estimated time of arrival and for 1 hour after estimated time of arrival at the intended destination, the ceiling will be 1,000 feet above the airport elevation or 400 feet above the lowest approach minima and the visibility will be at least 2 statute miles. As discussed above (under ''ARAC Working Group Recommendation''), in its November 1997 submission to the FAA, ARAC recommended that the § 91.167 (b)(2) weather criteria be applicable at the estimated time of arrival. The FAA, however, proposes that the weather criteria be applicable at the estimated time of arrival and for 1 hour after the estimated time of arrival. Because weather can change suddenly and unexpectedly, the FAA believes that this extra margin of safety is necessary. The FAA specifically requests public comment on whether this requirement would be reasonable.

The FAA also proposes to revise the requirements for helicopter filing IFR flight plans under § 91.169 (b) so that an alternate airport designation would not be required on an IFR flight plan for

helicopters using standard instrument approach procedures if weather reports or forecasts, or any combination of them, indicate that, at the estimated time of arrival and for 1 hour after the estimated time of arrival at the intended destination, the ceiling will be at least 1,000 feet above the airport elevation, or 400 feet above the lowest approach minima, whichever is higher, and the visibility will be at least 2 statute miles. As with the amendment of § 91.167 (b)(2) (discussed above), ARAC recommended that the § 91.169 (b) weather criteria be applicable at the estimated time of arrival. However, the FAA is proposing that weather criteria be applicable at the estimated time of arrival and for 1 hour after the estimated time of arrival. Again, the FAA believes that this extra margin of safety is necessary, but specifically requests public comment on whether this requirement would be reasonable.

In addition, the proposed rule would revise § 91.169(c) to reduce the alternate airport weather minima for helicopter IFR flight plan filing purposes as follows: (1) for precision approach procedures, a ceiling of 400 feet and visibility of 1 statute mile, but never lower than the published minima for the approach to be flown; and (2) for non-precision approach procedures, a ceiling of 600 feet and visibility of 1 statute mile, but never lower than the published minima for the approach to be flown.

The FAA is also proposing to remove ''Special Federal Aviation Regulation (SFAR) No. 29–4—Limited IFR Operations of Rotorcraft'' from 14 CFR parts 21 and 91, and notes referencing it from 14 CFR parts 27 and 29. This action is being taken because the SFAR does not include the proposed provisions for alternate airport weather planning minima and weather minimum necessary to designate an airport as an alternate; therefore, if this proposal is adopted as final, SFAR No. 29–4 would no longer be necessary. The FAA has not issued any approvals under SFAR No. 29–4 in recent years and believes that all approvals previously issued have either been surrendered or revoked, or have terminated. While the FAA does not know of any operators that would be adversely impacted by the removal of SFAR No. 29–4, the agency specifically requests comments from operators that believe they would be.

Aside from the substantive amendments described above, the FAA is also proposing to issue these amendments in clear, easy to follow language. This is discussed below under ''III. Plain Language in Government Writing.''

## III. Plain Language in Government Writing

In response to the White House Commission on Aviation Safety and Security's recommendation that the FAA's regulations should be simplified and, as appropriate, rewritten in plain English (Recommendation 1.4; Final Report to President Clinton, February 12, 1997), as well as the June 1, 1998, Presidential Memorandum on ''Plain Language in Government Writing,'' the FAA has attempted to make the proposed regulatory text for §§ 91.167 and 91.169 as easy to follow as possible. Under § 91.167, paragraph (a) does not contain any new requirements, but would be clarified by moving the exception clause to paragraph (a)(2), which it modifies. Section 91.169 (a)(2) does not contain any new requirements, but would be clarified by moving the exception clause to the beginning of the sentence to make it consistent with § 91.167 (a)(2). In addition, the FAA has made one minor clarification to the airplane flight planning provisions in §§ 91.167(b)(2) and 91.169(b) by adding the word ''for'' before the phrase ''1 hour after'' to make it consistent with the helicopter flight planning provisions.

The FAA is setting forth the proposed revisions to §§ 91.167 (b) and 91.169 (b) and (c) in two formats, tabular and narrative (each containing the same proposed new requirements). The FAA specifically requests comments on whether the amendments set forth in this NPRM are in clear language, and whether the tabular or narrative format in § 91.167 (b) and 91.169 (b) and (c) is preferable. Only one format will be adopted at the final rule stage.

## IV. Economic Evaluation Summary

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; Feb. 26, 1979).

Both the executive and legislative branches of government recognize that economic considerations are an important factor in establishing regulations. Executive Order 12866, signed by President Clinton on September 30, 1993, requires Federal agencies to assess both the costs and benefits of proposed regulations and, recognizing that some costs and benefits are difficult to quantify, propose or adopt regulations only upon a reasoned determination that the benefits of each regulation justify its costs. In addition, the Regulatory Flexibility Act of 1980 requires Federal agencies to determine whether or not proposed regulations are expected to have a significant economic impact on a substantial number of small entities, and, if so, examine feasible regulatory alternatives to minimize the economic burden on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of proposed regulations on international trade.

This section of the preamble summarizes the FAA's economic and trade analyses, findings, and determinations in response to these requirements. The complete economic and trade analyses are contained in the docket (see ''Addresses'' above).

### *Benefits*

There are some non-quantifiable benefits that can be attributed to this proposed rulemaking, such as the reduction in the level of aircraft noise experienced by individuals on the ground when helicopters fly at higher altitudes. These benefits are difficult to accurately measure, and are discussed in qualitative terms. Other benefits are more quantifiable and are derived from the reduction of the number of fatal and serious accidents that occur in marginal weather conditions. The estimated reduction in the number of accidents is due to the increased level of safety afforded pilots that fly IFR. These benefits are classified as quantitative.

### *Qualitative Benefits*

Due to the lack of feasible alternatives to VFR, during periods of marginal or inclement weather conditions, a helicopter operator often will forsake the IFR system because he or she is unable to meet the flight plan requirements and criteria for specifying an alternate airport. As such, the helicopter operator will fly either VFR or Special VFR at lower altitudes. By flying at lower altitudes, third party costs (increased level of aircraft noise), are experienced by individuals on the ground.

All noise has the potential to annoy because of interference with speech, sleep, work, or other activities; however, aircraft noise is a function of aircraft altitude, and noise or sound energy can be reduced by increasing the flight altitude. Therefore, by providing the opportunity to increase the altitude of a helicopter's flight during IMC (instrument meteorological conditions), the proposed rule would help to reduce

the sound energy on the ground generated by that helicopter. For example, if a helicopter flying VFR at 250 feet above ground level (AGL) in marginal weather conditions is able to fly IFR at 4,000 feet AGL in the same marginal weather conditions, the reduction in sound energy is 24 dB, which represents a decrease to less than one-hundredth the level of sound intensity experienced by third parties on the ground.

Another benefit of this NPRM that is difficult to quantify is reducing the opportunity cost of upper management time. Opportunity cost is a forward-looking view of costs that are forgone by not putting a firm's resources to its highest use. Due to the high level of concern many companies have regarding the safety of their senior executives, the safe operation of their corporate helicopter receives a high priority. As such, during periods of marginal or adverse weather conditions most corporate operations are canceled rather than attempt to fly VFR under those conditions. A portion of the opportunity cost can be measured by the lost productivity associated with the extra time involved by senior executives using alternate forms of transportation, such as automobiles. With the average annual chief executive compensation at $2.3 million, an hour delay could amount to as much as $1,100, not including the salaries of other senior executives traveling with the chief executive, or the cost of the helicopter and pilot sitting idle due to marginal or adverse weather conditions. By enabling more helicopter pilots to operate under IFR in marginal weather conditions, these opportunity costs could be avoided.

*Quantitative Benefits*

The quantitative benefits of this proposed rulemaking are derived from a potential reduction in weather-related accidents. Weather-related accidents are a common, serious type of accident experienced by helicopter operators, but this type of accident can be prevented by enhanced helicopter operator access into the IFR system. The FAA believes that the proposed rule will result in a level of safety equivalent to the current rule and offer greater operational flexibility for helicopter operators. The FAA bases this on the U.S. Army's experience of no mishaps over the past 16 years associated with weather planning criteria resulting from reduced helicopter ceiling and visibility minima for IFR flight planning.

In this analysis, the FAA used data involving helicopter accidents where weather was a cause or factor over a 10-year period from 1987 to 1996. The data used was obtained from the National Transportation Safety Board (NTSB) database. The most recent accidents that occurred in 1997 are still under review, and thus no data from 1997 is used in this analysis.

Since 1987, there have been a total of 275 helicopter accidents where weather was a cause or factor of the accident. The total includes 202 accidents involving VFR flight without a flight plan filed, 68 accidents where a VFR flight plan was filed, and five accidents where a IFR flight plan was filed. The 202 accidents involving VFR flight is approximately 40 times greater than the five accidents that occurred under an IFR flight plan. In addition, the 68 accidents where VFR flight plans were filed is approximately 14 times greater than the five in IFR operation. When the 202 accidents are added to the 68 accidents, the result is a total of 270 accidents, which represents approximately 98 percent of all the accidents that occurred when weather was a cause or factor. These statistics suggest the potential safety benefits of flying IFR in IMC.

Of all helicopter flights flown, approximately 10 percent are performed under an IFR flight plan. As such, the number of accidents flying IFR would be expected to be approximately 10 percent of the total accidents, or 28 accidents. However, of the 275 helicopter accidents where weather was a cause or factor of the accident, instead of 28 accidents, only five accidents occurred under an IFR flight plan. Because the actual number of accidents (five) is approximately 18 percent of the expected number of accidents (28), this information suggests that IFR flight is safer than VFR flight when marginal weather conditions are present.

When the fatalities sustained while flying with no flight plan (74) are added to the fatalities sustained while flying with a VFR flight plan (63), the result is 137 fatal injuries. That represents a fatality rate more than five times the 27 fatal injuries sustained under an IFR flight plan. Similarly, when serious injuries sustained while flying with no flight plan (32) are added to the serious injuries sustained while flying with a VFR flight plan (24), the result is 56, compared to only one serious injury sustained in IFR flight. In aggregate, the fatal and serious injuries that occurred when no IFR flight plan was filed is approximately seven times those that occurred under an IFR flight plan. The FAA is aware that even though weather was a cause or contributing factor in all of these accidents, this proposed rulemaking would not have prevented all of these accidents or injuries; however, the data suggest that IFR flight is safer than VFR flight when marginal weather conditions are present.

In 16 of the 270 accidents involving VFR flight, in addition to weather being a cause or contributing factor, the pilot-in-command had instrument ratings for helicopters, or for helicopters and airplanes. Although the weather minima for the destination airport is not known, the FAA believes that with the revised weather minima provided by the proposal, the pilots with instrument ratings could have taken advantage of positive air traffic control services (such as obstacle avoidance) and flown IFR. However, due to the uncertainty regarding the weather at the destination airports, the FAA recognizes that all 16 of these accidents may not have been avoided. Therefore, the FAA applied the same percentage described above regarding the expected and actual accidents under IFR ($5/28 \cong 18\%$) where weather was a cause or factor of the accident and determined that three of the 16 accidents ($16 \times 18\% \cong 3$) would not have been avoided if this proposed rulemaking had been in effect.

