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Thursday  
September 10, 1998

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## Federal Register

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

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 93-CE-24-AD; Amendment 39-10744; AD 98-19-01]

RIN 2120-AA64

#### Airworthiness Directives; Stemme GmbH & Co. KG Model S10 Sailplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Model S10 sailplanes. This AD requires replacing the O-ring that is installed in the mounting part of the pitot tube (in the propeller dome) with one of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the pitot tube O-ring caused by an ineffective design, which could result in the pitot tube falling out and the sailplane pilot losing airspeed indications.

**DATES:** Effective September 25, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 1998.

Comments for inclusion in the Rules Docket must be received on or before October 21, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 93-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D-W-1000 Berlin 65, Federal Republic of Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 93-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426-2169.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Stemme Model S10 sailplanes. The LBA advises that the original design O-ring that is installed in the mounting part of the pitot tube (in the propeller dome) could fail. The softness of these O-rings makes this part subject to failure due to propeller vibration.

Failure of this O-ring could result in the pitot tube falling out and the sailplane pilot losing airspeed indications.

##### Relevant Service Information

Stemme has issued Technical Bulletin No. A31-10-003, dated February 7, 1992, which specifies procedures for replacing the O-ring that is installed in the mounting part of the pitot tube (in the propeller dome) with one of improved design.

The LBA classified this technical bulletin as mandatory and issued German AD 92-197 Stemme, dated April 9, 1992, in order to assure the continued airworthiness of these sailplanes in Germany.

##### The FAA's Determination

This sailplane 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.

##### Cost Impact

None of the Stemme Model S10 sailplanes affected by this action are on the U.S. Register. All sailplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject sailplanes are imported and placed on the U.S. Register.

Should an affected sailplane be imported and placed on the U.S. Register, accomplishment of the required modification would take approximately 1 workhour at an average labor charge of \$60 per workhour. Parts cost approximately \$1 per sailplane. Based on these figures, the total cost impact of this AD would be \$61 per sailplane that would become registered in the United States.

##### The Effective Date of This AD

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

##### Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 No. 93-CE-24-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.

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, Incorporation by reference, Safety.

### **Adoption of the Amendment**

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

### **PART 39—AIRWORTHINESS DIRECTIVES**

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

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

#### **§ 39.13 [Amended]**

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

##### **98-19-01 Stemme GmbH & Co. KG:**

Amendment 39-10744; Docket No. 93-CE-24-AD.

**Applicability:** Model S10 sailplanes, serial numbers 10-01 through 10-35, certificated in any category.

**Note 1:** This AD applies to each sailplane 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 sailplanes 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 prior to further flight after the effective date of this AD, unless already accomplished.

To prevent failure of the pitot tube O-ring caused by an ineffective design, which could result in the pitot tube falling out and the sailplane pilot losing airspeed indications, accomplish the following:

(a) Replace the O-ring that is installed in the mounting part of the pitot tube (in the propeller dome) with one of improved design, part number 10 RV-PD28. Accomplish this replacement in accordance with Stemme Technical Bulletin No. A31-10-003, dated February 7, 1992.

**Note 2:** Stemme Technical Bulletin No. A31-10-003, dated February 7, 1992, specifies repetitively greasing the replacement O-ring with silicone at 3-month intervals. This is not a requirement of this AD since it is considered regular maintenance for the sailplane operator.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be

approved by the Manager, Small Airplane Directorate, FAA, 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 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Stemme Technical Bulletin No. A31-10-003, dated February 7, 1992, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D-W-1000 Berlin 65, Federal Republic of 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.

(e) The replacement required by this AD shall be done in accordance with Stemme Technical Bulletin No. A31-10-003, dated February 7, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D-W-1000 Berlin 65, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in German AD 92-197 Stemme, dated April 9, 1992.

(f) This amendment becomes effective on September 25, 1998.

Issued in Kansas City, Missouri on August 28, 1998.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98-23967 Filed 9-9-98; 8:45 am]

BILLING CODE 4910-13-U

### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 98-ANE-02-AD; Amendment 39-10746; AD 98-19-03]

RIN 2120-AA64

**Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney

PW4000 series turbofan engines, that requires fluorescent penetrant and eddy current inspections of 2nd stage high pressure turbine (HPT) rotating airseals for cracks, removal from service of cracked parts, incorporation of improved 2nd stage HPT rotating airseals, and modification of 2nd stage ring segments and vane clusters to increase cooling flow and reduce stress as terminating action to the inspection requirements. This amendment is prompted by reports of 2nd stage HPT rotating airseal cracking. The actions specified by this AD are intended to prevent 2nd stage HPT rotating airseal cracking, which could result in an uncontained engine failure and damage to the aircraft.

**DATES:** Effective November 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 9, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-6600, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7128, fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) Models PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156A, PW4158, PW4460, PW4462, PW4164, and PW4168 turbofan engines was published in the **Federal Register** on March 24, 1998 (63 FR 14055). That action proposed to require fluorescent penetrant and eddy current inspections of 2nd stage high pressure turbine (HPT) rotating airseals for cracks, removal from service of cracked parts, incorporation of improved 2nd stage HPT rotating airseals, and modification of 2nd stage ring segments and vane clusters to increase cooling flow and reduce stress as terminating action to the inspection requirements.

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 they have had no uncontained engine failures following HPT rotating airseal fracture events but makes no comment to the text of the proposed rule.

One commenter notes two typographical errors in the applicability, with the "P" deleted for models PW4060 and PW4462. This final rule corrects those errors in the applicability.

The same commenter also notes that the proposed rule seems to use a different compliance requirement than that pointed out in the applicable Service Bulletin (SB). The proposed rule defines a hot section visit as "any time the HPT Module is disassembled", which is less restrictive than the requirement stated in the SB. The FAA concurs. The FAA has determined that the compliance interval stated in the proposed rule poses less of a burden on the operators, is consistent with the risk assessment assumptions, and maintains the safety level desired.

The same commenter states that the proposed rule does not address fluorescent penetrant inspection (FPI) requirements for new parts with the old P/Ns, and believes the intention is for no FPI inspection requirement. The FAA concurs as there is no intention in the AD to require fluorescent penetrant inspections of new parts.

The same commenter states that there is no applicability reference for the SBs in the proposed rule, and that while it can be implicitly assumed that the SBs required for the 94" engine are only those beginning with PW4ENG (and for the 100" engine those beginning with PW4G), there is currently nothing explicitly stating this. The FAA concurs. The SB versus Engine Model applicability has been clarified in the final rule.

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

There are approximately 1,720 engines of the affected design in the worldwide fleet. The FAA estimates that 350 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take additional time to accomplish the required actions. Required parts will cost approximately

\$57,200 per engine. In addition, these parts will have consumed some portion of their life limits at the time of their removal, so this full cost burden will not be realized. Based on these figures, assumed an average part removal time of 7,000 cycles, the total cost impact of the AD on U.S. operators is estimated to be \$10,677,333. Pratt & Whitney has advised the FAA that it has an Industry Support Program that will reimburse operators for unconsumed life in parts that are retired early for cracking. This should eliminate the majority of the financial burden to the operators.

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 its may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**98-19-03 Pratt & Whitney: Amendment 39-10746.** Docket 98-ANE-02-AD.

**Applicability:** Pratt & Whitney Models PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156A, PW4158, PW4460, PW4462, PW4164, and PW4168 turbofan engines, with 2nd stage high pressure turbine (HPT) rotating airseals, Part Numbers (P/N) 50L156 or 50L195, installed. These engines are installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas MD-11 series, and Airbus Industrie A300, A310, and A330 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 (d) of this AD. This 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 eliminated, the request

should include specific proposed actions to address it.

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

To prevent 2nd stage HPT rotating airseal cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) At the next hot section shop visit after the effective date of this AD, and at each subsequent hot section shop visit, fluorescent penetrant inspect and eddy current inspect 2nd stage HPT rotating airseals for cracks, remove from service cracked airseals, and replace with serviceable parts, in accordance with Pratt & Whitney Alert Service Bulletins (ASBs) No. PW4ENG A72-628, Revision 1, dated February 17, 1998, for models PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156A, PW4158, PW4460 and PW4462, and Pratt & Whitney ASB No. PW4G-100-A72-80, Revision 1, dated February 17, 1998, for models PW4164 and PW4168.

(b) For the purpose of this AD, a hot section shop visit is defined as any time the HPT modules is disassembled.

(c) Within 6 years after the effective date of this AD, modify 2nd stage ring segments and vane clusters, and install improved 2nd stage HPT rotating airseals in accordance with Pratt & Whitney Service Bulletins (SBs) No. PW4ENG 72-636, dated May 16, 1997, and No. PW4ENG 72-637, dated May 16, 1997, for models PW4052, PW4056, PW4060,

PW4060A, PW4062, PW4152, PW4156A, PW4158, PW4460 and PW4462, and Pratt & Whitney ASB No. PW4G-100-72-93, dated May 22, 1997, and No. PW4G-100-72-94, dated May 22, 1997 for the PW4164 and PW4168. Performance of these modifications and installation of the improved 2nd stage HPT rotating airseal constitutes terminating action to the inspection requirements of this AD.

(d) 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 submit their request 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.

(e) 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.

(f) The actions required by this AD shall be done in accordance with the following Pratt & Whitney service documents:

Document No	Pages	Revision	Date
ASB No. PW4ENG-A72-628 .....	1, 2 .....	1 .....	February 17, 1998.
	3 .....	Original .....	November 21, 1996.
	4-9 .....	1 .....	February 17, 1998.
	10 .....	Original .....	November 21, 1996.
	11-22 .....	1 .....	February 17, 1998.
	1-25 .....	Original .....	November 12, 1996.
NDIP-894 .....	1-10 .....	Original .....	November 7, 1996.
NDIP-896 .....			
Total Pages: 57.			
ASB No. PW4G-100-A72-80 .....	1-16 .....	1 .....	February 17, 1998.
NDIP-894 .....	1-25 .....	Original .....	November 12, 1996.
NDIP-896 .....	1-10 .....	Original .....	November 7, 1996.
Total Pages: 51.			
SB No. PW4ENG-72-636 .....	1-30 .....	Original .....	May 16, 1997.
Total Pages: 30.			
SB No. PW4G-100-72-93 .....	1-16 .....	Original .....	May 22, 1997.
Total Pages: 16.			
SB No. PW4ENG-72-637 .....	1-15 .....	Original .....	May 16, 1997.
Total Pages: 15.			
SB No. PW4G-100-72-94 .....	1-10 .....	Original .....	May 22, 1997.
Total Pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-6600, fax (860) 565-4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 9, 1998.

Issued in Burlington, Massachusetts on August 31, 1998.

#### **Donald E. Plouffe,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 98-23997 Filed 9-9-98; 8:45 am]

BILLING CODE 4910-13-M

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 97-NM-159-AD; Amendment 39-10749; AD 98-19-07]

RIN 2120-AA64

#### **Airworthiness Directives; Airbus Model A320-111, -211, and -231 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires modification of certain fastener holes on the outer frames of the fuselage, and installation of new, improved fasteners. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of certain fastener holes on the outer frames of the fuselage, which could result in reduced structural integrity of the airplane.

**DATES:** Effective October 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation

Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on July 15, 1998 (63 FR 38122). That action proposed to require modification of certain fastener holes on the outer frames of the fuselage, and installation of new, improved fasteners.

#### **Comments**

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

The commenter supports the proposed rule.

#### **Conclusion**

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### **Cost Impact**

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$390 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$6,750, or \$750 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### **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.