To determine the potential benefits that would result from this proposed rule, the FAA estimated the average costs associated with all the injuries and fatalities sustained in the 16 accidents involving VFR flight where the pilot-in-command had instrument ratings for helicopters. A critical economic value of $2.7 million and $518,000 was applied to each human fatality and serious injury, respectively. This computation resulted in an estimate of approximately $53 million in casualty costs. Also, the value of the destroyed aircraft was estimated to be $7 million. If this rulemaking helps prevent 80 percent of these injuries and fatalities that resulted from 16 accidents, the expected potential safety benefits over the next 10 years would be approximately $48 million ($34 million, discounted).

*Costs*

The proposed rule would not impose any additional equipment, training, or other cost to the aviation industry. Therefore, the FAA believes there is no apparent compliance cost associated with the proposed rule. However, the FAA solicits comments regarding the plausibility and extent of the adverse impacts on operators from implementation of the proposed rule.

*Comparison of Costs and Benefits*

The NPRM would not place any additional requirements on the aviation industry. Therefore, there are no compliance costs associated with the

proposed rule. Qualitative benefits from the proposed rule would come from reducing the level of aircraft noise experienced by individuals on the ground and from cost savings associated with reducing transportation time for high-level corporate executives. The quantitative benefits come from a potential reduction in accidents by enabling more helicopter pilots to operate under IFR in marginal weather conditions. Over the next 10 years, the estimated safety benefit of the proposed rule could be $48 million, or $34 million, present value. Therefore, the FAA has determined that the proposed rule is cost beneficial.

**V. Initial Regulatory Flexibility Assessment**

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

This proposed rule will impact entities operating under 14 CFR part 91. The FAA believes there is no compliance cost associated with the proposed rule. Therefore, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities; however, the FAA solicits comments from operators that feel they would be negatively impacted from implementation of the proposed rule.

**VI. International Trade Impact Statement**

This proposed rule is not expected to impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this proposed rule would not impose additional costs on either U.S. or foreign air carriers. This proposal would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of United States aviation products or services in foreign countries.

**VII. Unfunded Mandates Reform Act Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandate; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**VIII. Federalism Implications**

The proposed regulations would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this proposed regulation would not have federalism implications warranting the preparation of a Federalism Assessment.

**IX. Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, Appendix 4 paragraph 4(j), regulations, standards and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation. In accordance with FAA Order 1050.1D, paragraph 32, the FAA proposes that there are no extraordinary circumstances warranting preparation of an environmental assessment for this proposed rule.

It is expected that the proposed rule would increase the safety, but not change the number of helicopter operations conducted in the United States. In particular, changes in instrument flight rules (IFR) applied to helicopter flight requirements would result in helicopters flying at higher altitudes during instrument meteorological conditions (IMC) with less associated ground level noise. During visual meteorological conditions, helicopters are expected to continue to operate as they do currently under visual flight rules. These changes in operating rules pertaining to flight plans and fuel for flights by helicopters operating under IFR are not expected to result in any adverse environmental effects since there should be no adverse change in the noise levels currently experienced in the human and natural environment, and no adverse additional impacts on biological, cultural or aesthetic resources. Introduction of exotic species is not expected to be influenced by the proposed rule, and neither would air quality, freshwater supplies nor the practice of traditional belief systems in natural environments.

Comments relating to the proposed categorical exclusion or to any environmental impacts that might result from adopting this rule are invited.

**X. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), there are no requirements for information collection associated with this proposed rule.

**List of Subjects**

*14 CFR Part 21*

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

*14 CFR Part 27*

Aircraft, Aviation safety.

*14 CFR Part 29*

Aircraft, Aviation safety.

*14 CFR Part 91*

Aircraft, Airports, Aviation safety.

**The Proposed Amendment**

In consideration of the foregoing, the FAA proposes to amend parts 21, 27, 29, and 91 of the Federal Aviation Regulations (14 CFR parts 21, 27, 29, and 91) as follows:

## PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

**Authority:** 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

**SFAR No. 29–4 [Removed]**

2. Part 21 is amended by removing Special Federal Aviation Regulation (SFAR) No. 29–4—Limited IFR Operations of Rotorcraft.

## PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

3. The authority citation for Part 27 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

**SFAR No. 29–4—Editorial note [Removed]**

4. Part 27 is amended by removing the Editorial Note for Special Federal Aviation Regulation No. 29–4.

## PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

5. The authority citation for Part 29 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

**SFAR No. 29–4—Editorial note [Removed]**

6. Part 29 is amended by removing the Editorial Note for Special Federal Aviation Regulation (SFAR) No. 29–4.

## PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1156, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

**SFAR No. 29–4 [Removed]**

8. Part 91 is amended by removing Special Federal Aviation Regulation (SFAR) No. 29–4.

. Section 91.167 is revised to read as set forth below. The revision is displayed in two formats (all-narrative and partially tabular), each containing the same information, so the public can comment on which format is preferable.

*Option 1—All-Narrative Format*

**§ 91.167 Fuel requirements for flight in IFR conditions.**

(a) No person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to—

(1) Complete the flight to the first airport of intended landing;

(2) Except as provided in paragraph (b) of this section, fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing, and the weather reports or forecasts, or any combination of them, indicate the following:

(1) *For airplanes.* For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

(2) *For helicopters.* At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be 1,000 feet above the airport elevation, or 400 feet above the lowest approach minima, whichever is higher, and the visibility will be at least 2 statute miles.

*Option 2—Partially Tabular Format*

**§ 91.167 Fuel requirements for flight in IFR conditions.**

(a) No person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to—

(1) Complete the flight to the first airport of intended landing;

(2) Except as provided in paragraph (b) of this section, fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing and the weather is as described in the following table:

| The weather reports and/or prevailing weather forecast | Indicate that the ceiling will be | And the visibility will be |
|---|---|---|
| For airplanes: for at least one hour before and for one hour after the ETA. | At least 2000 feet above airport elevation ..... | At least 3 statute miles. |
| For helicopters: at the ETA and for one hour after the ETA. | At least 1000 feet above airport elevation, or 400 feet above the lowest approach minima, whichever is higher. | At least 2 statute miles. |

10. Section 91.169 is amended by revising paragraphs (a), (b), and (c) to read as set forth below. The revisions are displayed in two formats (all-narrative and partially tabular), each containing the same information, so the public can comment on which format is preferable.

*Option 1—All-Narrative Format*

**§ 91.169 IFR flight plan: Information required.**

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan shall include in it the following information:

(1) Information required under § 91.153(a) of this part;

(2) Except as provided in paragraph (b) of this section, an alternate airport.

(b) Paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing and the weather reports or forecasts, or any combination of them, indicate the following:

(1) *For airplanes.* For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport

elevation and the visibility will be at least 3 statute miles.

(2) *For helicopters.* At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport elevation, or 400 feet above the lowest approach minima, whichever is higher, and the visibility will be at least 2 statute miles.

(c) *IFR alternate airport weather minima.* Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following alternate weather minima:

(1) If an instrument approach procedure has been published in part 97 of this chapter for that airport, the alternate airport minima specified in that procedure, or

(2) If an instrument approach procedure has been published in part 97 of this chapter for that airport, but that procedure contains no alternate airport weather minima, the following apply:

(i) For airplanes using—

(A) *A precision approach procedure.* The ceiling will be 600 feet and the visibility will be 2 statute miles.

(B) *A nonprecision approach procedure.* The ceiling will be 800 feet and the visibility will be 2 statute miles.

(ii) For helicopters using—

(A) *A precision approach procedure.* The ceiling will be 400 feet and the visibility will be 1 statute mile, but never lower than the published minima for the approach to be flown.

(B) *A nonprecision approach procedure.* The ceiling will be 600 feet and the visibility will be 1 statute mile, but never lower than the published minima for the approach to be flown.

(3) If no instrument approach procedure has been published in part 97 of this chapter for the alternate airport, the ceiling and visibility minima are those allowing descent from the MEA, approach, and landing under basic VFR.

* * * * *

*Option 2—Partially Tabular Format*

**§ 91.169 IFR flight plan: Information required.**

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan shall include in it the following information:

(1) Information required under § 91.153(a) of this part;

(2) Except as provided in paragraph (b) of this section, an alternate airport.

(b) Paragraph (a) (2) of this section does not apply if part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing and the weather is as described in the following table:

| The weather reports and/or prevailing weather forecast | Indicate that the ceiling will be | And the visibility will be |
|---|---|---|
| For airplanes: for at least one hour before and for one hour after the ETA. | At least 2000 feet above airport elevation ..... | At least 3 statute miles. |
| For helicopters: at the ETA and for one hour after the ETA. | At least 1000 feet above airport elevation, or 400 feet above the lowest approach minima, whichever is higher. | At least 2 statute miles. |

(c) Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be as described in the following table:

| The ceiling will be | And the visibility will be |
|---|---|
| **If the instrument approach procedure in part 97 contains alternate airport minima** | |
| For airplanes and helicopters:<br>The alternate airport minimum specified in that procedure ..... | The alternate airport minimum specified in that procedure. |
| **If the instrument approach procedure in part 97 contains no alternate airport minima** | |
| For an airplane precision approach:<br>600 feet ..... | 2 statute miles. |
| For an airplane non-precision approach:<br>800 feet ..... | 2 statute miles. |
| For a helicopter precision approach:<br>400 feet, but never lower than the published minima for the approach ..... | 1 statute mile, but never lower than the published minima for the approach. |
| For a helicopter non-precision approach:<br>600 feet, but never lower than the published minima for the approach ..... | 1 statute mile, but never lower than the published minima for the approach. |
| **If there is no instrument approach procedure in part 97 for the airport** | |
| The minima allowing descent from MEA , approach and landing under basic VFR | |

* * * * *

Issued in Washington, DC, on August 28, 1998.

**Richard O. Gordon,**

*Acting Director, Flight Standards Service.*

[FR Doc. 98–23662 Filed 9–1–98; 8:45 am]

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# Part IV

# Department of Transportation

## Research and Special Programs Administration

**49 CFR Part 171, et al.**

**Hazardous Materials: Revision to Standards for Infectious Substances and Genetically Modified Micro-organisms; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Parts 171, 172, 173, and 178**

**[Docket No. RSPA 98–3971 (HM–226)]**

**RIN 2137–AD13**

## Hazardous Materials: Revision to Standards for Infectious Substances and Genetically Modified Micro-organisms

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); notice of public meeting.

**SUMMARY:** RSPA is considering revising the requirements for infectious substances, including regulated medical waste (RMW) to: adopt defining criteria, hazard communication and packaging requirements for Division 6.2 materials consistent with international standards; revise broad exceptions for diagnostic specimens and biological products; provide additional packagings for RMW; and make other changes to improve and clarify regulatory requirements and exceptions. These proposals are intended to ensure an acceptable level of safety in the transport of infectious substances, facilitate international transportation and make it easier to understand and comply with the regulations.

In order to enhance the opportunity to provide comments to RSPA concerning this notice, the public is invited to provide written or E-mail comments during the comment period and to participate in an electronic public meeting on the Internet on September 14, 15 and 16, 1998.

**DATES:** *Comment date:* Comments must be submitted on or before December 1, 1998.

*Electronic public meeting date:* The electronic public meeting will commence on September 14, 1998, at 9:00 a.m. and end on September 16, 1998 at 12 noon (Eastern Daylight Time).

**ADDRESSES:** Information on the electronic meeting, including the Internet address, is available under **SUPPLEMENTARY INFORMATION.** *Written comments:* Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number (Docket Number RSPA–98–3971). Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. Comments may also be submitted by E-mail to ''rules@rspa.dot.gov''.

Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, the public may also review comments by accessing the docket management system through the DOT home page (http://dms.dot.gov). An electronic copy of the document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

**FOR FURTHER INFORMATION CONTACT:** Eileen Mack, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** *Electronic public meeting:* The electronic public meeting will be held at the conferences and public meetings section of RSPA's hazmat home page. The Universal Resource Locator (URL) address is ''http://hazmat.dot.gov/forum''. The electronic meeting will enable anyone with Internet access to participate in a near real-time electronic discussion of the rulemaking. This type of meeting may also increase the breadth of domestic and international participation in the commenting process. The message board will be posted on RSPA's hazmat web site and will be hot-linked to this advance notice of proposed rulemaking. A transcript of the electronic public meeting will be placed in the docket. The topics are as follows:

### List of Topics



### I. Background

On September 20, 1995, RSPA published a final rule (60 FR 48780) to revise the requirements for Division 6.2 materials (infectious substances). The rule clarified the scope of regulation for infectious substances, provided relief for certain shipments of regulated medical waste (RMW) that conform to other Federal agency regulations, allowed certain quantities of RMW to be transported by aircraft, and made other changes to clarify the regulatory provisions applicable to infectious substances. The final rule was intended to address critical, yet non-controversial, issues. RSPA stated in the final rule that other, more complex issues would be considered in a future rulemaking. This ANPRM seeks comment on RSPA's discussion of certain issues and solicits information to address the agency's concerns for safety in transportation of infectious substances and genetically modified micro-organisms and organisms.

### II. Revisions Under Consideration

#### *A. World Health Organization (WHO) Risk Groups/International Recommendations and Regulations*

In this ANPRM, RSPA is considering revising the classification criteria for infectious substances consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). In particular, RSPA is considering adopting risk groups and defining criteria developed by the World Health Organization (WHO) for Division 6.2 materials. These risk groups are described in the following table:

RISK GROUP TABLE

| Risk Group | Pathogen | Risk to individuals | Risk to the community |
|---|---|---|---|
| 4 ..... | Usually causes serious human or animal disease and can be readily transmitted from one individual to another, directly or indirectly, and for which effective treatment and preventative measures are not usually available. | HIGH ..... | HIGH. |
| 3 ..... | Usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another and for which effective treatment and preventative measures are available. | HIGH ..... | LOW. |
| 2 ..... | Can cause human or animal disease but is unlikely to be a serious hazard and, while capable of causing serious infection on exposure, effective treatment and preventive measures are available and only a limited risk of spreading infection exists. | MODERATE. | LOW. |
| 1 ..... | Micro-organisms that are unlikely to cause human or animal disease ..... | NONE OR VERY LOW. | NONE OR VERY LOW. |

Because the hazards posed by infectious substances vary greatly depending on the pathogenicity of the organism, mode and relative ease of transmission, and other factors, RSPA believes that classifying these materials based on the level of risk and applying requirements commensurate with the risk will ensure an adequate level of safety without imposing an undue burden on the regulated community. RSPA does not intend to provide a list of infectious substances that correlates with each risk group. Instead, RSPA would defer to the Department of Health and Human Services' Centers for Disease Control and Prevention (CDC), Office of Public Health, for guidance in determining the risk group of a specific material. RSPA seeks comments on whetheradoption of this risk-based classification criteria will improve safety in the transportation of infectious substances.

*B. Diagnostic Specimens*

Currently, in § 173.134 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), RSPA defers to the CDC regulations in 42 CFR Part 72 for packaging, hazard communication, and handling in the transportation of diagnostic specimens. Based upon reports of undisclosed and improperly prepared shipments of diagnostic specimens, RSPA believes that many shipments of diagnostic specimens are not properly identified and lack adequate hazard communication. RSPA also is concerned that, in some instances, packagings for diagnostic specimens lack sufficient integrity to survive normal handling in transportation. RSPA's Hazardous Materials Information System (HMIS) database contains a number of reports on packages of these materials that were damaged in transportation, causing costly delays and posing risks to cargo handlers, flight crews, emergency responders, and others who may have been exposed to infectious substances.

At the same time, RSPA recognizes that thousands of shipments of diagnostic specimens are transported by highway without incident to and from clinics, households and laboratories by private or contract carriers. To ensure that diagnostic specimens are regulated consistent with the degree of risk posed by the material, RSPA is considering differentiating between a diagnostic specimen known or suspected to contain an infectious substance and a diagnostic specimen that is offered for transportation and transported for routine screening where there is a lower probability that a risk group 2 or 3 pathogen is present.

RSPA is considering requirements that would treat diagnostic specimens that are known or suspected to contain a Risk Group 2, 3 or 4 pathogen as an infectious substance. For diagnostic specimens transported for routine screening (i.e., materials with a low probability of containing a Risk Group 2 or 3 pathogen), RSPA is considering whether to apply reduced packaging and hazard communication requirements. Proposed § 173.196(c) specifies quantity limits for inner receptacles and for outer packagings, and requires that a packaging meet performance tests for non-bulk packagings in Subpart M of part 178 of the HMR except that the height for the drop test must be at least 1.2 meters (3.9 feet).

*C. Biological Products*

Under current provisions, biological products are excepted from the HMR provided they meet the Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) regulations for the transfer of biological products specified in 9 CFR parts 102, 103, and 104 and 21 CFR parts 312 and 600–680. In this ANPRM, RSPA is considering whether to revise § 173.134(b) to except only licensed biological products. A licensed biological product is defined in this ANPRM as a material approved by FDA for human use as a drug in the diagnosis, cure, mitigation, treatment, or prevention of disease and that is derived from biological sources, e.g., blood plasma and/or platelets and products obtained from these materials. In the case of biological products known to contain infectious substances, RSPA proposes that they be treated as infectious substances. RSPA is interested in receiving information on whether the risks associated with the transportation of licensed biological products warrant the granting of these exceptions and whether there are any risks that have been overlooked. RSPA is also interested in information concerning whether it is appropriate for RSPA to continue to defer to FDA and USDA regulations regarding these materials.

In addition to the above, RSPA is considering whether to add a new special provision in § 172.102 (consistent with ICAO Technical Instruction Special Provision A81) to except blood and blood products from existing quantity limits by aircraft when the materials are packaged in accordance with proposed § 173.196, packaged in primary receptacles that do not exceed 500 ml (17 ounces), and contained in outer packagings not exceeding 4 L (1 gallon).

*D. Genetically Modified Organisms and Micro-organisms*

The UN Recommendations and the ICAO Technical Instructions treat any genetically modified material that meets the definition of Division 6.2 as an infectious substance. In addition, those international standards classify a genetically modified material that does not meet the definition of a Division 6.2 material, but is capable of altering animals, plants, or microbiological substances in a way not normally the result of natural reproduction, in hazard class 9 material. The UN Recommendations also contain a

provision that excludes from regulation genetically modified micro-organisms that are authorized and licensed for use by the government of the country of origin, transit, and destination.

RSPA is considering whether to align the HMR with the international provisions for genetically modified organisms and micro-organisms. RSPA invites commenters to address whether RSPA should proceed with developing regulations for genetically modified micro-organisms or whether provisions for the safe transport of these substances are adequately addressed in other agencies' regulations. Are the conditions specified in proposed § 173.140 that provide exceptions from the HMR for genetically modified micro-organisms and organisms justifiable in terms of safety and are they easily understood, or are there alternative safety controls that may be more appropriate?

*E. Hazard Communication*

RSPA is considering several options with respect to the marking or placarding of bulk packagings and transport vehicles containing infectious substances, including regulated medical waste (RMW), and is interested in receiving comments on those options. RSPA is considering requiring the display of an INFECTIOUS SUBSTANCE placard for any quantity of an infectious substance known or reasonably expected to contain a Risk Group 4 pathogen. RSPA seeks comment on whether a requirement to display placards on bulk packagings, freight containers, unit load devices, transport vehicles, or rail cars for shipments of infectious substances known or reasonably expected to contain a Risk Group 4 pathogen, regardless of the quantity of material, is necessary. RSPA is considering amending § 172.504(e), Table 1, column 1, to include 6.2 infectious substances known or reasonably expected to contain a Risk Group 4 pathogen, and to add the appropriate references to an INFECTIOUS SUBSTANCE placard in columns 2 and 3 of the Table. Additionally, a new ''INFECTIOUS SUBSTANCE'' placard would be proposed, as shown below:

BILLING CODE 4910-60-P


BILLING CODE 4910-60-C

RSPA is also considering whether placards should be required to be displayed for bulk packagings, freight containers, unit load devices, transport vehicles or rail cars that contain other infectious substances, including RMW. If placarding is considered necessary, Table 2 of § 172.504 would be revised to

require display of placards for these materials. Consistent with exceptions in § 172.504(c), transport vehicles or freight containers that contain less than 454 kg (1,001 pounds) aggregate gross weight of infectious substances would not be required to be placarded. Alternatively, RSPA is considering a requirement to mark bulk packagings, freight containers, transport vehicles or rail cars with a display similar to that required for units that have been fumigated. For example, a rectangular display with the words ''REGULATED MEDICAL WASTE'' could be prominently displayed so that it can be readily seen by any person attempting to enter the interior of the bulk packaging, freight container, transport vehicle, or rail car. This marking is being considered for domestic transportation of infectious substances, other than those known or reasonably expected to contain a Risk Group 4 pathogen (see discussion above).

RSPA requests comments on the following questions:

1. Should placarding be required for an infectious substance known or reasonably expected to contain a Risk Group 4 pathogen regardless of the quantity of material in the bulk packaging, freight container, transport vehicle or rail car?

2. For RMW, should placarding be required for a bulk packaging, freight container, transport vehicle or rail car which contains RMW? Alternatively, should an optional marking, such as ''REGULATED MEDICAL WASTE,'' be authorized in lieu of placards?

3. Should other infectious substances shipments (e.g., those known or reasonably expected to contain a Risk Group 2 or 3 pathogen) be required to display an INFECTIOUS SUBSTANCE placard? Should an optional marking, such as the term ''BIOHAZARD'' appearing in a rectangular display alongside the BIOHAZARD trefoil symbol, be authorized in lieu of placards?

4. Are placarding and marking proposals for infectious substances, as considered in this ANPRM, necessary and effective for communicating the infectious substance hazard to emergency responders?

5. Will transportation safety be significantly improved if placarding or identification number marking is required?

6. What costs would be incurred by shippers and carriers of infectious substances, including RMW, in fulfilling the proposed placarding requirements or the alternate marking requirements? Are there less costly alternatives to communicate the hazards of infectious substances, including RMW?

7. If placards are required, how many drivers would need to obtain a commercial drivers license (CDL) or a hazardous material (HM) endorsement to the CDL? What would be the associated impacts, including costs?

8. With respect to labels, RSPA is also considering revising the telephone number on its INFECTIOUS SUBSTANCE label to reflect the CDC's new toll free telephone number for reporting incidents involving infectious substances. Even though both CDC telephone numbers are currently in operation, should a transition period be provided to allow for use of existing inventories of currently required labels? If so, how long?

*F. Regulated Medical Waste*

RSPA is considering authorizing non-specification bulk packagings meeting conditions set forth in proposed § 173.197(b) for RMW. Currently, bulk packagings are only authorized under the terms of 18 exemptions. This proposal would incorporate the provisions of some of these exemptions into the HMR to allow the use of non-specification bulk packagings for RMW under specific conditions, thereby eliminating the need for exemptions. These bulk packagings would require inner packagings that are securely closed and leak-resistant to be placed inside fiberglass or plastic containers, bins, or carts. With certain exceptions, these packagings have demonstrated through the exemption process that they provide an acceptable level of safety in transportation.