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

#### **List of Subjects in 14 CFR Part 39**

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

#### **Adoption of the Amendment**

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

#### **PART 39—AIRWORTHINESS DIRECTIVES**

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

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

#### **§ 39.13 [Amended]**

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

**98-19-07 Airbus Industrie:** Amendment 39-10749. Docket 97-NM-159-AD.

**Applicability:** Model A320-111, -211, and -231 series airplanes; on which Airbus Modification 20903 has not been installed; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 fatigue cracking of certain fastener holes on the outer frames of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later, remove the existing fasteners located at fuselage frame 35 between the left- and right-hand stringers 30 and 31, and perform a rotating probe inspection to detect fatigue cracking of the fastener holes, in accordance with Airbus Service Bulletin A320-53-1137, dated June 24, 1997.

(1) If no cracking is detected, prior to further flight, modify the fastener holes and install new, improved fasteners, in accordance with the service bulletin.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(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, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(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) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320-53-1137, dated June 24, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 98-154-113(B), dated April 8, 1998.

(e) This amendment becomes effective on October 15, 1998.

Issued in Renton, Washington on September 1, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98-24062 Filed 9-9-98; 8:45 am]  
BILLING CODE 4910-13-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-144-AD; Amendment 39-10748; AD 98-19-06]

RIN 2120-AA64

### Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires replacing the radio tuning units (RTU's) and associated components with new, improved parts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent NAV/COM radios from simultaneously changing tuned frequencies and transponder codes due to a black screen failure or "blinking" of an RTU, which could result in loss of communications capability and air traffic control data.

**DATES:** Effective October 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linkping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on July 14, 1998 (63 FR 37795). That action proposed to require replacing the radio tuning units (RTU's) and associated components with new, improved parts.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

#### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required replacement, and that the average labor rate is \$60 per work hour. Required parts will be provided by the manufacturer of the RTU at no cost to operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be \$360, or \$120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### 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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**98-19-06 SAAB Aircraft AB:** Amendment 39-10748. Docket 97-NM-144-AD.

**Applicability:** Model SAAB 2000 series airplanes, as listed in Saab Service Bulletin 2000-23-017, dated March 10, 1997; 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 (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 NAV/COM radios from simultaneously changing tuned frequencies and transponder codes due to a black screen failure or “blinking” of a radio tuning unit (RTU), which could result in loss of communications capability and air traffic control data, accomplish the following:

(a) Within 1 year after the effective date of this AD, replace the existing RTU's and associated components with new, improved parts, in accordance with Saab Service Bulletin 2000-23-017, dated March 10, 1997.

(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, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(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) The replacement shall be done in accordance with Saab Service Bulletin 2000-23-017, dated March 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Swedish airworthiness directive SAD 1-109, dated March 12, 1997.

(e) This amendment becomes effective on October 15, 1998.

Issued in Renton, Washington on September 1, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98-24061 Filed 9-9-98; 8:45 am]

BILLING CODE 4910-13-U

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-54-AD; Amendment 39-10747; AD 98-19-05]

RIN 2120-AA64

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

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757-200 series airplanes, that requires the application of a sealant, secondary fuel barrier, and corrosion-inhibiting compound to certain portions of the wing center section. This amendment is

prompted by reports indicating that, during manufacture, the secondary fuel barrier was not applied to certain portions of the wing center section. The actions specified by this AD are intended to prevent leakage of fuel through the fasteners, sealant, or structural cracks in the center section structure, which could result in fuel or fuel vapors entering the cargo or passenger compartment of the airplane.

**DATES:** Effective October 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1547; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757-200 series airplanes was published in the **Federal Register** on September 25, 1997 (62 FR 50263). That action proposed to require the application of a sealant, secondary fuel barrier, and corrosion-inhibiting compound to certain portions of the wing center section.

#### Comments

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

#### Support for the Proposal

One commenter supports the proposed rule.

#### Request for Extension of the Compliance Time

Several commenters request that the compliance time for the actions required by this proposed AD be extended, and suggest that the compliance thresholds

be revised to coincide with the next scheduled heavy maintenance check. Compliance times of 36 months, 48 months, and 72 months are suggested as appropriate for the extension. The commenters state that the extensive access required to fully clean the corrosion inhibiting compound applied at the factory, the cure times for the sealants, and the application of the corrosion inhibiting compounds, are all factors making it prohibitive to incorporate the modification during "C" checks. One commenter estimates that it could save \$36,000 by retrofitting its 17 airplanes during a heavy maintenance check instead of during a "C" check. Another operator states that to accomplish the modification on its affected fleet of airplanes within 18 months would require special scheduling and would create an economic burden. Another commenter states that it does not agree with the logic used to determine the urgency of this issue because there have not been any reports or evidence of fuel vapors reaching the pressurized area.

The FAA concurs that the compliance times can be extended somewhat. The intent of the AD is that the inspections be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenters, the FAA now recognizes that a compliance time of 48 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraph (a) of the final rule has been revised to require accomplishment of the required actions "at the next scheduled heavy maintenance check (i.e., a "4C" check) or within 48 months after the effective date of the AD, whichever occurs first." The FAA does not consider that this extension will adversely affect safety. The affected area is small, approximately 200 square inches, and there have been no reported leaks in this area of the front spar of the wing center section. In addition, the barrier does not function as the primary barrier but is designed to provide a fume-proof and fuel-proof barrier in the event of a failure of the fastener sealant or structural cracks in the center section.

#### **Request for Use of Equivalent Methods and Finishes**

One commenter requests that the proposed AD be revised to allow the use of an "industry accepted standard or practice" material, in lieu of "original

equipment manufacturer approved parts and procedures." The commenter states that Boeing Service Bulletin 757-57-0053, dated February 6, 1997, lists secondary fuel barrier BMS 5-81, Type II, which is not stocked by the airplane manufacturer or this operator.

The FAA does not concur with the commenter's request. The material in question, secondary fuel barrier, is used on all current generation Boeing airplanes and, from time to time, may require replacement following structural work on the fuel tank walls. Although such material may not currently be stocked by this operator, it should be readily available. Further, BMS 5-81, Type II, has specific property requirements needed to ensure a fume-proof and fuel-proof barrier over the life of the airplane. Allowing use of other substances without a detailed review by the FAA could compromise the performance of the barrier. However, for any material or process an operator may wish to substitute, the operator may request approval of an alternative method of compliance in accordance with the provisions of paragraph (b) of this AD.

#### **Request for Revision of Cost Impact Information**

Two commenters state that the proposed AD underestimates the cost of the modification, in that the economic analysis did not include the 18 to 36 work hours required to gain access to the front spar of the wing center section and to return the airplane to a serviceable condition. Another commenter states that the airplane downtime required to accomplish the modification during a "C" check was not included in the cost impact information.

The FAA acknowledges that the cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The estimate of 2 work hours necessary to accomplish the required actions was provided to the FAA by the manufacturer, and represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft "downtime" to the cost of the AD because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. Even if, in some cases, additional downtime is necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required. Therefore, attempting to estimate such costs would be futile. No change to the final rule is necessary.

#### **Explanation of Changes Made to Proposal**

Since the issuance of the proposed AD, the manufacturer has issued Boeing Service Bulletin 757-57-0053, Revision 1, dated January 15, 1998. This revision is essentially the same as Boeing Service Bulletin 757-57-0053, dated February 6, 1997 (which is cited in the proposal as the appropriate source of service information for accomplishment of the requirements of the AD), with minor editorial changes incorporated. The FAA has reviewed and approved this revision as an additional source of service information for accomplishment of the actions required by this AD, and has revised the final rule accordingly.

#### **Conclusion**

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 changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

#### **Cost Impact**

There are approximately 724 Boeing Model 757-200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 463 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$100 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$101,860, or \$220 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### 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.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**98-19-05 Boeing:** Amendment 39-10747. Docket 97-NM-54-AD.

**Applicability:** Model 757-200 series airplanes, line numbers 1 through 724 inclusive, 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 (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 leakage of fuel through the fasteners, sealant, or structural cracks in the center section structure, which could result in fuel or fuel vapors entering into the cargo or passenger compartment of the airplane, accomplish the following:

(a) At the next scheduled heavy maintenance check (i.e., "4C" check) or within 48 months after the effective date of this AD, whichever occurs first, apply sealant, secondary fuel barrier, and corrosion-inhibiting compound to areas on the front spar of the wing center section, in accordance with Figure 3 of Boeing Service Bulletin 757-57-0053, dated February 6, 1997, or Boeing Service Bulletin 757-57-0053, Revision 1, dated January 15, 1998.

(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) The actions shall be done in accordance with Boeing Service Bulletin 757-57-0053, dated February 6, 1997, or Boeing Service Bulletin 757-57-0053, Revision 1, dated January 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 15, 1998.

Issued in Renton, Washington on September 1, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.  
[FR Doc. 98-24059 Filed 9-9-98; 8:45 am]  
BILLING CODE 4910-13-U*

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

##### 14 CFR Part 39

[Docket No. 97-ANE-37-AD; Amendment 39-10745 AD 98-19-02

RIN 2120-AA64

#### Airworthiness Directives; Superior Air Parts, Inc., Piston Pins Installed on Teledyne Continental Motors Reciprocating Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Superior Air Parts, Inc., piston pins installed on Teledyne Continental Motors reciprocating engines. This amendment requires removal from service of defective piston pins, and replacement with serviceable parts. This amendment is prompted by reports of numerous piston pin fractures. The actions specified by this AD are intended to prevent a piston pin failure from causing secondary engine damage resulting in loss of oil or total power failure, and from causing jamming of the engine crankshaft resulting in a catastrophic engine failure.

**DATES:** Effective November 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 9, 1998.

**ADDRESSES:** The service information referenced in the proposed rule may be obtained from Superior Air Parts, Inc., 14280 Gillis Rd., Dallas, TX 75244; telephone (800) 400-5949. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul Madej, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Ft.

Worth, TX 76137-4298; telephone (817) 222-4635, fax (817) 222-5785.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Superior Air Parts, Inc., piston pins installed in Teledyne Continental Motors IO-360-A, -AB, -C, -CB, -D, -DB, -G, -GB, -H, -HB, -J, -JB, -K, -KB; LTSIO-360-E, -EB, -KB; TSIO-360-A, -AB, -B, -C, -CB, -D, -DB, -E, -F, -FB, -GB, -H, -HB, -JB, -KB, -LB, -MB series reciprocating engines was published in the **Federal Register** on February 17, 1998 (63 FR 7739). That action proposed to require removal from service of defective piston pins and replacement with serviceable parts.

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 the cost to U.S. operators of the proposed AD will be far greater than documented by the FAA. The FAA does not concur. Only 2,322 of the suspect piston pins were shipped. The NPRM assumed a worst case scenario based on each suspect piston pin being installed in a different engine. If, as the commenter had assumed, the suspect piston pins were installed in groups of six, the total cost would be far less than estimated in the NPRM (\$585,516 compared to the NPRM's estimate of \$1,300,320). In addition, to date at least 1,000 of the suspect piston pins have now been removed from service. As a result, the cost impact is lower than originally estimated in the NPRM and has been revised in this final rule.

One commenter states that the NPRM implies that suspect piston pins could have been installed in accordance with the Superior Parts mandatory service bulletin. The commenter also disagrees with the proposed definition of a serviceable piston pin, stating that any approved piston pin should qualify as serviceable. Finally, the commenter points out that an incorrect part number was used twice under the compliance section of the NPRM. The FAA concurs in part but disagrees with the commenters suggestion regarding the definition of a serviceable piston pin. The AD has been clarified to state that a determination that a suspect piston pins could have been installed should be made referring to the mandatory service bulletin. This should eliminate any implication that the suspect piston pins were installed in accordance with the mandatory service bulletin. Also,

the incorrect piston pin part numbers have been corrected. The AD continues to define as serviceable, however, only those piston pins that can be verified not to be a PMA Superior Air Parts piston pin shipped from Superior between August 1, 1994 and June 20, 1996. Of course, before installing a piston pin that meets that definition, an operator must also insure that the particular piston pin is approved for installation on that particular engine. The FAA disagrees with the commenter's suggestion to define as serviceable any approved piston pin. That definition may not eliminate from service the very suspect piston pins that the AD requires operators to remove.

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 changes described above. 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 there are at most approximately 1,322 engines installed on aircraft of U.S. registry that will be affected by this AD, that it will take approximately 6 work hours per engine to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts are estimated to cost \$200 per engine. Based on these figures (which assume one pin per engine), the total cost impact of the AD on U.S. operators is estimated to be \$740,320.

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 location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### §39.13 [Amended]

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

**98-19-02 Teledyne Continental Motors With Superior Air Parts, Inc. PMA Piston Pins, Part Number (P/N) SA629690: Amendment 39-10745 Docket 97-ANE-37.**

**Applicability:** Superior Air Parts, Inc., Parts Manufacturer Approval (PMA) piston pins, Part Number (P/N) SA629690, shipped from Superior Air Parts, Inc., from August 1, 1994, through June 20, 1996, installed in Teledyne Continental Motors IO-360-A, -AB, -C, -CB, -D, -DB, -G, -GB, -H, -HB, -J, -JB, -K, -KB; LTSIO-360-E, -EB, -KB; TSIO-360-A, -AB, -B, -C, -CB, -D, -DB, -E, -F, -FB, -GB, -H, -HB, -JB, -KB, -LB, -MB series reciprocating engines which were overhauled or had cylinder head maintenance performed by a repair facility other than Teledyne Continental Motors after August 1, 1994. These engines are installed on but not limited to the following aircraft: Cessna 172XP, 336, 337, T337, P337, and T-41B/C (military); Maule M-4-210, M-4-210C, M-4-210S, M-4-210T, and M-5-210C; Swift Museum Foundation, Inc. GC-1A, GC-1B, New Piper Inc. PA-28-201T, PA-28R-201T, PA-28RT-201T, PA-34-200T, and PA-34-220T; Reims FR172, F337, and FT337; Goodyear Airship Blimp 22; Mooney M20-K; and Pierre Robin HR100.

**Note 1:** Shipping records, engine logbooks, work orders, and parts invoices checks may allow an owner or operator to determine if this AD applies.

**Note 2:** 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 (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, unless accomplished previously.

To prevent a piston pin failure from causing secondary engine damage that results in loss of oil or total power failure, and from causing jamming of the engine crankshaft resulting in a catastrophic engine failure, accomplish the following:

(a) If an engine has not had a piston pin installed after August 1, 1994, or if an engine has had a piston pin installed after August 1, 1994, but it was installed by Teledyne Continental Motors, then no action is required.

(b) For engines that had a piston pin installed after August 1, 1994, by an entity other than Teledyne Continental Motors, within 25 hours time in service (TIS) after the effective date of this AD, referring to Superior Air Parts, Inc. Mandatory Service Bulletin (SB) No. 96-001, dated August 5, 1996,

determine if a suspect Superior Air Parts, Inc. PMA piston pin, P/N SA629690, could have been installed. If unable to verify that a suspect piston pin was not installed using a records check, disassemble the engine in accordance with the applicable Maintenance Manual or Overhaul Manual, visually inspect or verify for suspect piston pins, and accomplish the following:

(1) If it is determined that suspect Superior Air Parts, Inc. PMA piston pins, P/N SA629690, could have been installed, remove from service defective piston pins and replace with serviceable piston pins.

(2) If it is determined that suspect Superior Air Parts, Inc. PMA piston pins, P/N SA629690, could not have been installed, no further action is required.

(c) For the purpose of this AD, a serviceable piston pin is any piston pin approved for the application that has been verified not to be a Superior Air Parts, Inc. PMA piston pin, P/N SA629690, shipped from Superior Air Parts, Inc., from August 1, 1994, through June 20, 1996. Installation of a Superior Air Parts Inc. PMA piston pin, P/N SA629690, that can

not be verified to be outside of the suspect shipping period range, is prohibited after the effective date of this AD.

(d) 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, Special Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Special Certification Office.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Special Certification Office.

(e) 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 inspection may be performed.

(f) The actions required by this AD shall be done referring to the following Superior Air Parts, Inc. Mandatory Service Bulletin:

Document No.	Pages	Revision	Date
96-001 .....	4	Original .....	August 5, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of Superior Air Parts, Inc. Mandatory Service Bulletin No. 96-001 may be obtained from Superior Air Parts, Inc., 14280 Gillis Road, Dallas, TX. 75244; telephone (800) 400-5949, fax (800) 238-8471. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 9, 1998.

Issued in Burlington, Massachusetts on August 31, 1998.

**Donald E. Plouffe,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*  
[FR Doc. 98-24089 Filed 9-9-98; 8:45 am]

BILLING CODE 4910-13-U

**SUMMARY:** This action establishes Class E airspace at Crosby, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30 has been developed for Crosby Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace at Crosby Municipal Airport to accommodate the approach.

**EFFECTIVE DATE:** 0901 UTC, December 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### **SUPPLEMENTARY INFORMATION:**

##### **History**

On Tuesday, June 23, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Crosby, ND (63 FR 34137). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### **The Rule**

This amendment to 14 CFR part 71 establishes Class E airspace at Crosby, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP at Crosby Municipal Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts.

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.

#### **List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

#### **Adoption of the Amendment**

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

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

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

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

#### **§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

\* \* \* \* \*

#### **AGL ND E5 Crosby, ND [New]**

Crosby Municipal Airport, ND  
(Lat. 48°55' 45" N., long. 103°17'56" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Crosby Municipal Airport, excluding that airspace north of lat. 49° 00' 00"N (Canada/United States Boundary).

\* \* \* \* \*

Issued in Des Plaines, Illinois, on August 25, 1998.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 98-24290 Filed 9-9-98; 8:45 am]

**BILLING CODE 4910-13-M**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **Food and Drug Administration**

#### **21 CFR Part 101**

[Docket Nos. 98N-0426, 98N-0428, 98N-0427, 98N-0423, 98N-0424, 98N-0419, 98N-0422, 98N-0421, and 98N-0420]

#### **Food Labeling: Health Claims; Reopening of Comment Period**

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

**ACTION:** Interim final rules; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening to October 8, 1998, the comment period for the nine interim final rules that appeared in the **Federal Register** of June 22, 1998 ((63 FR 34084), (63 FR 34092), (63 FR 34097), (63 FR 34101), (63 FR 34104), (63 FR 34107), (63 FR 34110), (63 FR 34112), and (63 FR 34115)). The rules prohibit the use on food labels of claims that are not appropriately based on authoritative statements from scientific bodies or that otherwise do not meet the specifications of new legislation. Interested persons were given until September 8, 1998, to comment on the interim final rules. This action is being taken in response to requests to reopen the comment period. **DATES:** Written comments by October 8, 1998.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS-451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4168.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 22, 1998 ((63 FR 34084), (63 FR 34092), (63 FR 34097), (63 FR 34101), (63 FR 34104), (63 FR 34107), (63 FR 34110), (63 FR 34112), and (63 FR 34115)), FDA issued nine interim final rules prohibiting the use on food labels of claims that are not appropriately based on authoritative statements from scientific bodies or that otherwise do not meet the specifications of new legislation.

Interested persons were given until September 8, 1998, to comment on the rules. FDA has received several requests for extending the comment period. After evaluating these requests, the agency has decided to reopen the comment

period on the interim final rules until October 8, 1998.

To be considered, written comments regarding the interim final rules must be received by October 8, 1998, by the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket Nos. 98N-0426, 98N-0428, 98N-0427, 98N-0423, 98N-0424, 98N-0419, 98N-0422, 98N-0421, and 98N-0420. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 1998

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98-24359 Filed 9-4-98; 4:34 pm]

**BILLING CODE 4160-01-F**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **Food and Drug Administration**

#### **21 CFR Part 884**

[Docket No. 97N-0335]

#### **Obstetric and Gynecologic Devices; Reclassification and Classification of Medical Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it is reclassifying instrumentation intended for use in in vitro fertilization (IVF) and related assisted reproduction technology (ART) procedures, including but not limited to gamete intrafallopian transfer (GIFT), embryo transfer (ET), and intracytoplasmic sperm injection (ICSI), from class III (premarket approval) to class II (special controls). FDA is also reclassifying assisted reproduction microscopes and microscope accessories from class III to class I. This reclassification is on the Secretary of the Department of Health and Human Services' (the Secretary's) own initiative based on new information. Accordingly, the order is being codified in the Code of Federal Regulations. Upon the effective date, this **Federal Register** document may be cited in the absence of an existing predicate device which would be used to support substantial equivalence. Elsewhere in this issue of the **Federal Register**, FDA is announcing the

availability of a draft guidance entitled "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)."'

**EFFECTIVE DATE:** The regulation is effective October 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Elisa D. Harvey, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180.

**SUPPLEMENTARY INFORMATION:**

**I. Background—Regulatory Authorities**

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94-295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101-629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105-115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order

finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(3) of the act, formerly section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

FDAMA added a new section 513(f)(2) to the act, which addresses classification of postamendments devices. New section 513(f)(2) of the act provides that, upon receipt of a "not substantially equivalent" determination, a 510(k) applicant can request FDA to classify a postamendments device into class I or class II. Within 60 days from the date of such a written request, FDA must classify the device by written order. If FDA classifies the device into class I or II, the applicant has then received clearance to market the device and it can be used as a predicate device for other 510(k)'s. It is expected that this process will be used for low risk devices. This process does not apply to devices that have been classified by regulation into class III—i.e., preamendments class III devices, or class III devices for which a PMA is appropriate.

Under section 513(f)(3)(B)(i) of the act, formerly section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a proposed reclassification to a device classification

panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the proposed reclassification. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the proposed reclassification was initiated.

Section 510(l) of the act (21 U.S.C. 360(l)) provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as "reserved criteria."

Such an exemption permits manufacturers to introduce into commercial distribution generic type of class I devices without first submitting a premarket notification to FDA. If FDA has concerns about certain types of changes to a particular class I device, the agency may grant a limited exemption from premarket notification for that generic type of device.

**II. Regulatory History of the Device**

FDA consulted with the Obstetrics and Gynecology Devices Panel (the Panel). During an open public meeting on October 23, 1995, the Panel indicated its concurrence, given the history of safe and effective use of these devices, with FDA's intention to reclassify instrumentation intended for use in IVF and ART procedures.

Based on this input from the Panel, FDA published a proposed reclassification rule in the **Federal Register** of September 4, 1997 (62 FR 46686), proposing that the generic type of device, instrumentation intended for use in IVF and related ART procedures, should be reclassified from class III to class II, and that assisted reproduction microscopes and microscope accessories should be reclassified from class III to class I.

FDA received 10 comments from manufacturers of devices used in assisted reproduction procedures in response to the proposed rule. A summary of the comments and FDA's response is discussed in section III of this document. The comments primarily addressed issues relating to clarification of the proposed rule, and suggestions for the special controls required for the various categories of assisted reproduction devices. It should be noted

that while clinical studies have been identified as a special control for the class II devices, FDA only intends to require clinical studies on a case-by-case basis where, based on the design or function of the device, the performance in its intended use can only be validated with clinical data.

### III. Summary and Analysis of Comments and FDA's Response

#### A. General Comments

1. One comment stated that it would be helpful to state in the reclassification final rule that the final rule itself can be used to support substantial equivalence, obviating the need to cite existing predicate devices.