RSPA is considering, also, whether to revise the quantity limitations in columns (9A) and (9B) of § 172.101 for RMW to read ''No Limit'' to reflect the language in the ICAO Technical Instructions for maximum net quantity permitted per non-bulk package. RSPA notes that the ICAO Technical Instructions in Packing Instruction 622 restrict infectious substances, such as RMW, to non-bulk packagings only. Consistent with ICAO Technical Instructions, RSPA is considering whether to limit RMW in bulk packagings to non-air modes (railcar, motor vehicle, vessel) only.

1. Should the HMR be revised to authorize caster carts as reusable outer packagings for RMW packaged in plastic film bags, as currently authorized by 12 exemptions? If so, what specifications and size limitations are appropriate for caster carts?

2. Should the HMR be revised to authorize roll-off bins as reusable outer packagings for RMW packaged in plastic film bags, as currently authorized by 7 exemptions? If so, what specifications and size limitations are appropriate for roll-off bins?

3. If caster carts or roll-off bins are authorized for transporting RMW in plastic film bags, should film bags be required to be single or multiple ply with a total film thickness of 3 mils, a volume not more than 46 gallons, and a weight not more than 22 pounds, or are there more appropriate specifications?

4. If authorized for reuse to transport RMW, should roll-off bins and caster carts be decontaminated with a disinfectant solution after each use?

5. Should hospitals or clinics that use roll-off bins to transport RMW be required to register as shippers of bulk hazardous materials?

6. Should there be a time limit on the period a bin may hold RMW at the generator's site, to prevent the waste from decomposing and possibly releasing high concentrations of infectious vapors should a film bag be torn?

7. Should roll-off bins be allowed only if they are mechanically unloaded, without the inner packaging being handled manually?

*G. Materials of Trade Exception*

Under Docket HM–200, Hazardous Materials in Intrastate Commerce (62 FR 1216, as amended at 62 FR 49566 and 62 FR 51560), RSPA adopted exceptions from most of the requirements of the HMR for hazardous materials when transported as materials of trade. Materials of trade include certain hazardous materials carried by a private motor carrier engaged in a principal business other than transportation, such as lawn care, plumbing, welding, door-to-door sale of consumer goods, and farm operations. Specific limitations (such as maximum gross weight of materials of trade that may be carried on a motor vehicle) and safety provisions (such as packaging and hazard communication) contained in current § 173.6 achieve an acceptable level of safety at a minimal cost to the carrier.

In this ANPRM, RSPA is inviting comments on whether to amend § 173.6 to permit certain biological products, diagnostic specimens and RMW in Division 6.2, to be transported by private carraige as materials of trade. Entities, such as home health care and diagnostic laboratories, that transport smaller amounts of infectious substances in direct support of a principal business other than transportation would be included.

RSPA requests comments on whether an acceptable level of safety would be

achieved, also, through a materials of trade exception for infectious substances. What, if any, hazard communication should be required for carriage of such materials? If so, what should the communication be?

Section 173.6 specifies quantity limits for the packaging and the motor vehicle, and minimal hazard communication, for materials transported by a private motor carrier engaged in a principal business other than the transportation of hazardous materials. RSPA invites comments on the costs and benefits associated with this proposal and whether special recognition should be given to private carriage by highway, including the transportation of risk group 4 pathogens.

*H. Discussion of Petition for Rulemaking*

On August 28, 1997, The Medical Waste Institute (MWI) submitted a petition for rulemaking (P–1350) requesting relief for the transportation of waste cultures and stocks that meet the definition for infectious substances. This petition and its enclosures have been entered as part of the public docket for this rulemaking and can be obtained by contacting the Department of Transportation Dockets Management System using the information provided in the address section at the beginning of this rule.

Specifically, MWI requested that RSPA revise the HMR to allow contract and private motor carriers to transport discarded cultures and stocks of infectious substances in non-specification packagings if the carriers use dedicated vehicles. The petitioners requested that this relief be authorized for Biosafety Level 1, 2, and 3 materials, as defined in Health and Human Services publication No. 93–8395. These biosafety levels are based on the same WHO risk groups as referenced in § 173.134(a) of the accompanying regulatory text. Currently, the HMR allows this type of transportation for RMW that does not contain a waste culture or stock of an infectious substance. The HMR require a waste culture or stock to be transported in a packaging meeting the performance criteria in § 178.609. Section 178.609 specifies requirements for a triple packaging that survives several rigorous performance tests, including a 9 m (30-foot) drop test and a 1 m (3-foot) puncture test. By comparison, § 173.197 currently requires that the packaging for RMW that does not contain a waste culture or stock of an infectious substance meet performance criteria of a UN specification packaging at the Packing Group II performance level contained in 49 CFR Part 178, Subpart M, except § 178.609. In addition, when packaging authorized in § 173.134 is used, RSPA currently requires that the material be transported in a dedicated vehicle by a private or contract carrier and conform to Biosafety Levels 1, 2, or 3.

MWI included with its petition for rulemaking DOT and State incident data on infectious substances from 1989 through March 1997. The petitioner stated that the information shows a relatively low number of hazardous materials incidents in the U.S. involving a release of RMW transported by highway. MWI further said that:

- The CDC reports hospital waste disposal practices have not resulted in epidemiologic evidence of disease in communities;
- Emergency responders take the same precautions with infectious substance releases as they do with RMW releases;
- Packing group II packagings are not justified for discarded cultures and stocks;
- Discarded cultures and stocks from non-health care settings pose the same level of risk as those from health care settings; and
- The HMR's general packaging requirements coupled with OSHA's bloodborne packaging standards have a proven safety record.

From these points, the MWI concluded that the current packagings required in the HMR for discarded cultures and stocks are not justified because they are onerous and expensive and lack a safety record that proves their actual public health and safety benefit. The MWI also enclosed an EPA press release announcing its medical waste incinerator program, and language that MWI suggests justifies discarded cultures and stocks to be defined as RMW when transported by private or contract motor carriers.

As a result of a provision in § 171.15(b) and the wording of the INFECTIOUS SUBSTANCE label in § 172.432, many releases of infectious substances are reported directly to CDC but not to RSPA. Section 171.15(b) allows carriers that report infectious substance (etiologic agent) incidents the option of reporting the event to the CDC or DOT. Although § 171.15(c) requires incident information reported to CDC to be reported to RSPA in the form of a written report, often this information is not provided to RSPA. This has resulted in an under-reporting of these events in RSPA's HMIS incident database. Further, pre-1996 HMR exceptions for packagings containing 50 ml (1.7 ounces) or less of an infectious substance (known then as an etiologic agent) were often misapplied and used to ship larger amounts of an infectious substance.

The § 171.15(b) exception, when properly applied, relieved carriers from immediate telephonic notification requirements of the HMR. It was intended to avoid duplication with CDC regulations because these materials were subject to CDC requirements in 42 CFR Part 72. Because a number of incidents involving infectious substances were not reported to DOT, RSPA is considering revising § 171.15 to clarify that any incident involving the release of an infectious substance be reported to RSPA, in addition to the CDC, in the form of an incident report.

Over the last few years, individuals and companies commenting on infectious substance rulemakings, or on their own initiative, reported to RSPA information concerning infectious substance releases. They have reported witnessing blood pouring from rolloffs and freight containers transporting RMW, the disposal of AIDS-contaminated blood in municipal waste cans, overturned vehicles that have released diagnostic specimens on the highways, leaking non-bulk packagings of RMW, ruptured packages containing diagnostic specimens being transported by aircraft, releases of treatment-resistant diseases from insufficient packaging, and used sharps that punctured inner packagings. As a result of information received from these sources, and through RSPA's own initiative and incident reporting system, RSPA is now considering whether to take a more conservative approach, on the side of safety, to the transportation of waste cultures and stocks.

Several commenters, responding to earlier NPRMs issued on this subject under Docket HM–181G, stated that a high concentration of micro-organisms exist in cultures and stocks of infectious substances. These micro-organisms have the potential to cause disease and, therefore, require special handling. CDC supported special handling of these materials in a October 24, 1996 final rule (61 FR 55190) and in response to RSPA's rulemaking actions on infectious substances issued under Docket HM–181G. In meetings and conversations with RSPA, CDC recommended more rigorous packagings for cultures and stocks of infectious substances. Therefore, RSPA did not base its current regulations for these materials solely on incident reports. In addition, RSPA recommends, through guidance provided in the 1996 North American Emergency Response Guidebook, that emergency responders treat infectious substances and RMW

the same since both are Division 6.2 materials.

RSPA finds, through experience gained under exemption DOT–E 11588, that Packing Group II packagings transported by a private or contract carrier in a dedicated vehicle provide an acceptable level of protection for waste cultures and stocks of infectious substances. Private and contract carriers that transport these materials have an increased level of knowledge from working with these materials. Moreover, use of dedicated vehicles limits exposure of these packagings to other packagings and assures that shipments are handled by experienced personnel. RSPA also finds that the general packaging requirements in §§ 173.24 and 173.24a coupled with OSHA's packaging requirements for bloodborne pathogens contained in 29 CFR 1910.1030 are adequate for less virulent infectious substances. RSPA seeks specific comments on the MWI petition for rulemaking.

*I. Segregation from Foodstuffs*

RSPA currently requires segregation of poisons from foodstuffs. Is there sufficient justification to support imposing similar restrictions on all or certain packages containing infectious substances?

**III. Section-by-Section Review**

This discussion is included to provide the reader with additional information to more fully explain potential approaches. RSPA seeks comments on these potential approaches and may publish an NPRM to further refine these approaches or to propose alternatives to these approaches based on comments we receive.

*Section 171.14*

Paragraph (f) would be added to establish a two-year transition period for the use of infectious substance labels that do not include the CDC's new toll-free telephone number for reporting infectious substance incidents.

*Section 171.15*

In paragraphs (a) (3) and (b), the term ''etiologic agents'' would be revised to read ''infectious substances.'' In paragraph (b), information would be added to clarify that a written report, DOT Form F 5800.1, is required for all infectious substance incidents, including those reported to the CDC.

*Section 172.101*

For the entry, ''Regulated medical waste'', the letter ''D'' in column (1) would be removed, in column (7) the reference to Special Provision A14 would be removed, and columns (9A) and (9B) would be amended to indicate ''No limit'' as opposed to ''Forbidden'' for quantity limitations. These changes would harmonize requirements in the HMR with those in the ICAO Technical Instructions and facilitate the transport of RMW in non-bulk packagings by aircraft. It should be noted that, although ''No limit'' would be specified for per-package quantity limits in the Hazardous Materials Table (the Table), Special Provision A13 would be revised to prohibit the use of bulk packagings aboard aircraft. Further, quantity limits may apply with regard to the types of packagings authorized for RMW in Part 173 and to air transportation under § 175.75. RSPA requests comments concerning the need, if any, for further limitations or relaxations on the quantities of RMW authorized for transportation by aircraft.

For the entries ''Infectious substances, affecting animals only'' and ''Infectious substances, affecting humans'' new special provisions would be added in Column (7). One, A81, would provide relief from quantity limits for the transport of blood or blood products known to contain or suspected of containing infectious substances when in primary receptacles not exceeding 500 ml (17 ounces) and in outer packagings not exceeding 4 L (1 gallon) and packaged in accordance with § 173.196. The second, A82, would provide relief from UN standard packaging for transporting body parts, whole organs, and whole bodies.