FDA agrees with this comment, and has included such a statement in the summary section of the final rule. The draft guidance document entitled "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)," which is the subject of a notice of availability published elsewhere in this issue of the **Federal Register**, also provides discussion of the documentation necessary to establish substantial equivalence.

2. One comment stated that the proposed date for guidance document issuance should be provided in the final rule.

FDA agrees with this comment. A notice of availability of the draft guidance document, entitled "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)," is published elsewhere in this issue of the **Federal Register**, and is available through the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

3. One comment stated that although the proposed rule is clearly intended to cover devices used in GIFT procedures, the preamble to the proposed rule refers only to IVF/ET, without specifically referring to GIFT. The comment requested that FDA clarify in the final rule that it reclassifies medical devices used in GIFT, as well as IVF, ICSI, ET, and other ART procedures. The comment also provided recommended language specifying the inclusion of devices used for GIFT for the definitions of assisted reproduction needles and assisted reproduction catheters.

FDA agrees with this comment. Medical devices used during GIFT and other well-established ART procedures are included in the category of assisted reproduction catheters. The final rule has been appropriately revised to

include them. In addition, the proposed language for the definitions of assisted reproduction needles and assisted reproduction catheters has been incorporated.

4. One comment pointed out the potential applicability of FDA's guidance entitled "Convenience Kits Interim Regulatory Guidance," May 20, 1997, to GIFT sets or kits, and recommended that this guidance be updated to include GIFT sets as a type of device covered by this policy.

FDA disagrees with this comment. Devices used for GIFT procedures do not meet the criteria identified under "Components." That is, they are not: (1) Legally marketed preamendments devices, (2) exempt from premarket notification, or (3) found to be substantially equivalent through the premarket notification process. Nevertheless, FDA anticipates that these types of kits may become eligible for consideration in time, and is willing to consider the inclusion of GIFT sets for this new regulatory approach once a sufficient 510(k) data base for these devices is obtained.

5. One comment questioned the inclusion of micropipette fabrication instruments as a category in this reclassification. The comment noted that it was not clear why the machines (micropipette fabrication instrument micropipette "puller") used to manufacture a regulated end product (the micropipette) should also be subject to such regulation. The comment stated that if such a device were included in this reclassification, it would mean that micropipettes would not be available commercially unless they have been processed with FDA approved instrumentation and that any IVF/ART laboratory making its own micropipettes would not be able to make those without an FDA approved instrument. The comment was concerned that this might mean that IVF/ART procedures would be stopped because there is currently no FDA approved instrument for manufacturing the micropipettes.

FDA disagrees with this comment. Only the end product device that is specifically promoted and marketed to the medical community with a claim relating to an intended use for IVF/ART will be subject to a premarket notification submission (510(k)). This applies to the micropipette itself, as well as the micropipette fabrication instrumentation. If the micropipette itself is the device marketed for that intended use, a 510(k) would be necessary, but the instrumentation to manufacture that micropipette would not require a 510(k). However, if the micropipette fabrication

instrumentation itself is the device marketed for the specific intended use of IVF/ART, then a 510(k) for that device would be necessary. If neither the micropipette itself nor the micropipette fabrication instrumentation have a specific claim for use during IVF/ART, then no 510(k) is required. Thus, it is incorrect to state that this reclassification would result in a lack of commercially available micropipettes because they have not been processed with FDA approved instrumentation or that any IVF laboratory making its own micropipettes would not be able to make those without an FDA approved instrument. This classification regulation neither addresses individual IVF/ART laboratory decisions about what instruments are necessary, nor does it prohibit any individual laboratory from making its own micropipettes. However, when those devices (whether they are the micropipettes or the micropipette fabrication instrumentation) are marketed and promoted for the specific intended use of IVF/ART by the manufacturer (including a laboratory that markets the devices to others), those products become subject to section 510(k) of the act requirements.

6. One comment stated that laser microtools are also used to denude human gametes or embryos and that these devices should be classified in class II and added to pipettes and other devices under the category of assisted reproduction microtools.

FDA disagrees with this comment. The intent of this reclassification is to reclassify those devices associated with IVF/ART procedures which have a long and well-established history of safe use. Laser microtools used to manipulate and treat human gametes or embryos are relatively new. The Panel which recommended reclassification of devices used in IVF/ART did not identify laser microtools as having a sufficiently established history of reasonably safe and effective use to justify their classification in class II. Therefore, the agency believes that it is not appropriate to include laser microtools in this reclassification. As a result, laser microtools remain in class III.

7. One comment stated that there was ambiguity with respect to the classification of assisted reproduction microscopes and microscope accessories. The comment stated that fluorescence microscopes should not be classified as class I and exempt, but rather, class II because of the potential for damage to human gametes and embryos.

FDA agrees with this comment. The intent of this reclassification is to

reclassify those devices associated with IVF/ART procedures which have a long and well-established history of safe use. The use of fluorescence microscopy for the purpose of preimplantation diagnosis is relatively new. The Panel which recommended reclassification of devices used in IVF/ART did not identify fluorescence microscopes as having a sufficiently established history of reasonably safe and effective use to justify their classification in class I. Therefore, although the proposed rule did refer to fluorescence microscopy, the agency has concluded that it is not appropriate to include fluorescence microscopy in this reclassification. Thus, fluorescence microscopy is retained in class III. The category of assisted reproduction microscopes and microscope accessories is intended to specifically refer to conventional optical microscopes and accessories which are used for the most common and routine IVF/ART procedures.

8. One comment stated that stylets (a tube or rod which can be inserted into a catheter or cannula to give it form and assist in its passage) are commonly used in IVF/ART procedures, but are not explicitly included in the reclassification.

FDA agrees with this comment and has amended the final rule to include stylets, which are a common component of devices used in IVF/ART procedures, in the category of assisted reproduction catheters.

9. One comment stated that the proposed definition of assisted reproduction microtools should be revised to read:

*Assisted reproduction microtools* are pipettes or other devices used in the laboratory to denude, micromanipulate, hold or transfer human gametes, or embryos for assisted hatching, ICSI, embryo biopsy, or other similar procedures used specifically for assisted reproduction methods, including preimplantation diagnosis.

FDA disagrees with this comment. Although devices used in preimplantation diagnosis procedures such as embryo biopsy were inadvertently included in the proposed rule, the agency does not believe this type of device should be included in this reclassification because the use of such preimplantation diagnosis procedures is relatively new. The intent of this reclassification is to reclassify those devices associated with IVF/ART procedures that have a long and well-established history of safe use, as stated in the response to comment numbers 6 and 7. The use of preimplantation diagnosis procedures such as embryo biopsy is relatively new. The Panel which recommended reclassification of

devices used in IVF/ART did not identify devices associated with preimplantation diagnosis procedures as having a sufficiently established history of reasonably safe and effective use to justify their reclassification. The category of assisted reproduction microtools refers only to those devices that are used for the most common and routine IVF/ART procedures.

10. One comment recommended that catheters, accessories, and reproductive media and supplements warrant regulation as class II products, but that all other specified products intended for use during IVF/ART procedures should be considered class I products.

FDA disagrees with this comment, which did not offer any explanation for the position expressed. The agency believes that assisted reproduction needles, assisted reproduction microtools, assisted reproduction micropipette fabrication instruments, assisted reproduction micromanipulators and microinjectors, assisted reproduction labware, and assisted reproduction water and water purification systems also warrant regulation as class II medical devices. FDA has concluded that the special controls identified for these categories of devices are necessary at this time to ensure the safe and effective use of these devices. However, the agency does not rule out the possibility that these devices may be considered for further downclassification at some later date after a sufficient 510(k) data base has been obtained.

11. One comment stated that the College of American Pathologists (CAP) and the Society for Assisted Reproductive Technology (SART) references may be considered voluntary standards, but that the SART references are published patient registries, not recognized standards with which to comply or adhere.

FDA agrees with this comment. FDA recognizes that the SART reference is a patient registry and data base, and that it does not contain specific guidelines or recommendations for techniques of employing IVF/ART procedures. Nevertheless, the agency wishes to acknowledge this organization and encourage laboratories to consult this reference for its significant guidance to IVF/ART laboratories in obtaining data on the safety and effectiveness of these procedures.

12. One comment stated that validation of clinical performance is not warranted if there are no new types of safety and effectiveness questions raised.

FDA disagrees with this comment. Even if no new types of safety and

effectiveness questions are raised regarding a device, clinical data may still be required in some cases to adequately assess the performance of a device based on its unique design or function, as is outlined in FDA's guidance document "510(k) Substantial Equivalence Decision-Making Process (Detailed)" that is available from the Division of Small Manufacturers Assistance (HFZ-220), FDA, 1350 Picard Dr., Rockville, MD 20850, or on the World Wide Web at "<http://www.fda.gov/cdrh/k863.html>". Further information on the need for clinical data is provided in the draft guidance document on IVF devices that is being announced elsewhere in this issue of the **Federal Register**.

13. One comment stated that water purification systems have demonstrated a long history of safe and effective use in IVF/ART applications, and that placing them into class II with special controls would provide no additional benefit to end-users. The comment recommended that these devices be classified into class I and exempted from premarket notification and good manufacturing practice (GMP) requirements.

FDA disagrees with this comment. Water purification systems with specific claims for other applications (e.g., kidney dialysis) are also placed in class II and are subject to special controls. The quality of water that directly contacts human gametes or embryos in IVF/ART procedures is similar to that for dialysis. If a manufacturer of a water purification system wishes to market and promote that system with specific claim(s) for its use in IVF/ART procedures, then that device will require a 510(k). However, if a manufacturer of a water purification system wishes to market and promote that system for general purposes only, then no 510(k) is needed, and the device is not affected by this reclassification.

14. Two comments suggested using the USP "water for injection" requirement as the special control for the quality of water used in reconstitution of IVF media, rather than requiring type I reagent grade water. The rationale was that water meeting the latter requirement may still be corrosive to metals, causing possible exposure of metal ions to human gametes or embryos as a result of its use in final rinsing of packaging materials in a pharmaceutical washing machine. Water produced in conformance with the USP water for injection requirement has properties sufficient and appropriate for its intended use. The second comment's rationale was that their validated system producing USP

water for injection has routinely produced water which passes the mouse embryo assay test. Additionally, this same requirement should suffice for water used to wash and rinse labware.

FDA agrees with these comments. Because the USP water for injection requirement delineates testing requirements for producing water that is safe for parenteral use, it should also suffice for production of water with potential for exposure to human gametes and embryos. Therefore, FDA agrees with the comment, and the USP water for injection requirement will be used as a special control for: (1) Water specifically intended for reconstitution of reproductive media, (2) water specifically intended for washing and rinsing of labware to be used in IVF/ART procedures, and (3) purification systems specifically intended for production of water to be used for IVF/ART procedures.

15. One comment stated that regulating water quality specific to these products is not warranted because: (1) These devices are sterilized and pyrogen tested, and (2) typical use consists of flushing any lumens with media or sterile water prior to use. The comment stated that water quality is a user issue that should be addressed by Clinical Laboratory Improvement Amendments of 1988 (CLIA) or accrediting bodies.

FDA disagrees with this comment. As previously stated, the rationale for requiring water quality testing (USP water for injection testing) is that the quality of water used to reconstitute media and supplements, as well as to wash and rinse labware, is critically important to the success of ART procedures. As was also previously stated, water purification systems with specific claims for other applications (e.g., kidney dialysis) are also placed in class II and are subject to special controls. The quality of water needed for IVF/ART procedures in which human gametes or embryos are directly contacted is similar to that for dialysis. If a manufacturer of a water purification system wishes to market and promote that system with specific claim(s) for its use in IVF/ART procedures, then that device will require a 510(k). However, if a manufacturer of a water purification system wishes to market and promote that system for general purposes only, then no 510(k) is needed, and the device is not affected by this reclassification.