A new entry, ''Genetically modified micro-organisms'' would be added to the Table as a Class 9 (miscellaneous) material consistent with the entry in the UN Recommendations, the ICAO Technical Instructions and the IMDG Code.

Another new entry, ''Diagnostic Specimen'', would be added to the Table as a Division 6.2 material. However, this proper shipping name would be authorized only for diagnostic specimens excepted under proposed § 173.196(c). There would be no identification number, hazard warning label, or packing group assignment.

In order to eliminate any confusion and costs that could result from the use of several proper shipping names for the same material, the other proper shipping names for infectious waste that are authorized in the UN Recommendation and the ICAO Technical Instructions, ''Biomedical waste, n.o.s.'', ''Clinical waste, unspecified, n.o.s.'', and ''Medical waste, n.o.s.'', would not be added to § 172.101. RSPA believes the proper shipping name ''Regulated medical waste'' more accurately describes the material and is the preferable shipping name. Also, it is RSPA's understanding that the other names were added to satisfy requests from specific countries that were already using these shipping names. International shipments using these names would be authorized for transport to their final destinations under the import-export provisions in §§ 171.11, 171.12, and 171.12a.

*Section 172.102*

Special Provision A13 would be revised to prohibit the use of bulk packagings for RMW aboard aircraft, thus imposing a maximum gross mass of 400 kg or 450 L per package. Special Provision A14 would be removed.

Two new Special Provisions, A81 and A82, that are consistent with A81 in the ICAO Technical Instructions, would be added, as discussed earlier in this section-by-section review under § 172.101.

*Section 172.432*

The current telephone number, ''404–633–5313'', printed on the INFECTIOUS SUBSTANCE label for reporting infectious substance incidents would be changed at the request of CDC to reflect its new toll free phone number for this purpose, to ''800–232–0124''. A two-year transition period would be provided in § 171.14 to allow shippers to exhaust their label inventories.

*Section 173.6*

Paragraph (a)(4) would be redesignated as paragraph (a)(5) and a new paragraph (a)(4) would be added to permit certain biological products, diagnostic specimens and RMW in Division 6.2 to be transported by entities, such as home health care providers and diagnostic laboratories, that transport smaller amounts of infectious substances in direct support of a principal business other than the transportation of hazardous materials.

*Section 173.134*

The criteria for Division 6.2 materials specified in § 173.134 would be revised based on the UN Recommendations and the 1999–2000 edition of the ICAO Technical Instructions. This section would also be revised to incorporate certain domestic exceptions for transportation by highway. The current definition for infectious substances would be revised to remove the term ''viable microorganism'' and clarify the term ''pathogens.'' The defining criteria would exclude toxins, include the WHO risk groups, and except from Division 6.2 infectious substances that are unlikely to cause disease, i.e., risk group

1 pathogens. The definitions for the terms ''diagnostic specimen'' and ''biological product'' would be amended to include the WHO risk groups and be compatible with the ICAO Technical Instructions. Paragraph (b) would be amended to except licensed biological products from regulation under the HMR and, under certain conditions, except diagnostic specimens and biological products where a low probability exists that they contain a WHO risk group 2 or 3 pathogen.

RSPA is considering requiring that animals which contain or are contaminated with genetically modified micro-organisms or organisms (§ 173.140(d)(4)) that meet the criteria of an infectious substance (§ 173.134(c)(5)) be transported under terms and conditions approved by RSPA's Associate Administrator for Hazardous Materials Safety, consistent with standards specified in the UN Recommendations and ICAO Technical Instructions.

*Section 173.140*

New paragraphs (c) and (d) would be added to provide defining criteria and exceptions for a genetically modified micro-organism that does not meet the definition of a Division 6.2 material but has the potential to alter animals, plants, or the environment. These materials would be assigned to the Class 9 hazard class. A genetically modified micro-organism that meets the criteria for a Division 6.2 material would be classed and described as an infectious substance. A genetically modified micro-organism would be required to be packaged in accordance with § 173.196, except that the packagings need not be marked in accordance with § 178.503 or tested in accordance with § 178.609. In addition, the quantity in the primary receptacles would be limited to a maximum of 100 ml (3.4 ounces) or 100 g (4 ounces) for consistency with the ICAO Technical Instructions. A Class 9 genetically modified micro-organism and organism packages would not be assigned a packing group and would be excepted from all requirements in the HMR if authorized for final distribution and use by a U.S. Government agency.

*Section 173.196*

Existing paragraph (a) would be revised and redesignated as paragraph (b). New paragraph (a) would clarify that § 173.196 prescribes non-bulk packagings for infectious substances. Existing paragraphs (b), (c), (d), and (e) would be incorporated in new paragraph (b). New paragraph (b) would include an exception from requirements for an absorbent material for solid infectious substances, and other revisions to provide consistency with the ICAO Technical Instructions. These revisions would include package and overpack marking requirements and requirements to ensure the containment integrity of the packagings during air transport, including circumstances where the refrigerant is dissipated or lost. The existing text in paragraph (h) of this section excepting biological products and diagnostic specimens from regulation under the HMR would be deleted. New exceptions for diagnostic specimens and biological products would be relocated to § 173.134. A new paragraph (c) would be added to remove from regulation diagnostic specimens with a low probability of containing a risk group 2 or 3 pathogen when a limited amount of the material is placed in a non-specification packaging. A new paragraph (d) would be added to prescribe non-specification packaging provisions for body parts and certain diagnostic infectious substances. Former paragraph (g) would be renamed paragraph (e).

*Section 173.197*

RSPA is considering revising the RMW packaging requirements to allow five types of packagings: (1) infectious substances packaging in accordance with § 173.196; (2) RMW packaging in accordance with current § 173.197; (3) packagings that conform to 29 CFR 1910.1030; (4) non-specification bulk packagings currently authorized under exemptions; and (5) intermediate bulk containers (IBCs).

In addition, the provisions for RMW packaging meeting the criteria in § 173.197 would be revised to permit liquid materials to be placed in a packaging suitable for solids when the liquid can be fully absorbed by the absorbent material in the packaging, the packaging is capable of retaining liquids, and the packaging conforms to the OSHA bloodborne pathogen packaging standards in 29 CFR 1910.1030.

Existing paragraph (b) would be removed because the anniversary date for this provision is no longer applicable.

Several commenters to earlier rulemakings on RMW were unaware that the HMR allow the use of non-bulk, single packagings for RMW. This proposal would clarify that the packaging requirements in § 173.197 allow the shipper to use single or combination UN specification packagings if the performance standards are met.

*Section 178.503*

In § 178.503, a new paragraph (f) would be added to incorporate package markings consistent with those in the ICAO Technical Instructions and UN Recommendations for infectious substances.

*Section 178.601*

A sentence would be added to paragraph (c)(1) of this section to include the tests for infectious substance packaging in the definition for design qualification testing. As a result of this change, manufacturers of infectious substance packagings would be required to retain design qualification records, as required in § 178.601(l).

*Section 178.609*

Several amendments may be incorporated in this section to harmonize it with the UN Recommendations and the ICAO Technical Instructions. The section heading may be revised to remove the wording ''(etiologic agents)''. Paragraph (c) would be revised to permit the use of expanded plastics for inner packagings and require the packaging tests to be determined by the most fragile inner packaging. Paragraphs (d)(1)(i), (d)(1)(iii), (d)(1)(iv) would be revised for editorial purposes. Paragraph (e) would be revised to replace the current water immersion test with a water spray test that simulates exposure to rainfall consistent with the ICAO Technical Instructions. The last sentences in paragraphs (h)(1) and (h)(2) would be revised to clarify the requirements for conducting the penetration test. Specifically, the text would be revised to clearly indicate that penetration of the primary receptacle is not acceptable. Paragraph (i) would be revised to clarify that infectious substances are required to be marked in accordance with § 178.503 and redesignated as a new paragraph (l). New paragraphs (i), (j) and (k) would be added to incorporate the selective testing provisions in the UN Recommendations and ICAO Technical Instructions. These provisions allow variations in the primary receptacles within the secondary packaging without further testing of the completed packaging if an equivalent level of performance is maintained.

## IV. Regulatory Analyses and Notices

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This ANPRM is not a significant regulatory action under section 3(f) of Executive Order 12866, and was not

reviewed by the Office of Management and Budget. It is not a significant regulatory action under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, March 1, 1979).

Any future NPRM on infectious substances may contain proposals that have substantial effects on hospitals (SIC 8062), nursing and personal care facilities (SIC 8059), medical and dental laboratories (SIC 807), home health care services (SIC 8082), offices and clinics of doctors of medicine (SIC 8011) and dentists (SIC 8021), and research, development and testing services (SIC 8731). The primary economic impact of a proposed rule along the lines of this ANPRM would be on persons who offer for transportation or transport diagnostic specimens and biological products, subclassifications of infectious substances that are currently excepted from all requirements of the HMR. At this time, RSPA has neither sufficient data in the form of reported incidents concerning fire, breakage, spillage, or suspected contamination involving shipments of diagnostic specimens and biological products with which it may assess actual risks in transportation. Also, RSPA does not have a thorough understanding of current distribution systems by which it may estimate costs that would result from a decision to apply requirements of the HMR to various modes of transportation and types of carriage (i.e., common, contract and private). A primary purpose of this ANPRM is for RSPA to gather additional information that will assist the agency in measuring the anticipated benefits to society, through increased safety in the transportation of these hazardous materials, against anticipated costs to society resulting from new rules and regulations. RSPA requests comments on costs and benefits that may result from any future rulemaking.

*B. Executive Order 12612*

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This advance notice of proposed rulemaking addresses covered subjects under items i–v above and, if adopted, would preempt State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at Sec. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

*C. Executive Order 13084*

This notice has not yet been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because revised rules and regulations evolving from this ANPRM are not expected to significantly or uniquely affect the communities of Indian tribal governments, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this ANPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

*D. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a potential notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of ''small business'' has the same meaning as under the Small Business Act. Because RSPA has established no special definition, the agency employs thresholds published under criteria in 13 CFR 121.101, e.g., $5 million for facilities falling within major group 80 (health services) and 500 employees for commercial physical and biological research (SIC 8731).

Because it has not yet proposed any new requirements, RSPA cannot yet determine potential effects upon small entities. Accordingly, an Initial Regulatory Flexibility Assessment discussing the impact of this potential rulemaking on small entities has not been prepared. However, RSPA has determined that an NPRM that closely follows considerations in this ANPRM may have potential impacts on small businesses, and State and local governments. The agency expects that comments received on this ANPRM will assist it in determining the number of potentially affected small entities and in weighing the impact of various regulatory alternatives for the purpose of drafting revised rules and regulations.

*E. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This ANPRM does not propose any new information collection burdens.

*F. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*G. Unfunded Mandates Reform Act*

This ANPRM imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

**List of Subjects**

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

*49 CFR Part 172*

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and record keeping requirements.

*49 CFR Part 173*

Hazardous materials transportation, Packaging and containers.

*49 CFR Part 178*

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, and 178 may be proposed to be amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citiation for part 171 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR part 1.

1a. Section 171.14 would be amended by adding paragraph (f) to read as follows:

### § 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(f) Until [TWO YEARS FROM THE EFFECTIVE DATE OF FINAL RULE], labels which conform to specifications in subpart E of part 172 contained in the 49 CFR, parts 100 to 185, edition revised as of October 1, 1998, for a Division 6.2 material may be used in place of the Division 6.2 labels currently specified in subpart E of Part 172 of this subchapter.