16. One comment stated that IVF media are products as critical as parenterals and should therefore be manufactured according to aseptic GMP conditions.

FDA agrees with this comment. Sections 820.70(c) and 820.75 of the

quality system regulation, pertaining to environmental control and process validation, respectively, address this concern. These sections describe requirements for adequate control of environmental conditions to assure no adverse effect of the environment on product quality, and measures which shall be used to validate and document the manufacturing processes to assure the quality of the product. A further explanation of these portions of the quality system regulation may be found in the Association for the Advancement of Medical Instrumentation (AAMI) Guidelines entitled "The Quality System Compendium: GMP Requirements and Industry Practice" (Ref. 1).

17. One comment stated that because the purity of chemicals used for IVF media is critical, that FDA should require these chemicals to be of pharmacopoeial grade, with additional requirements regarding cytotoxicity, endotoxin, and sterility.

FDA disagrees with this comment. While FDA agrees that the quality of the components of IVF media is critical, FDA believes that it is not necessary to require that all chemicals be of pharmacopoeial grade, since not all desired components may be available in that grade. Additionally, there exist other special controls, including mouse embryo assay information, endotoxin testing and sterilization validation, which are sufficient to assure the safety of the product.

18. One comment recommended that human-derived or animal-derived macromolecules (such as serum albumin or hyaluronic acid) not be allowed in IVF media, and proposed the requirement that macromolecules be manufactured instead by recombinant methods. The rationale for this was: (1) The potential for transmission of pathogens such as Creutzfeld-Jacob Disease (CJD) or bovine spongiform encephalopathy (BSE) to the human gamete or embryo that may be difficult to detect; and (2) the potential for transmission of foreign deoxyribonucleic acid (DNA) into the human oocyte during ICSI. The comment also indicated that a European standard, now in preparation, would be appropriate to consider as a special control if FDA does allow use of biological macromolecules.

FDA disagrees with this comment. While FDA recognizes the previously mentioned risks, the agency believes that a requirement for the use of only recombinant macromolecules in the manufacture of IVF media is not feasible at this time due to the limited availability of these macromolecules.

FDA does not currently recognize any European standard regarding the use of biological macromolecules in IVF media. However, with the controls in place for donor screening and testing, it should be appropriate to use human derived macromolecules with the proper notification and consent. In addition, there currently exist special controls for the use of animal-derived macromolecules in IVF media.

19. One comment suggested a requirement that IVF media shall be tested by the manufacturer according to the special controls listed, and that a certificate with test results be issued for each approved batch.

FDA agrees with this comment. The end-user will benefit if labeling for IVF media includes information which indicates test results for each approved batch, even if some labs opt to do further testing to supplement what is done by the manufacturer. This will also provide quality assurance to the general public without being unduly burdensome to the manufacturer.

20. One comment recommended that an acceptance criterion for endotoxin levels be set for ready-to-use IVF media.

FDA disagrees with this comment. Because there is no "gold standard" in the medical community for what the lower limit of acceptability of endotoxin levels is for IVF and assisted reproduction procedures, it is not possible to identify an appropriate threshold. Rather, it is important that the manufacturer perform an established USP endotoxin test, such as the limulus mebocyte lysate (LAL) or rabbit pyrogen assay, on any device potentially contacting human gametes or embryos, and identify this information in the labeling.

21. One comment stated that the category of reproductive media should also include: (1) Acid solutions (prepared from liquid or powder), which are commonly utilized to denude human gametes or embryos, (2) rinsing solutions used after acid treatment, and (3) separation media used to separate and concentrate sperm.

FDA agrees with this comment. Because these products come into direct physical contact with gametes or embryos, they will also be listed in the category of reproductive media.

22. One comment recommended that FDA require that the mouse embryo assay (MEA) test be mandatory rather than voluntary, and that the two-cell MEA be used, with an acceptance criterion of greater than 80 percent hatching.

FDA disagrees with this comment. FDA recognizes that the MEA is currently the most appropriate test for

embryotoxicity; however, there is no consensus in the medical community on whether the one-cell or the two-cell MEA is most appropriate. Both have their advantages and disadvantages, and these may be weighed differently by each end-user of a product. Therefore, it would be inappropriate for FDA to mandate one test over the other. In addition, FDA believes it would be inappropriate to mandate that the MEA be conducted, because it recognizes that some end-users will perform their own testing on the product to assure its safety, regardless of whether the manufacturer performs these tests. Requiring that the MEA be conducted would add an unnecessary burden and cost to the manufacturer. The final regulation requires each manufacturer to provide clear and prominent information both on the label and in the labeling to the user about whether and how the MEA was performed, and the results. FDA believes that this requirement to clearly label the product and provide information to the end-user in this regard will be adequate to assure appropriate testing and use of the product.

23. One comment stated that certain materials (substances which denature protein, chelate cations, bind endotoxin, or alter endotoxin's hydrophobic state) may interfere with the LAL assay used to measure endotoxin, and proposed that this reclassification state that USP methods such as the rabbit pyrogen assay may also be submitted for endotoxin testing.

FDA agrees with this comment. Manufacturers may perform either the LAL assay or the rabbit pyrogen assay in accordance with established USP test methods for determination of endotoxin levels, and must clearly identify on the label what endotoxin test was performed, as well as the results of the testing in the labeling.

24. One comment requested that the "hybritest," a bioassay based on the culture of mouse hybridoma cells, be allowed as an alternative to the MEA test for embryotoxicity. The comment pointed out the limitations of the MEA test and provided documentation to support the use of the Hybritest as an alternative to the MEA.

FDA disagrees with this comment. Although FDA recognizes that there are limitations to both the one-cell and the two-cell MEA test, it is currently the most widely recognized and accepted method for determining potential embryotoxicity. Although the hybritest has potential for becoming more widely accepted in the medical community as a valid alternative to the MEA, it has not yet established sufficient history,

acceptance, and validity to be acceptable as an alternative to the MEA. FDA will periodically review new information and consult with the medical community to determine if the hybritest should be included as an alternative to the MEA test.

25. One comment stated that if MEA testing is not required by the agency for assisted reproduction devices, then language stating that MEA testing was not performed is not warranted.

FDA disagrees with this comment. As previously stated, FDA believes it would be inappropriate to mandate that the MEA be conducted, because it recognizes that some end-users will perform their own testing on the product to assure its safety, regardless of whether the manufacturer performs these tests. Nevertheless, it is still essential for each manufacturer to provide information both on the label and in the labeling to the user about whether the MEA was performed. FDA believes that this requirement to clearly label the product is essential to assure that the end-user (in the laboratory) has sufficient information to determine if any further testing of the product is necessary.

26. One comment stated that the language regarding MEA testing in the special controls section of the proposed rule should be revised from, "Whether a one-cell or two-cell MEA is used, the bioassay should duplicate, as closely as possible, the procedures used for human IVF, including acquisition, maintenance, culture, transfer (relocation) and cryopreservation of embryos" to, "Whether a one-cell or two-cell MEA is used, the bioassay should represent, as closely as possible, the corresponding procedures for which the device is used for human IVF, such as acquisition, maintenance, culture, transfer (relocation) or cryopreservation of embryos."

FDA agrees with this comment. FDA is including such advice in the guidance document, for which a notice of availability is being published elsewhere in this issue of the **Federal Register**.

27. One comment stated that for assisted reproduction accessories that do not contact gametes, embryos or patients, the cited special controls of MEA testing, device sterilization validation, and/or water quality testing have no impact on mitigating risks of gamete or embryo damage.

FDA agrees with this comment. It is true that the particular special controls of MEA testing, device sterilization validation, and water quality testing are not applicable to certain assisted reproduction accessories, such as

syringe pumps, incubators and cryopreservation instrumentation, which do not directly contact the human gamete, embryo, or patient. Nevertheless, the other identified special controls for design specifications, labeling and voluntary standards are applicable and can mitigate the potential risks to the human gamete or embryo associated with use of assisted reproduction accessories.

28. One comment stated that the risk of hematuria would not be mitigated by the use of design specifications, and that hematuria is primarily associated with the procedure/technique.

FDA disagrees with this comment. The agency recognizes that a risk such as hematuria is primarily associated with the procedure/technique. However, FDA believes that design specifications can help to ensure the safe and appropriate use of the product and thereby reduce the possibility of inadvertent needle puncture of the bladder.

29. One comment stated that the risk of puncture would not be mitigated by the use of design specifications, and that puncture is primarily associated with the procedure/technique.

FDA disagrees with this comment. The agency recognizes that a risk such as puncture is primarily associated with the procedure/technique. However, FDA believes that design specifications can help to ensure the safe and appropriate use of the product and thereby reduce the possibility of inadvertent needle puncture of other unintended abdominal or pelvic structures.

30. One comment stated that the risk of infection would not be mitigated by the use of MEA testing, and that instead, use of embryo-compatible materials should be advocated.

FDA agrees with this comment. The agency recognizes that a risk such as infection would not be mitigated by the use of MEA testing. However, the agency believes that the other identified special controls of endotoxin testing, device sterilization validation, water quality testing, design specifications, and labeling requirements will mitigate this risk and thereby help to ensure the safe and appropriate use of the product.

31. One comment stated that the potential complications of ectopic pregnancy, multiple gestation, or chromosomal congenital abnormalities are not device specific, and that, therefore, the statement that: "The assisted reproduction devices most likely to present this risk are assisted reproduction needles, assisted reproduction catheters, \* \* \*" (62 FR 46689) should be deleted. The comment also stated that these risks would not be

mitigated by the use of design specifications.

FDA disagrees with this comment. The agency does agree that the potential complications of multiple gestation or chromosomal congenital abnormalities are not device specific, and that assisted reproduction needles do not contribute to the risk of these potential complications. Nevertheless, assisted reproduction catheters may pose a risk of increasing the rate of ectopic pregnancies following embryo transfer, either by: (1) Allowing for an increased volume of transfer fluid, or (2) being designed in such a way as to promote inadvertent location of the catheter tip in or near the fallopian tube ostium (two postulated mechanisms for the occurrence of ectopic pregnancy in IVF/ART patients). These risks would be mitigated not only by design specifications, but also by labeling and appropriate instructions for use which caution against these possibilities. Therefore, the agency has modified the statement accordingly.

32. One comment questioned whether it was appropriate to require instructions for use for disposable labware. The comment stated that generalized instructions would not be useful to the user because of the diversity of techniques, and that as laboratories become regulated by other organizations such as SART, CAP, and the Health Care Finance Administration (HCFA) under CLIA, they are generating their own written procedures to meet their own specific needs.

FDA agrees with this comment. Because of the variability in techniques from user to user, it is not feasible or helpful to provide specific instruction for use on devices such as labware. Guidance from the appropriate regulatory entities (CAP, SART, HCFA) should be followed wherever applicable, and the manufacturer should provide a general statement in the labeling to users to use the labware as appropriate for the particular technique they are employing. FDA will review the labeling to ascertain that any instructions are appropriate given the indication for use identified on the labeling.

33. One comment recommended that the statement "labeling \* \* \* will ensure that devices are used properly, that the user is adequately informed, that the intended use of the device is clearly understood, and that claims by the manufacturer do not exceed the intended use of the device," be revised to indicate that labeling "promotes" or "supports reasonable assurance of" the items listed.

FDA disagrees with this comment. The meaning intended to be conveyed by the word "ensure" is that the labeling should be carefully and clearly written so as to provide the user with the information necessary to use the device as intended. The agency does not believe that the recommended revisions would adequately convey this intent.

34. One comment stated that labeling requirements need to be clarified, and that boilerplate language should be suggested to provide useful information.