### § 171.15 [Amended]

2. In § 171.15, the following changes would be made:

a. Paragraph (a)(3) would be amended by removing the term ''(etiologic agents)''.

b. Paragraph (b) would be amended by removing the term ''etiologic agents'' and in its place adding the term ''infectious substances''.

c. Paragraph (b) would be amended by adding the wording ''; however, a written report is still required as stated in paragraph (c) of this section'' immediately after the number ''202–267–2675''.

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION AND TRAINING REQUIREMENTS

3. The authority citation for part 172 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

3. In § 172,101, the following proper shipping names would be added to or revised in the Hazardous Materials Table: following proper shipping names would be added to or revised in the Hazardous Materials Table:

### § 172.101 Hazardous Materials Table

* * * * *

| Symbols | Hazardous materials descriptions and proper shipping names | Hazard class or Division | Identification Numbers | PG | Label codes | Special provisions | (8) Packaging (§ 173.***) | | | (9) Quantity limitations | | (10) Vessel stowage | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Exceptions | Nonbulk | Bulk | Passenger aircraft/rail | Cargo aircraft only | Location | Other |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8A) | (8B) | (8C) | (9A) | (9B) | (10A) | (10B) |
| | [ADD] | | | | | | | | | | | | |
| | Diagnostic specimen | 6.2 | | | | A82 | 134 | 196 | None | 4L or 4kg | 4L or 4kg. | | |
| | * * * * * * * * * | | | | | | | | | | | | |
| | Genetically modified micro-organisms. | 9 | UN3245 | | 9 | | 140 | 140 | None | No Limit | No Limit | B. | |
| | * * * * * * * * * | | | | | | | | | | | | |
| | [REVISE] | | | | | | | | | | | | |
| | Infectious substances, affecting animals, only. | 6.2 | UN2900 | | 6.2 | A81, A82 | 134 | 196 | None | 50 ml or 50 g. | 4L or 4kg | B. | |
| | Infectious substances, affecting humans. | 6.2 | UN2814 | | 6.2 | A81, A82 | 134 | 196 | None | 50 ml or 50 g. | 4L or 4kg | B. | |
| | * * * * * * * * * | | | | | | | | | | | | |
| | Regulated medical waste | 6.2 | UN3291 | | 6.2 | A13 | 134 | 197 | 197 | No Limit | No Limit | E. | |
| | * * * * * * * * * | | | | | | | | | | | | |

* * * * *

4. In § 172.102, in paragraph (c)(2), Special provision A14 would be removed, Special Provision A13 would be revised, and Special Provisions A81 and A82 would be added in alphanumeric order to read as follows:

**§ 172.102 Special provisions.**

* * * * *

(c) * * *

(2) * * *

A13 Bulk packagings are not authorized for transportation by aircraft.

* * * * *

A81 The quantity limits in column (9A) do not apply to blood or blood products known to contain or suspected of containing infectious substances when transported in primary receptacles not exceeding 500 ml (17 ounces) and in outer packagings not exceeding 4 L (1 gallon) and packaged in accordance with § 173.196.

A82 The quantity limits in columns (9A) and (9B) do not apply to body parts, whole organs or whole bodies known to contain or suspected of containing infectious substances; these materials must be packaged in accordance with § 173.134 of this subchapter or, alternatively, in a strong outer packaging in accordance with 173.196(c)(3) with leakproof inner receptacles or liners so as not to present a hazard to persons or animals during transport.

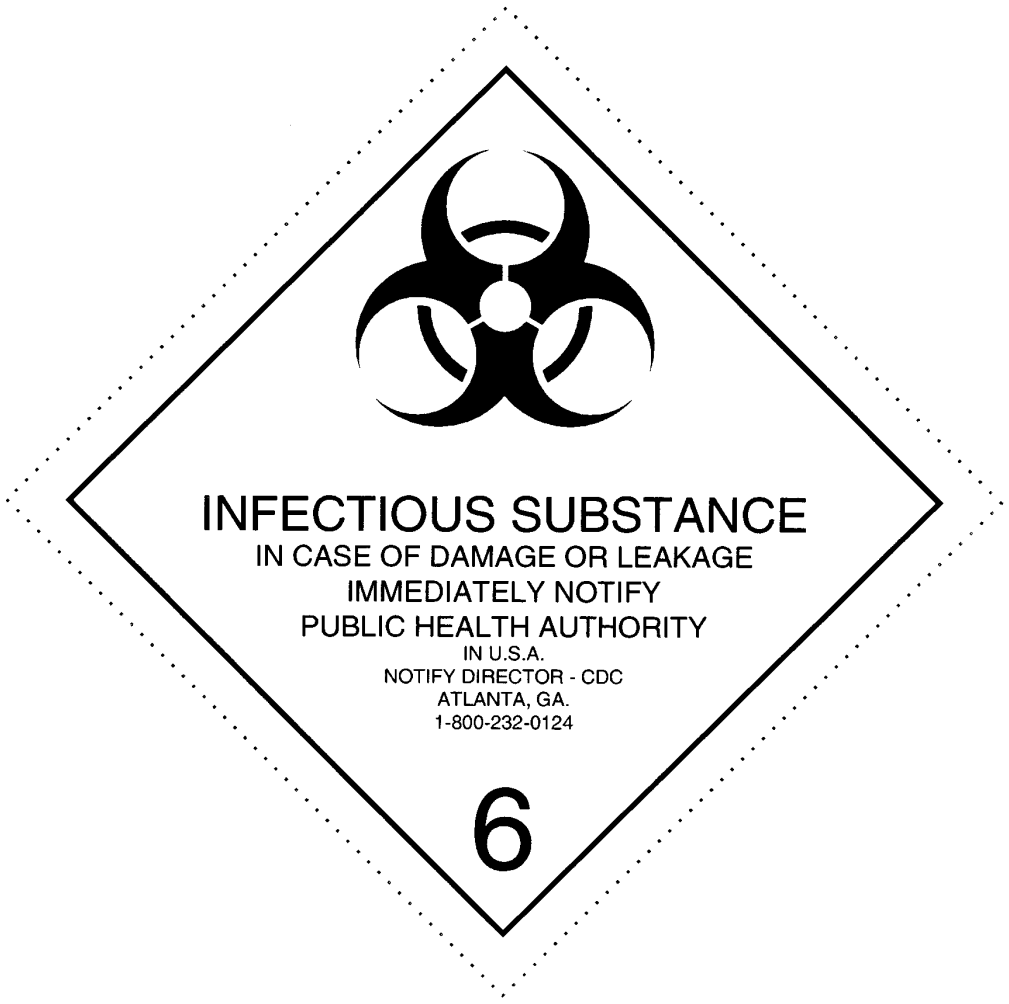
* * * * *

5. Section 172.432, the illustration in paragraph (a) and paragraph (b) would be revised to read as follows:

**§ 172.432 INFECTIOUS SUBSTANCE label.**

(a) * * *

BILLING CODE 4910–60–P




BILLING CODE 4910–60–c

(b) In addition to complying with § 172.407, the background on the INFECTIOUS SUBSTANCE label must be white.

## PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. The authority citation for part 173 would continue to read as follows:

**Authority:** 49 U.S.C. 51015127, 44701; 49 CFR 1.45, 1.53.

6. In § 173.6, paragraph (a)(1) introductory text would be amended by adding the term ''6.2'' immediately following the term ''6.1'', paragraph (a)(4) would be redesignated as paragraph (a)(5) and a new paragraph (a)(4) would be added to read as follows:

### § 173.6 Materials of trade exceptions.

* * * * *

(a) * * *

(4) A Division 6.2 material, other than a risk group 4 or a culture or stock, that is a diagnostic specimen, biological product or regulated medical waste contained in a combination packaging consisting of inner packagings having a gross mass or capacity not over 0.5 kg (1 pound), or 0.5 L (1 pint), and an outer packaging having a gross mass or capacity not exceeding 4 kg (8.8 pounds) or 4 L (1 gallon).

* * * * *

7. Section 173.134 would be revised to read as follows:

### § 173.134 Class 6, Division 6.2—Definitions and exceptions.

(a) *Definitions.* For the purposes of this subchapter, the following terms pertain to Division 6.2 (infectious substances) materials:

(1) *Division 6.2 material* means a material containing an infectious substance subject to the requirements of this subchapter, including, but not limited to, a biological product, a diagnostic specimen, cultures and stocks of an infectious substance, and regulated medical waste.

(2) *Infectious substance* means a material known to contain, or reasonably expected to contain, pathogens. Pathogens are micro-organisms (including bacteria, viruses, rickettsia, parasites, and fungi) or recombinant micro-organisms (hybrid or mutant) that are known or reasonably expected to cause infectious disease in humans or animals. An infectious substance is assigned to a risk group based on its level of risk and is subject to the provisions of this subchapter as a Division 6.2 material if it has the potential to spread disease when exposure to it occurs.

(3) *Biological product* means a material derived from a living organism that is manufactured and distributed in accordance with the provisions of 9 CFR part 102 (Licenses for Biological Products), 9 CFR part 103 (Experimental Products, Distribution, and Evaluation of Biological Products Prior to Licensing), 9 CFR part 104 (Permits for Biological Products), 21 CFR part 312 (Investigational New Drug Application), or 21 CFR parts 600 to 680 (Biologics). A biological product is used for prevention, treatment, or diagnosis of disease in humans or animals, or for developmental, experimental, or investigational purposes related to these uses. This term includes, but is not limited to, a finished or unfinished product such as a vaccine; however, it does not include a diagnostic specimen.

(4) *Cultures and stocks* means material that contains a risk group 2, 3 or 4 pathogen for purpose of growth or storage.

(5) *Diagnostic specimen* means any human or animal material including, but not limited to, excreta, secreta, blood, blood and its components, tissue, and tissue fluids, being transported for diagnostic or investigational purposes, but excluding live humans or animals. Exceptions are provided in paragraph (c)(4) of this section for Risk Group 2, 3, and 4 materials transported by private or contract motor carrier.

(6) *Regulated medical waste* means a waste or reusable material that contains or is suspected of containing an infectious substance in other than risk group 4 and is generated in—

(i) The diagnosis, treatment or immunization of human beings or animals;

(ii) Research pertaining to the diagnosis, treatment or immunization of human beings or animals; or

(iii) The production or testing of biological products.

(7) *Risk group* means a ranking based on level of risk using criteria developed by the World Health Organization (WHO). A risk group is characterized by the pathogenicity of the organism, the mode and relative ease of transmission, the degree of risk to both an individual and a community, and the reversibility of the disease through the availability of known and effective preventative agents and treatment. The criteria for each risk group according to the level of risk are as follows:

(i) *Risk group 4* means a pathogen that usually causes serious human or animal disease and that can be readily transmitted from one individual to another, directly or indirectly, and for which effective treatment and preventative measures are not usually available (i.e., high individual and community risk).

(ii) *Risk group 3* means a pathogen that usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another, and for which effective treatment and preventative measures are available (i.e., high individual risk and low community risk).

(iii) *Risk group 2* means a pathogen that can cause human or animal disease but is unlikely to be a serious hazard, and, while capable of causing serious infection on exposure, for which there are effective treatment and preventive measures available and the risk of spread of infection is limited (i.e., moderate individual risk and low community risk).

(iv) *Risk group 1* means a micro-organism that is unlikely to cause human or animal disease (i.e., no, or very low, individual or community risk). A material containing only such micro-organisms is not subject to the requirements of this subchapter.