FDA disagrees with this comment. Because of the large number of devices identified in the several categories of assisted reproduction devices intended for this reclassification, as well as variability in techniques from user to user, it is not feasible to provide specific boilerplate language for labeling in this final rule. Guidance from the appropriate regulatory entities (CAP, SART, and HCFA) should be followed wherever applicable, and the manufacturer should provide a general statement in the labeling to the user to use the device as appropriate for the particular technique they are employing. As stated previously, FDA will review labeling to ascertain that any instructions are appropriate given the indication for use identified on the labeling. In addition, FDA will work with manufacturers to develop appropriate labeling and may revise the guidance document for these devices once an appropriate 510(k) data base has been obtained.

35. Two comments expressed a concern with respect to the requirement that all devices coming into contact with embryos and gametes must demonstrate a sterility assurance level (SAL) of  $10^{-6}$ . Both comments stated that while a SAL of  $10^{-6}$  may be reasonable for a terminally sterilized product, most liquid media used for the processing or culture of embryos and gametes are not compatible with existing technologies for terminal sterilization, and therefore must be aseptically filled. The comments proposed that a SAL of  $10^{-3}$  be stipulated for aseptically filled products.

FDA agrees with this comment. A SAL of  $10^{-3}$  is recommended for reproductive media used for the processing or culture of embryos and gametes. Products which are processed in this way must clearly identify the SAL, and that they were "aseptically processed" or "membrane filtered" both on the label and in the labeling.

36. One comment stated that the identification for assisted reproduction needles should be revised from "Assisted reproduction needles are

devices used to obtain gametes, \* \* \*" to "Assisted reproduction needles are devices used to obtain gametes from the body \* \* \*".

FDA agrees with this comment and has revised this identification accordingly.

After reviewing the data presented before the Panel and considering the Panel's recommendation, as well as the comments received on the proposed reclassification, FDA, based on the information set forth, is reclassifying instrumentation intended for use in IVF and related ART procedures, and substantially equivalent devices of this generic type, from class III to class II, and assisted reproduction microscopes and microscope accessories, and substantially equivalent devices of this generic type, from class III to class I.

FDAMA added a new section 510(l) to the act. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as "reserved criteria." FDA has considered assisted reproduction microscopes and microscope accessories in accordance with the reserved criteria and determined that the device does not require premarket notification. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

Accordingly, as required by § 860.134(b)(6) and (b)(7) of the regulations, FDA is reclassifying instrumentation intended for use in IVF and related ART procedures, and substantially equivalent devices of this generic type, from class III to class II, and assisted reproduction microscopes and microscope accessories, and substantially equivalent devices of this generic type, from class III to class I. In addition, FDA is codifying the reclassification of the device by adding 21 CFR part 884 subpart G which consists of §§ 884.6100, 884.6200, 884.6300, 884.6400, 884.6500, 884.6600, 884.6700, 884.6800, 884.6900, and 884.7000.

#### *B. Special Controls*

The following special controls have been identified for assisted reproduction devices classified into class II:

## 1. Mouse Embryo Assay Information

The manufacturer should provide information to the user on whether an MEA was performed for toxicity and functionality testing of assisted reproduction needles, catheters, microtools, water or water purification systems, reproductive media, labware or other devices coming into contact with gametes and/or embryos. The rationale for requiring information on this test as a special control for class II assisted reproduction devices is that the MEA is a good surrogate indicator of potential toxicity of materials used in assisted reproduction devices to gametes and/or embryos. Both one-cell and two-cell assays are used. FDA will not dictate to the manufacturer which MEA should be used during the manufacture of a particular product, or even that any MEA is performed. Rather, if the mouse embryo assay is conducted, the manufacturer should provide clear information to the user about how the assay was performed and the assay results, both on the label and in the labeling. The bioassay should duplicate, as closely as possible, the procedures used for human IVF, including the acquisition, maintenance, culture, transfer (relocation) and cryopreservation of embryos. If no MEA is used, then this information must also be clearly provided to the user.

## 2. Endotoxin Testing

The rationale for requiring endotoxin testing as a special control for class II assisted reproduction devices is that it will provide a mechanism for ensuring that devices coming into contact with gametes, embryos, and/or the patient have been tested for levels of endotoxin released from gram-negative bacteria, which is the major pyrogen of concern. Of primary concern, endotoxin can be harmful to embryos and thus potentially affect development of the embryo, implantation and pregnancy rates. An established USP endotoxin assay (LAL or rabbit pyrogenicity) must be performed on any device, including needles, catheters, microtools, labware, water or water purification systems and media coming into contact with gametes, embryos, and/or the patient.

## 3. Sterilization Validation

The rationale for requiring sterilization validation as a special control for class II assisted reproduction devices is that it will provide a mechanism for ensuring that devices, including needles, catheters, microtools, labware, water or water purification systems, and media coming into contact with gametes and/or embryos are sterile

to a SAL of  $10^{-6}$ . The SAL for media should be  $10^{-3}$  or better. Established sterilization validation testing must be performed on all devices according to AAMI guidelines. The label should clearly identify the method of sterilization (for media, whether they were aseptically processed or membrane filtered) and SAL.

## 4. Water Quality

The rationale for requiring this test as a special control for class II assisted reproduction devices is that water quality is critically important to successful assisted reproductive technology procedures. The quality of water that directly contacts human gametes or embryos in IVF/ART procedures is similar to that for dialysis. Water used to reconstitute reproductive media and to wash and rinse labware, whether generated in-house using purification systems or obtained in bottled form from vendors, should be in conformance with USP water for injection requirements. As stated previously, general purpose water purification systems without a specific assisted reproduction claim will not be affected by this proposed rule.

## 5. Design Specifications

Particular design specifications may be identified for each type of device which assure minimally acceptable standards. The rationale for including design specifications as a special control for all class II assisted reproduction devices is that it will help to reduce the incidence of adverse events such as bleeding, pain or perforation which could be due to suboptimal device design. For example, assisted reproduction needles may be specified to be 16 to 18 gauge, 22 to 23 centimeters long, 45 to 60 degree beveled stainless steel, and sterile to assure safe and adequate access to ovarian follicles.

## 6. Labeling Requirements

Specific labeling which identifies the intended use, indication for use, contraindications, precautions, warnings, instructions for use and other information will be required. The rationale for including labeling as a special control for all class II assisted reproduction devices is that it will ensure that devices are used properly, that the user is adequately informed, that the intended use of the device is clearly understood, and that claims by the manufacturer do not exceed the intended use of the device. The label and labeling should also include information on the mouse embryo assay (see section III.B.1 of this document),

the method of sterilization (for media, whether they were aseptically processed or membrane filtered) and SAL (see section III.B.3 of this document), and endotoxin levels (see section III.B.2 of this document).

## 7. Biocompatibility Testing

Aside from concerns with gamete- or embryotoxicity, devices which are patient-contacting should demonstrate that the materials of which they are comprised are biocompatible with their intended use using conventional biocompatibility testing. Tests performed should conform to those recommended by international standard ISO-10993, "Biological Evaluation of Medical Devices, Part 1: Evaluation and Testing."

## 8. Clinical Testing

Certain device designs may not conform to conventional configurations used in assisted reproduction today, e.g., a specially-configured embryo transfer catheter. Although the device designs envisioned for this special control do not raise new types of safety and effectiveness questions, clinical data may still be required in some cases to adequately assess the performance of a device for its intended use. As stated previously, FDA does not intend to routinely require clinical testing; instead, clinical testing will be required on a case-by-case basis, where, based on the design or function of the device, the performance in its intended use can only be validated with clinical data.

## C. Summary of Other Changes

In addition, FDA would like to note the following changes from the proposed rule which are incorporated into the final rule:

(1) Although devices used for preimplantation diagnosis procedures such as embryo biopsy were inadvertently included in the proposed rule, the agency does not believe this type of device should be included in this reclassification because the use of such devices for this intended use is relatively new (see comment 9 of this document).

(2) Voluntary standards have been omitted as a special control from the final rule. While several organizations such as the CAP and the SART have provided significant guidance to IVF/ART laboratories, FDA recognizes that standards and recommendations from these organizations do not include specific guidelines for devices (see comment 11 of this document).

(3) The special control of water quality testing has been modified to require conformance with USP water for

injection requirements (see comment 14 of this document).

(4) The special control of sterilization validation has been modified to allow a SAL of  $10^{-3}$  for reproductive media rather than  $10^{-6}$  (see comment 36 of this document).

(5) The special control of biocompatibility testing for patient-contacting devices has been added to the appropriate categories of assisted reproduction devices.

In light of the general controls and special controls proposed for these devices, and the known risks and benefits of the devices, there exists reasonable assurance that these devices are safe and effective for their intended use.

#### **IV. Environmental Impact**

The agency has determined under 21 CFR 25.34(b) that this reclassification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### **V. Analysis of Impacts**

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354) as amended by subtitle D of the Small Business Regulatory Fairness Enforcement Act of 1996 (Pub. L. 104-121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II or class I will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit

small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of \$100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

#### **VI. Paperwork Reduction Act of 1995**

FDA has determined that this final rule does not contain any information collection requirements and, therefore, is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

#### **VII. References**

The following reference has been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Association for the Advancement of Medical Instrumentation (AAMI) Guideline, "The Quality System Compendium: GMP Requirements and Industry Practice."

#### **List of Subjects in 21 CFR Part 884**

##### **Medical devices.**

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

#### **PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES**

1. The authority citation for 21 CFR part 884 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Subpart G, consisting of §§ 884.6100 through 884.6190, is added to read as follows:

#### **Subpart G—Assisted Reproduction Devices**

Sec.

- 884.6100 Assisted reproduction needles.
- 884.6110 Assisted reproduction catheters.
- 884.6120 Assisted reproduction accessories.
- 884.6130 Assisted reproduction microtools.
- 884.6140 Assisted reproduction micropipette fabrication instruments.
- 884.6150 Assisted reproduction micromanipulators and microinjectors.
- 884.6160 Assisted reproduction labware.
- 884.6170 Assisted reproduction water and water purification systems.
- 884.6180 Reproductive media and supplements.

884.6190 Assisted reproductive microscopes and microscope accessories.

#### **Subpart G—Assisted Reproduction Devices**

##### **§ 884.6100 Assisted reproduction needles.**

(a) **Identification.** Assisted reproduction needles are devices used in in vitro fertilization (IVF), gamete intrafallopian transfer (GIFT), or other assisted reproduction procedures to obtain gametes from the body or introduce gametes, zygote(s), preembryo(s) and/or embryo(s) into the body. This generic type of device may include a single or double lumen needle and component parts, including needle guides, such as those used with ultrasound.

(b) **Classification.** Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, biocompatibility testing, and clinical testing).

##### **§ 884.6110 Assisted reproduction catheters.**

(a) **Identification.** Assisted reproduction catheters are devices used in in vitro fertilization (IVF), gamete intrafallopian transfer (GIFT), or other assisted reproduction procedures to introduce or remove gametes, zygote(s), preembryo(s), and/or embryo(s) into or from the body. This generic type of device may include catheters, cannulae, introducers, dilators, sheaths, stylets, and component parts.

(b) **Classification.** Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, biocompatibility testing, and clinical testing).

##### **§ 884.6120 Assisted reproduction accessories.**

(a) **Identification.** Assisted reproduction accessories are a group of devices used during assisted reproduction procedures, in conjunction with assisted reproduction needles and/or assisted reproduction catheters, to aspirate, incubate, infuse, and/or maintain temperature. This generic type of device may include:

(1) Powered aspiration pumps used to provide low flow, intermittent vacuum for the aspiration of eggs (ova).

(2) Syringe pumps (powered or manual) used to activate a syringe to infuse or aspirate small volumes of fluid during assisted reproduction procedures.