(8) *Sharps* means any object that can penetrate the skin, including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires that may be contaminated with a pathogen.

(b) *Exceptions for biological products.* (1) A biological product which is known or reasonably expected to contain a pathogen in risk groups 2, 3, or 4 must be classified in Division 6.2 under UN 2814 or UN 2900, as appropriate, unless otherwise excepted.

(2) A biological product that has successfully completed all screening and confirmatory tests required by the Food and Drug Administration of the Department of Health and Human Services or the Department of Agriculture, as appropriate, to identify pathogens is not considered an infectious substance and is not subject to the requirements of this subchapter.

(c) *Exceptions for diagnostic specimens.* (1) A diagnostic specimen that is known or reasonably expected to contain a pathogen in risk group 2 or 3 (medium to high probability) or for which there is any probability that it contains a pathogen of risk group 4 must be classified in Division 6.2 under UN 2814 or UN 2900, as appropriate, unless otherwise excepted. A specimen transported for the purpose of initial or confirmatory testing for the presence of a pathogen falls within this group.

(2) A diagnostic specimen for which a relatively low probability exists that a pathogen of risk groups 2 or 3 is present may be transported under the exceptions provided in § 173.196(c).

(3) A diagnostic specimen that is known or reasonably expected to contain a pathogen in risk group 1 only or is known not to contain a pathogen is not considered an infectious substance and is not subject to the requirements of this subchapter.

(4) A diagnostic specimen which meets the provisions of paragraph (c)(1) or (c)(2) of this section is excepted from all other requirements of this subchapter when transported by a private or contract motor carrier not engaged in the transportation of passengers and the material is packaged and marked with the proper shipping name ''Diagnostic Specimen'' in accordance with the provisions for diagnostic specimens in § 173.196(c) of this subchapter.

(5) Animals which contain or are contaminated with an infectious substance must be transported under the terms and conditions approved by the Associate Administrator for Hazardous Materials Safety.

(d) *Other exceptions.* (1) The following are not subject to the requirements of this subchapter as a Division 6.2 material:

(i) A living person;

(ii) Laundry or medical equipment that conforms to the regulations of the Occupational Safety and Health Administration of the Department of Labor in 29 CFR 1910.1030;

(iii) A material, including waste, that previously contained an infectious substance that has been treated by steam sterilization, chemical disinfection, or other appropriate method, so that it no longer meets the definition of an infectious substance;

(iv) Any waste or recyclable material, other than regulated medical waste, including—

(A) Garbage and trash derived from hotels, motels, and households, including but not limited to single and multiple residences;

(B) Sanitary waste or sewage;

(C) Sewage sludge or compost; and

(D) Animal waste generated in animal husbandry or food production;

(E) Medical waste generated from households; or

(F) Corpses, remains, and anatomical parts that are intended for interment or cremation;

(v) Forensic material that is transported on behalf of, a Federal, State, local or Indian tribal government agency provided they are shipped in a packaging conforming to the provisions of § 173.24 of this subchapter. A package being shipped and transported under this provision must be marked ''Diagnostic Specimen''.

(2) [Reserved]

9. In § 173.140, paragraphs (c) and (d) would be added to read as follows:

**§ 173.140 Class 9—Definitions.**

* * * * *

(c) Any material that is a genetically modified micro-organism or organism.

(1) This includes micro-organisms and organisms in which:

(i) Genetic material has been purposely altered through genetic engineering in a way that does not occur naturally; and

(ii) The material does not meet the definition of an infectious substance, but has the potential to alter animals, plants or microbiological substances in a way not normally the result of natural reproduction.

(2) A genetically modified micro-organism or organism that meets the definition of an infectious substance in § 173.134 is subject to the requirements for a Division 6.2 material.

(d) Exceptions. (1) A genetically modified micro-organism or organism that is authorized for final distribution and use by a U.S. Government agency is not subject to requirements of this subchapter.

(2) Genetically modified micro-organisms or organisms that meet the definition of a Class 9 material are not assigned a packing group.

(3) Packaging requirements for genetically modified micro-organisms and organisms are specified in § 173.196(c).

(4) A genetically modified micro-organism or organism is excepted from all other requirements of this subchapter when transported by a private or contract motor carrier not engaged in the transportation of passengers, and the material is packaged and marked with the proper shipping name ''Genetically modified micro-organism,'' in accordance with the provisions in § 173.196(c)(4).

(5) Animals which contain or are contaminated with a genetically modified micro-organism must be transported under the terms and conditions approved by the Associate Administrator for Hazardous Materials Safety.

10. Section 173.196 would be revised to read as follows:

**§ 173.196 Infectious substances.**

(a) When § 172.101 of this subchapter specifies that an infectious substance be packaged under this section, only non-bulk packagings prescribed in this section may be used.

(1) An infectious substance must be classified and described under UN 2814 or UN 2900 and must be packaged in a Division 6.2 packaging meeting requirements of paragraph (b) of this section.

(2) An infectious substance that is authorized to be described under the proper shipping name ''Diagnostic Specimen'' must be packaged in accordance with paragraph (b) or (c) of this section. If the diagnostic specimen meets the requirements of § 173.134(c)(2) and is transported by highway only by a private or contract carrier, it may be packaged in conformance with provisions of paragraph (c) of this section.

(3) Body parts, organs or whole bodies must be packaged in a:

(i) Division 6.2 packaging meeting the requirements of paragraph (b) of this section;

(ii) Diagnostic specimen packaging meeting the requirements of paragraph (c) of this section, or

(iii) Non-specification packaging meeting the requirements of paragraph (d) of this section.

(b) *Division 6.2 packaging.* A Division 6.2 packaging must conform to a UN standard specified in subpart L of part 178 of this subchapter and meet the test standards of § 178.609 of this subchapter. The packaging must include:

(1) Inner packagings comprising:

(i) A watertight primary receptacle;

(ii) A watertight secondary packaging; and

(iii) Other than for a solid infectious substance, an absorbent material must be placed between the primary receptacle and the secondary packaging. If multiple primary receptacles are placed in a single secondary packaging, they must be wrapped individually to ensure that contact between them is prevented. The absorbent material, such as cotton or wool, must be sufficient to absorb the entire contents of all primary receptacles.

(2) An outer packaging of adequate strength for its capacity, mass and intended use.

(3) The smallest overall external dimensions of the outer packaging must be at least 100 mm (3.9 inches).

(4) An itemized list of contents must be enclosed between the secondary packaging and the outer packaging.

(5) Based on their physical and chemical form, infectious substances must be packaged according to the following guidelines:

(i) *Lyophilized substances.* Primary receptacles must include flame-sealed glass ampules or rubber-stopped glass vials fitted with metal seals.

(ii) *Liquid or solid substances*—

(A) *Substances shipped at ambient temperatures or higher.* Authorized primary receptacles include those of glass, metal or plastic. Positive means of ensuring a leakproof seal, such as heat

seal, skirted stopper or metal crimp seal must be provided. If screw caps are used, they must be secured with adhesive tape.

(B) *Substances shipped refrigerated or frozen (ice, pre-frozen packs, dry ice).* Ice or dry ice must be placed outside the secondary packagings. Interior supports must be provided to secure the secondary packagings in the original position after the ice or dry ice has dissipated. If ice is used, the packaging must be leakproof. If dry ice is used, the outer packaging must permit the release of carbon dioxide gas and otherwise meet the provisions in § 173.217.

(C) *Substances shipped in liquid nitrogen.* Plastic primary receptacles capable of withstanding very low temperatures must be used. Secondary packaging must withstand very low temperatures and in most cases will need to be fitted over individual primary receptacles. For transportation of liquid nitrogen aboard aircraft, see § 171.11 of this subchapter.

(6) Whatever the intended temperature of shipment, the primary receptacle or secondary packaging used for infectious substances must be capable of withstanding, without leakage, an internal pressure which produces a pressure differential of not less than 95 kPa (14 psi) and temperatures in the range of −40°C to +55°C (−40°F to +131°F).

(c) *Diagnostic specimens and genetically modified micro-organisms and organisms.* (1) A diagnostic specimen that otherwise conforms to terms and conditions specified in § 173.134(c)(1) and (c)(4) must be packaged as specified in paragraph (b) of this section, except that the package need only be capable of meeting test standards of § 178.609 of this subchapter and at a drop test height of not less than 1.2 m (3.9 feet), rather than 9 m (30 feet).

(2) A diagnostic specimen that otherwise conforms to terms and conditions specified in § 173.134(c)(2) and (c)(4) must be packaged as follows:

(i) In a leakproof primary receptacle that does not contain more than 500 ml (17 ounces) or 500 mg (1.1 pounds).

(ii) In an outer packaging that does not contain more than 4 L (1 gallon) or 4 kg (8.8 pounds).

(iii) The packing conforms to requirements in § 173.196(b), but is not subject to the marking requirements in subpart L of part 178 of this subchapter or the performance tests in subpart M of part 178 of this subchapter. However, each completed package must be capable of successfully passing the drop test specified in § 178.603 of this subchapter. The height of the drop test must meet or exceed 1.2 m (3.9 feet).

(iv) For a solid diagnostic specimen, the primary receptacle and secondary packaging is excepted from requirements pertaining to their ability to withstand a pressure differential of not less than 95 kPa.

(3) Except as provided in paragraph (c)(4) of this section, a genetically modified micro-organism or organism must be packaged as specified in paragraph (b) of this section, except that the package need only be capable of meeting test standards of § 178.609 of this subchapter and at a drop test height of not less than 1.2 m (3.9 feet), rather than 9 m (30 feet).

(4) A genetically modified micro-organism or organism that otherwise conforms to terms and conditions specified in § 173.140(d)(4) must be packaged as follows:

(i) In a leakproof primary receptacle that does not contain more than 500 ml (17 ounces) or 500 mg (1.1 pounds).

(ii) In an outer packaging that does not contain more than 4 L (1 gallon) or 4 kg (8.8 pounds).

(iii) The packaging conforms to requirements in § 173.196(b), but is not subject to the marking requirements in subpart L of part 178 of this subchapter or the performance tests in subpart M of part 178 of this subchapter. However, each completed package must be capable of successfully passing the drop test specified in § 178.603 of this subchapter. The height of the drop test must meet or exceed 1.2 m (3.9 feet).

(iv) For a solid genetically modified micro-organism or organism, the primary receptacle and secondary packaging is excepted from requirements pertaining to their ability to withstand a pressure differential of not less than 95 kPa.

(d) *Non-specification packaging requirements.* This packaging consists of a non-bulk strong outer packaging and a leakproof inner packaging, such as a liner or receptacle, that conforms to the conditions specified in §§ 173.24 and 173.24a and the following additional requirements:

(1) When transported by aircraft, the packaging must conform to requirements specified in § 173.27;

(2) When transported with dry ice, the packaging must conform to requirements specified in paragraph (b)(5)(ii)(B) of this section; and

(3) When shipped in liquid nitrogen, the packaging must conform to requirements specified in paragraph (b)(5)(ii)(C) of this section.

(e) The requirements of this section are in addition to the requirements of the Department of Health and Human Services contained in 42 CFR part 72.