(3) Collection tube warmers, used to maintain the temperature of egg (oocyte)

collection tubes at or near body temperature. A dish/plate/microscope stage warmer is a device used to maintain the temperature of the egg (oocyte) during manipulation.

(4) Embryo incubators, used to store and preserve gametes and/or embryos at or near body temperature.

(5) Cryopreservation instrumentation and devices, used to contain, freeze, and maintain gametes and/or embryos at an appropriate freezing temperature.

(b) *Classification.* Class II (special controls) (design specifications, labeling requirements, and clinical testing).

#### **§ 884.6130 Assisted reproduction microtools.**

(a) *Identification.* Assisted reproduction microtools are pipettes or other devices used in the laboratory to denude, micromanipulate, hold, or transfer human gametes or embryos for assisted hatching, intracytoplasmic sperm injection (ICSI), or other assisted reproduction methods.

(b) *Classification.* Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, and clinical testing).

#### **§ 884.6140 Assisted reproduction micropipette fabrication instruments.**

(a) *Identification.* Assisted reproduction micropipette fabrication devices are instruments intended to pull, bevel, or forge a micropipette or needle for intracytoplasmic sperm injection (ICSI), in vitro fertilization (IVF) or other similar assisted reproduction procedures.

(b) *Classification.* Class II (special controls) (design specifications, labeling requirements, and clinical testing).

#### **§ 884.6150 Assisted reproduction micromanipulators and microinjectors.**

(a) *Identification.* Assisted reproduction micromanipulators are devices intended to control the position of an assisted reproduction microtool. Assisted reproduction microinjectors are any device intended to control aspiration or expulsion of the contents of an assisted reproduction microtool.

(b) *Classification.* Class II (special controls) (design specifications, labeling requirements, and clinical testing).

#### **§ 884.6160 Assisted reproduction labware.**

(a) *Identification.* Assisted reproduction labware consists of laboratory equipment or supplies intended to prepare, store, manipulate, or transfer human gametes or embryos for in vitro fertilization (IVF), gamete intrafallopian transfer (GIFT), or other assisted reproduction procedures. These

include syringes, IVF tissue culture dishes, IVF tissue culture plates, pipette tips, dishes, plates, and other vessels that come into physical contact with gametes, embryos or tissue culture media.

(b) *Classification.* Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, and clinical testing).

#### **§ 884.6170 Assisted reproduction water and water purification systems.**

(a) *Identification.* Assisted reproduction water purification systems are devices specifically intended to generate high quality, sterile, pyrogen-free water for reconstitution of media used for aspiration, incubation, transfer or storage of gametes or embryos for in vitro fertilization (IVF) or other assisted reproduction procedures. These devices may also be intended as the final rinse for labware or other assisted reproduction devices that will contact the gametes or embryos. These devices also include bottled water ready for reconstitution available from a vendor that is specifically intended for reconstitution of media used for aspiration, incubation, transfer, or storage of gametes or embryos for IVF or other assisted reproduction procedures.

(b) *Classification.* Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, water quality testing, design specifications, labeling requirements, biocompatibility testing, and clinical testing).

#### **§ 884.6180 Reproductive media and supplements.**

(a) *Identification.* Reproductive media and supplement are products that are used for assisted reproduction procedures. Media include liquid and powder versions of various substances that come in direct physical contact with human gametes or embryos (including water, acid solutions used to treat gametes or embryos, rinsing solutions, sperm separation media, supplements, or oil used to cover the media) for the purposes of preparation, maintenance, transfer or storage. Supplements are specific reagents added to media to enhance specific properties of the media (e.g., proteins, sera, antibiotics, etc.).

(b) *Classification.* Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, biocompatibility testing, and clinical testing).

#### **§ 884.6190 Assisted reproductive microscopes and microscope accessories.**

(a) *Identification.* Assisted reproduction microscopes and microscope accessories (excluding microscope stage warmers, which are classified under assisted reproduction accessories) are optical instruments used to enlarge images of gametes or embryos. Variations of microscopes and accessories used for these purposes would include phase contrast microscopes, dissecting microscopes and inverted stage microscopes. This device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

(b) *Classification.* Class I.

Dated: August 25, 1998.

**D.B. Burlington,**

Director, Center for Devices and Radiological Health.

[FR Doc. 98-24242 Filed 9-9-98; 8:45 am]

BILLING CODE 4160-01-F

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

### **24 CFR Part 570**

**[Docket No. FR-4269-F-01]**

**RIN 2528-AA06**

#### **Hispanic-Serving Institutions Work Study Program**

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Final rule.

**SUMMARY:** On February 25, 1998, HUD published an interim rule that broadened the eligibility for public and private non-profit two-year institutions of higher education to participate in the Hispanic-serving Institutions Work Study Program (HSI-WSP). This final rule makes final that interim rule without changes.

**EFFECTIVE DATE:** October 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jane Karadbil, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW, Washington, D.C. 20410, telephone (202) 708-1537, extension 218. Hearing- or speech-impaired individuals may call HUD's TTY number (202) 708-1455, or 1-800-877-8399 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.) Ms. Karadbil can also be contacted via the Internet at Jane.R.Karadbil@hud.gov.

**SUPPLEMENTARY INFORMATION:****I. Paperwork Reduction Act**

The information collection requirements contained in this final rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2528–0182. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

**II. Background**

The Hispanic-serving Institutions Work Study Program (HSI–WSP), which is authorized by section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307, 88 Stat. 647), makes grants to institutions of higher education for the purposes of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time undergraduate programs in community or economic development, community planning, or community management.

On April 9, 1997 (62 FR 17492), HUD issued a final rule governing the program. The final rule limited eligibility for HUD's HSI–WSP to only public or private institutions of higher education that offer two-year associate degrees and qualify as HSIs. While the statute authorizing the program does not require it, HUD decided to determine qualification by using the definition of an HSI contained in section 316 of the Higher Education Amendments of 1992 (20 U.S.C. 1059c; 106 Stat. 448, 473). Under that definition, an HSI is an institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic, of which not less than 50 percent of the Hispanic students are low-income individuals (i.e., 150 percent of the poverty level) who are first generation college students (i.e., whose parent(s) did not complete a baccalaureate degree) and another 25 percent are either low-income individuals or first generation college students. The U.S. Department of Education determines the eligibility of specific institutions as HSIs and issues a list of institutions meeting this definition. HUD's final rule noted that a list of HSI–WSP-eligible community colleges that are included in the U.S. Department of Education's list of HSIs

would appear with each Notice of Funding Availability (NOFA) for the program. Only institutions on the list, or HSI–WSP-eligible institutions subsequently added to the list prior to that NOFA's application deadline, were eligible to apply for HSI–WSP funds.

Through issuance of an interim rule on February 25, 1998 (63 FR 9682), HUD eliminated the use of the U.S. Department of Education's list to determine eligibility and, instead, allowed institutions to certify that they meet the statutory definition. The process for an institution to be put on the U.S. Department of Education's list is a multi-step process, and HUD's use of the list meant that some Hispanic-serving institutions were not eligible for HUD's HSI–WSP. HUD determined that it might have been unfairly penalizing institutions if it relied on a potentially out-of-date and overly restrictive eligibility list. HUD decided, therefore, not to base eligibility on the U.S. Department of Education's list, but instead to allow applicants to certify to HUD that they are eligible to apply for the HSI–WSP.

The February 25, 1998 interim rule provided for a 60-day public comment period. No comments were received. Accordingly, this rule makes final the interim rule as it was published on February 25, 1998.

**III. Findings and Certifications***Environmental Impact*

In accordance with 24 CFR 50.19(b)(9) of the HUD regulations, the policies and procedures contained in this rule relate only to training grants and technical assistance, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

*Regulatory Flexibility*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing, certifies that it will not have a significant economic impact on a substantial number of small entities. The rule only affects applicants and participants in the Hispanic-Serving Institutions Work Study Program and will not have any meaningful economic impact on any other entity.

*Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and

procedures contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the rule solicits participation by institutions of higher education in creating community development work study programs for some of their economically disadvantaged and minority students. The rule does not impinge upon the relationships between the Federal government and State or local governments.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*The Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance program number is 14.513.

**List of Subjects in 24 CFR Part 570**

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, the interim rule published on February 25, 1998, at 63 FR 9682, is adopted as final.

Dated: September 2, 1998.

**Xavier D. Briggs,**

*Deputy Assistant Secretary for Research, Evaluation and Monitoring.*

[FR Doc. 98–24286 Filed 9–9–98; 8:45 am]

BILLING CODE 4269–01–P

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199****RIN 0720-AA37****Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Reimbursement****AGENCY:** Office of the Secretary, DoD.**ACTION:** Final rule.

**SUMMARY:** This final rule revises certain requirements and procedures for reimbursement under the CHAMPUS program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this rule include: implementation of changes made to the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled and required by law to follow wherever practicable, along with changes to make our DRG-based payment system operate better; clarification of payment reduction for noncompliance with required utilization review procedures; clarification of publication of list of ambulatory surgery procedures; limitation on ambulatory surgery group payment rates; extension of the balance billing limitations currently in place for individual and professional providers to non-institutional, non-professional providers; adjustment of the CHAMPUS maximum allowable charge (CMAC) rate in the small number of cases where the CMAC rate is less than the Medicare rate; implementation of the government-wide debarment rule where any provider excluded or suspended from CHAMPUS shall be excluded from all other programs and activities involving Federal financial assistance, such as Medicare or Medicaid; elimination of the requirement for non-participating providers to file claims; and revision of the ambulatory surgery cost-share information to enable the cost-share to be assessed against the facility claim instead of the primary surgeon's claim.

**DATES:** This rule is effective October 13, 1998, except amendments to:

1. § 199.6, is effective October 1, 1997;
2. § 199.14(h) introductory text, effective January 1, 1999;
3. § 199.15, Paragraph (c)(2), effective July 11, 1995;
4. § 199.15, Paragraph (b)(4)(iii)(B), effective October 1, 1996.

**ADDRESSES:** Tricare Management Activity, (TMA), Program Development Branch, Aurora, CO 80045-6900.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity, telephone (703) 681-1745.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:****I. Introduction and Background***A. Congressional Action*

The National Defense Authorization Act for 1984 provided CHAMPUS with a statutory linkage to the Medicare Prospective Payment System, upon which the CHAMPUS diagnosis-related group (DRG) based payment system is modeled and required by law to follow whenever practicable.

In response to the rapid escalation of CHAMPUS costs in the 1980s, the Congress urged DoD, beginning with the Appropriations Act for Fiscal Year 1991 that physician payments under CHAMPUS be brought in line with payments under Medicare.

The National Defense Authorization Act for 1996, section 731, extended the balance billing limit authority to non-institutional, non-professional providers.

Section 2455 of the Federal Acquisition Streamlining Act of 1994, and Executive Order 12549, "Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs," February 18, 1986, require that any entity debarred, suspended or otherwise excluded under any program or activity involving Federal financial assistance shall also be debarred, suspended or otherwise excluded from all other programs and activities involving Federal financial assistance.

*B. Public Comments*

The proposed rule was published in the **Federal Register** on November 14, 1997. We received three comment letters. We thank those who provided comments; specific matters raised by commenters are summarized below in the appropriate sections of the preamble.

**II. Provisions of the Rule***A. Proposed Changes to the CHAMPUS DRG-Based Payment System*

1. Heart and Liver Transplants (revisions to § 199.14(a)(1)(ii)(C)(2),(3) and (4))

*Provisions of the Proposed Rule.* This paragraph explains that when we first implemented the CHAMPUS DRG-based

payment system in 1987, we exempted all services related to heart and liver transplantation. Although both of these types of transplants are subject to the Medicare PPS, we initially exempted them because at that time we had limited experience and claims data for them. We believed these limitations could significantly skew the relative weights we would calculate for such transplants.