11. Section 173.197 would be revised to read as follows:

**§ 173.197 Regulated medical waste.**

(a) *Non-bulk packagings.* Non-bulk packagings conforming to the requirements of part 178 of this subchapter at the Packing Group II performance level are authorized for regulated medical waste as follows. The packagings must be:

(1) Rigid;

(2) Leak-resistant;

(3) Impervious to moisture;

(4) Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling;

(5) Sealed to prevent leakage during transport;

(6) Puncture-resistant for sharps and sharps with residual fluids; and

(7) Break-resistant and tightly lidded or stoppered for fluids in quantities greater than 20 cubic centimeters.

(b) *Special bulk packagings.* Authorized packagings consist of one of the outer bulk packagings with multiple inner packagings, as described in this paragraph.

(1) *Outer packagings.* (i) *Intermediate bulk container (IBC) packaging.* Intermediate bulk containers are authorized as outer packagings subject to the conditions and limitations of this paragraph provided they conform to the requirements in subpart O of part 178 of this subchapter at the Packing Group II performance level, as follows:

(A) *Liquids or solids.* The following are authorized as outer packagings with inner packagings that contain liquids or solids:

(*1*) Composite: 31HZ1. The letter ''Z'' must be replaced with a capital letter which indicates the material of construction of the outer packaging (see § 178.702 of this subchapter);

(*2*) Metal: 31A, 31B, or 31N; or

(*3*) Rigid plastic: 31H1 or 31H2.

(B) *Solids only.* The following are authorized as outer packagings with inner packagings that contain solids only:

(*1*) Composite: 11HZ1 or 12HZ1. The letter ''Z'' must be replaced with a capital letter which indicates the material of construction of the outer packaging (see § 178.702 of this subchapter);

(*2*) Metal: 11A, 11B, 11N, 12A, 12B, or 12N; or (3) Rigid plastic: 11H1, 11H2, 21H1 or 21H2.

(C) *Additional provisions.* An IBC authorized for solids only, may be used for small quantities of liquids provided that sufficient absorbent material is used to absorb the entire amount of liquid

present. IBCs intended to carry sharps must be resistant to puncture and retain liquids under the performance tests of subpart O of part 178.

(ii) *Non-specification bulk packaging.* A non-specification packaging is authorized as an outer packaging subject to the conditions and limitations of this paragraph as follows:

(A) The packaging must be a metal or plastic bulk packaging of rigid, seamless construction, with the following features:

(*1*) A lid or closure that is closed, sealed and latched during transportation; and

(*2*) A maximum capacity greater than 450 L (119 gallons) but less than 1,000 L (264 gallons) as a receptacle for a liquid or a maximum net mass greater than 400 kg (882 pounds) but less than 1,000 kg (2,205 pounds) as a receptacle for a solid;

(B) Be capable of meeting the drop test requirements of § 178.810 and stacking test requirements of § 178.815, for the Packing Group II performance level for solids;

(C) Have an interior surface that is smooth, non-porous, and free of cracks and crevices that could obstruct decontamination operations;

(D) Be in dedicated service for the transportation of waste materials;

(E) Prior to reuse, be decontaminated; and

(F) The outer packaging must be maintained in an upright position during transportation.

(G) The package must be legibly marked with package orientation markings that conform pictorially to ISO Standard 780 on two opposite vertical sides of the package with the arrows pointing in the correct upright direction.

(2) *Inner packaging:* Inner packagings must conform to the following requirements to be authorized for use in special bulk packagings:

(i) A plastic film inner packaging may not exceed a volume of 175 L (46 gallons) and must have a film thickness of at least 0.076 cm (0.003 inches);

(ii) Sharps must be packaged in puncture-resistant containers that are not greater than 38 L (10 gallons) in volume;

(iii) Inner packagings for liquids must meet the non-bulk packaging standards for Packing Group II for liquids. Liquid materials are not authorized for transportation in inner packagings larger than 19 L (5 gallons); and

(iv) Inner packagings must be securely closed with a minimum of entrapped air and sealed with a positive sealing mechanism to prevent leakage.

## PART 178—SPECIFICATIONS FOR PACKAGINGS

12. The authority citation for part 178 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 178.503, paragraph (f) would be added to read as follows:

### § 178.503 Marking of packagings.

* * * * *

(f) A manufacturer must mark every UN specification package that is represented as manufactured to meet the requirements of § 178.609 for packaging of infectious substances with the marks specified in this section. The markings must be durable, legible and placed in a location and of such a size relative to the packaging as to be readily visible, as specified in § 178.3(a). An infectious substance packaging that successfully passes the tests conforming to the UN standard must be marked as follows:

(1) The United Nations symbol as illustrated in paragraph (e) of this section.

(2) The code designating the type of packaging and material of construction according to the identification codes for packagings specified in § 178.502 of this subpart.

(3) The text ''CLASS 6.2''.

(4) The last two digits of the year of manufacture of the packaging.

(5) The country authorizing the allocation of the mark. The letters ''USA'' indicate that the packaging is manufactured and marked in the United States in compliance with the provisions of this subchapter.

(6) The name and address or symbol of the manufacturer or the approval agency certifying compliance with subparts L and M of this part. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety.

(7) For packagings meeting the requirements of § 178.609(k), the letter ''U'' must be inserted immediately following the marking designating the type of packaging and material required in paragraph (f)(2) of this section.

(8) Examples of markings for infectious substance packages include:

4G/CLASS 6.2/97/USA/ACME876

1A2/CLASS 6.2/97/USA/ACME CORP. 123 ELM ST DALLAS, TX 75230

1A2U/CLASS 6.2/97/USA/ACME CORP. 123 ELM ST DALLAS, TX 75230

14. In § 178.601, paragraph (c)(1) would be revised to read as follows:

### § 178.601 General requirements.

* * * * *

(c) * * *

(1) *Design qualification testing* is the performance of the tests prescribed in § 178.603, 178.604, 178.605, 178.606, 178.607, or 178.609, as applicable, for each new or different packaging, at the start of production of that packaging.

* * * * *

15. In § 178.609, paragraph (i) would be redesignated as paragraph (l), the section heading, paragraph (c) preceding the table, the undersignated sentence preceding paragraph (d)(1) introductory text, paragraphs (d)(1) introductory text, (d)(1)(i), (d)(1)(iii), (d)(1)(iv), (e), (h)(1), (h)(2), and newly designated paragraph (l) would be revised, and new paragraphs (i), (j), and (k) would be added to read as follows:

### § 178.609 Test requirements for packagings for infectious substances.

* * * * *

(c) Packagings prepared for transport must be subjected to the tests in Table I of this paragraph, which, for test purposes, categorizes packagings according to their material characteristics. For outer packagings, the headings in Table I relate to fiberboard or similar materials whose performance may be rapidly affected by moisture; plastics, which may embrittle at low temperature; and other materials such as metal whose performance is not significantly affected by moisture or temperature. Where a primary receptacle and a secondary packaging of an inner packaging are made of different materials, the material of the primary receptacle determines the appropriate test. In instances where a primary receptacle is made of more than one material, the material most likely to be damaged determines the appropriate test.

* * * * *

(d) * * *

The drops must be performed as follows:

(1) Where the samples are in the shape of a box, five must be dropped in sequence:

(i) Flat on the base;

(ii) * * *

(iii) Flat on the longest side;

(iv) Flat on the shortest side; and

* * * * *

(e) The samples must be subjected to a water spray that simulates exposure to rainfall of approximately 50 mm per hour for at least one hour. They must then be subjected to the test described in paragraph (d) of this section.

* * * * *

(h) * * *

(1) Samples must be placed on a level hard surface. A cylindrical steel rod with a mass of at least 7 kg (15 pounds), a diameter not exceeding 38 mm (1.5 inches) and the impact end edges a radius not exceeding 6 mm (0.2 inches), must be dropped in a vertical free fall from a height of 1 m (3 feet), measured from the impact end of the impact surface of the sample. One sample must be placed on its base. A second sample must be placed in an orientation perpendicular to that used for the first. In each instance the steel rod must be aimed to impact the primary receptacle(s). Following each impact, there shall be no leakage from the primary receptacle(s).

(2) Samples must be dropped onto the end of a cylindrical steel rod. The rod must be set vertically in a level hard surface. It must have a diameter of 38 mm (1.5 inches) and the edges of the upper end a radius not exceeding 6 mm (0.2 inches). The rod must protrude from the surface a distance at least equal to that between the primary receptacle(s) and the outer surface of the outer packaging with a minimum of 200 mm (7.9 inches). One sample must be dropped in a vertical free fall from a height of 1 m (3 feet), measured from the top of the steel rod. A second sample must be dropped from the same height in an orientation perpendicular to that used for the first. In each instance the packaging should be so orientated that the steel rod must be aimed to impact the primary receptacle(s). Following each impact, there shall be no leakage from the primary receptacle(s).

(i) Provided an equivalent level of performance is maintained, the following variations in the primary receptacles placed within the secondary packaging are allowed without additional testing of the completed package:

(1) Primary receptacles of equivalent or smaller size as compared to the tested primary receptacles may be used provided:

(i) The primary receptacles are of similar design to the tested primary receptacle (e.g., shape: round, rectangular, etc.);

(ii) The material of construction of the primary receptacle (glass, plastics, metal, etc.) offers resistance to impact and a stacking force equal to or greater than that of the originally tested primary receptacle;

(iii) The primary receptacles have the same or smaller openings and the closure is of similar design (e.g., screw cap, friction lid, etc.);

(iv) Sufficient additional cushioning material is used to fill void spaces and to prevent significant movement of the primary receptacles; and

(v) Primary receptacles are oriented within the intermediate packaging in the same manner as in the tested package.

(2) [Reserved]

(j) A lesser number of the tested primary receptacles, or of the alternative types of primary receptacles identified in paragraph (i) of this section, may be used provided sufficient cushioning is added to fill the void space(s) and to prevent significant movement of the primary receptacles.

(k) Primary receptacles of any type may be placed within a secondary packaging and shipped without testing in the outer packaging under the following conditions:

(1) The secondary/outer packaging combination must have been successfully tested in accordance with paragraphs (a) through (h) of this section with fragile (e.g., glass) inner receptacles;

(2) The total combined gross weight of inner receptacles must not exceed one-half the gross weight of inner receptacles used for the drop test in paragraph (d) of this section;

(3) The thickness of cushioning material between inner receptacles and between inner receptacles and the outside of the secondary packaging must not be reduced below the corresponding thicknesses in the originally tested packaging. If a single inner receptacle was used in the original test, the thickness of cushioning between the inner receptacles must not be less than the thickness of cushioning between the outside of the secondary packaging and the inner receptacle in the original test. When either fewer or smaller inner receptacles are used (as compared to the inner receptacles used in the drop test), sufficient additional cushioning material must be used to fill the void;

(4) The outer packaging must have successfully passed the stacking test in § 178.606 of this subchapter while empty. The total weight of identical packages must be based on the combined mass of inner receptacles used in the drop test in paragraph (d) of this section;

(5) For inner receptacles containing liquids, an adequate quantity of absorbent material must be present to absorb the entire liquid contents of the inner receptacles; and

(6) If the outer packaging is intended to contain inner receptacles for liquids and is not leakproof, or is intended to contain inner receptacles for solids and is not siftproof, a means of containing any liquid or solid contents in the event of leakage must be provided in the form of a leak-proof liner, plastic bag or other equally effective means of containment.

(7) In addition, the marking required in § 178.503(f) of this subchapter must be followed by the letter ''U''.

(l) Packagings subject to this section are not subject to any other requirements of this subpart, except § 178.608.

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**Alan I. Roberts,**

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## FEDERAL REGISTER PAGES AND DATES, SEPTEMBER



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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