Since 1987 we have continued to collect data on these services. From the beginning, heart transplants were grouped to DRG 103 and exempted. For Fiscal Year 1991 the Health Care Financing Administration (HCFA) created DRG 480 for liver transplants, but we continued to exempt them.

In our notice of updated rates and weights for Fiscal Year 1991, which was published on November 5, 1990 (55 FR 46545), we noted that we intended to consider including both heart and liver transplants in our DRG system in the future, and we invited any comments in that regard. We received none.

Since we have enough claims data to calculate accurate weights for these transplants, we proposed to end the DRG exemption for all CHAMPUS covered solid organ transplants for which there is an assigned DRG and enough data to calculate the DRG weight. Just as Medicare does, we will continue to exempt acquisition costs for all CHAMPUS covered solid organ transplants.

*Analysis of Major Public Comments.* One commenter objected to the provisions of the proposed rule in the belief that DRG weights for the CHAMPUS program would be inappropriate for pediatric transplant services.

*Response.* Our analysis of recent data indicates that both the average lengths of stay and average billed charges are higher for pediatric liver transplants, but both measures are lower for pediatric heart transplants. Thus, given that the number of cases is sufficiently large and that differences between pediatric and non-pediatric cases are not significant, it seems reasonable to calculate combined pediatric and non-pediatric DRG weights for heart and liver transplants.

*Provisions of the Final Rule.* The final rule is consistent with the proposed rule.

2. Payment Requests for Capital and Direct Medical Education Costs (Revisions to § 199.14(a)(1)(iii)(G)(3))

*Provisions of the Proposed Rule.* Initially we required that hospitals submit their request for payment of capital and direct medical education

costs within three months of the end of the hospital's Medicare cost-reporting period. However, some hospitals encountered difficulties in meeting this deadline, because HCFA implemented changes which resulted in extensions to the filing deadline. Therefore, we often did not enforce our deadline, and as of October 1988 we eliminated the requirement entirely.

We eliminated the requirement because we believed hospitals would submit their requests at the earliest possible time anyway. Also, we believed there would be no adverse impact on CHAMPUS. Neither of these has proven to be correct. We continually receive these requests well after the end of the Medicare cost-reporting period—in some cases several years later. As a result, it is necessary for our contractors to retain claims data in their systems indefinitely, so that they can verify the reported amounts when the requests are submitted. This is proving to be a very burdensome and costly requirement for our contractors.

On June 27, 1995, HCFA published a final rule (60 FR 33137) extending the time frame providers have to file cost reports from no later than 3 months after the close of the period covered by the report to no later than 5 months after the close of that period. The rule also changed the regulations for granting extensions to providers. Under the new regulation, an extension may be granted by the intermediary only when a provider's operations were significantly adversely affected due to extraordinary circumstances over which the provider had no control, such as flood or fire. We proposed to adopt these same requirements for submitting requests for payment of capital and direct medical education costs with CHAMPUS.

Currently, CHAMPUS has no deadline, other than the six year statute of limitations, for submitting payment requests for Medicare cost-reporting periods. In order to allow us to close out our data for these periods, we proposed that any capital and direct medical education payment requests that fall within the six year statute of limitations and October 1, 1998, must be submitted to the appropriate CHAMPUS contractor no later than 5 months after October 1, 1998.

In addition, since capital and direct medical education costs are included in the national children's hospital differential, we proposed to eliminate the clause allowing children's hospitals to request reimbursement of capital and direct medical education costs as an alternative to being paid the national differential.

*Analysis of Major Public Comments.* We received two comments with respect to the time frame prescribed for requesting payment of capital and direct medical education. One commenter suggested we adopt a one year deadline from the end of the cost reporting period to file information necessary to the initial payment of capital and direct medical education costs. Another commenter suggested we allow a six month period after the close of the fiscal year to submit cost reports, and, since capital and direct medical education costs are included in the national children's hospital differential, requested the differential factor be updated annually with cost report information. The commenter also suggested that the payments come directly to hospitals and not be passed through the TRICARE Managed Care Support contractors.

*Response.* With respect to the timeframe to submit capital and direct medical education costs, we agree that a one year deadline is appropriate. We disagree with an annual update to the national children's hospital differential since it is designed to reflect the historical relationship of children's hospitals to DRG reimbursed institutional facilities. We also disagree with the suggestion that payments not be passed through our TRICARE managed care support contractors. It is in the Government's interest to continue to use our regional managed care support contractors to process these payments because they provide economies of scale for claims processing and are acting as the government's fiscal agents in these cases.

*Provisions of the Final Rule.* The final rule includes a one year timeframe to submit capital and direct medical education costs.

### 3. Indirect Medical Education Adjustment Factor (Revisions to § 199.14(a)(1)(iii)(A)(3), (a)(1)(iii)(D)(2), and (a)(1)(iii)(E)(3)(i), (ii), (iii), (iv), and (v))

*Provisions of the Proposed Rule.* An indirect medical education (IDME) adjustment factor is calculated for all hospitals which have teaching programs approved under the Medicare regulation. This factor is calculated using a formula developed by HCFA (see our previous final rules for a discussion of the application of this formula to CHAMPUS), and is based on the number of interns and residents and the number of beds in the hospital. Each DRG-based payment is increased by this factor for that hospital.

Initially, the number of residents and interns for each hospital was derived

from the most recently available audited HCFA cost report, and the number of beds was derived from the American Hospital Association Annual Survey of Hospitals. The factors have been updated annually based on data submitted by hospitals on the annual request for payment of capital and direct medical education costs.

While this updating procedure ensures that hospitals' factors are as current as possible, it is dependent upon the hospitals' submission of requests for payment of capital and direct medical education costs. Since the crucial components (number of interns, residents and beds) can change from year to year, and since many hospitals do not submit requests for payment of capital and direct medical education costs, we believe it is necessary to establish an alternative updating method.

We proposed to use the Medicare adjustment factor for any hospital for which a CHAMPUS-specific factor has not been calculated based on the hospital's request for payment of capital and direct medical education costs. We will update the factors using the Medicare amounts as of October 1 of each year when we routinely update the DRG rates and weights. Any hospital which has not submitted a capital and direct medical education payment request to CHAMPUS since the previous October 1, will be assigned the most recent Medicare adjustment factor.

HCFA uses a slightly different formula than that used by CHAMPUS, and we are aware that this will result in a different adjustment factor than would otherwise be used. Nevertheless, we believe this is justified. When the Medicare factor is used, the difference is likely to be small. In addition, CHAMPUS accounts for a very small portion of most hospitals' claims, and those hospitals which do not request payment of capital and direct medical education costs probably have few, if any, CHAMPUS admissions. Therefore, the financial impact of using the Medicare factor will be negligible. Yet it will ensure that the factors are kept current, so that factors which are no longer representative of a hospital's teaching program are not used indefinitely. And, of course, hospitals can ensure that a CHAMPUS-specific factor is used simply by submitting a request for payment of capital and direct medical education costs.

For hospitals which have indirect medical education factors for CHAMPUS but are not subject to the Medicare PPS, we will eliminate the factor if a CHAMPUS-specific factor cannot be calculated based on a current

request from the hospital for payment of capital and direct medical education costs. The factor will be eliminated as of October 1 if no capital and direct medical education payment request has been received since the previous October 1.

In any case where a hospital submits a capital and direct medical education payment request after the Medicare factor has been implemented (or the factor has been eliminated for hospitals not subject to the Medicare PPS, including children's hospitals), the CHAMPUS-specific factor will become effective in accordance with existing requirements. In no case will the CHAMPUS-specific factor be effective retroactively.

For children's hospitals which have indirect medical education factors for CHAMPUS, the factor will be eliminated as of October 1 of each year if during the past year, the hospital did not provide the contractor with updated information on the number of its interns, residents and beds. Since amounts for capital and direct medical education are included in the national children's hospital differential, children's hospitals are not required to submit capital and direct medical education payment requests. Because of this, the contractor is not able to update the CHAMPUS-specific factor unless requested by the children's hospital.

For Fiscal Year 1998, HCFA revised its indirect medical education adjustment formula to gradually reduce the current level of IDME adjustment over the next several years. Since the IDME formula used by CHAMPUS does not include disproportionate share hospitals (DSHs), the variables in the formula are different from Medicare's, however, the percentage reductions that will be applied to Medicare's formula are being adopted by CHAMPUS.

**Analysis of Major Public Comments.** One commenter suggested that supplemental payments for indirect medical education be continued under CHAMPUS since current Medicare proposed reductions are appropriate for adult populations but children's hospitals would be harmed, therefore they suggested that the percentage reductions implied by the Medicare formula be removed in application to children's hospitals.

**Response.** We disagree. We believe the incentives associated with the existing IME adjustments are contrary to the Administration's policy of decreasing the number of residents trained in the United States, increasing the relative number of residents trained in primary care, and encouraging more training in nonhospital-based sites thus

it is appropriate for CHAMPUS to adopt the Medicare formula.

**Provisions of the Final Rule.** In our November 14, 1997, proposed rule, we proposed an alternative updating method for the indirect medical education (IDME) adjustment factor. For those hospitals for which a CHAMPUS-specific factor has not been calculated based on the hospital's request for payment of capital and direct medical education costs, we proposed to use the Medicare adjustment factor, if said hospital was subject to the Medicare Prospective Payment System (PPS). We stated HCFA uses a slightly different formula than that used by CHAMPUS, and we were aware this would result in a different adjustment factor than would otherwise be used, however, we believed the difference was likely to be small.

In reassessing the proposed alternative method, we felt it would be more equitable to use the ratio of interns and residents to beds, which is a component of the IDME formula, from HCFA's Provider Specific File (PSF), rather than use Medicare's IDME adjustment factor. The ratio of interns and residents to beds will be provided to the contractors to update each hospital's IDME adjustment factor at the same time we routinely update the DRG rates and weights. The Provider Specific File is sent to us by HCFA each year for use in calculating the updated DRG rates and weights.

This method will be used beginning with the Fiscal Year 1999 DRG update. If after October 1, 1998, the contractor receives a request for payment of capital and direct medical education costs, they shall only change the ratio of interns and residents to beds if the request for payment is for a hospital's cost reporting period ending prior to October 1, 1998. The only other time a hospital's IDME adjustment factor should be changed is if the ratio of interns and residents to beds changes as a result of a Medicare audit. This alternative method shall only apply to those hospitals subject to the Medicare PPS.

For hospitals which have indirect medical education factors for CHAMPUS but are not subject to the Medicare PPS, including children's hospitals, the contractor shall send a notice each August to those hospitals who have not provided the contractor with updated information on the number of its interns, residents and beds, since the previous October 1, and advise them the IDME factor will be eliminated if they fail to provide the contractor with updated information by October 1 of that same year. We

anticipate the first notices to be sent in August of 1998.

Based on the above, we are removing the information contained in the proposed rule regarding the alternative updating method for the IDME adjustment factor. Since 32 CFR 199.14 already specifies the DRG payment is to be adjusted for IDME costs, any additional information regarding updating the IDME factor can be obtained from the contractor. This change does not affect the adoption of the percentage reductions being applied to the CHAMPUS IDME formula to gradually reduce the current level of IDME adjustment over the next several years.

#### 4. Length of Stay Outliers (Revisions to 32 CFR 199.14((a)(1)(iii)(E)(1)(j)(A) and (B))

**Provisions of the Proposed Rule.** For Fiscal Year 1998, HCFA eliminated payment for day outliers, referred to as long stay outliers under CHAMPUS. CHAMPUS also eliminated long stay outliers for all cases except children's hospitals and neonates for Fiscal Year 1998. We proposed to eliminate the long stay outliers for children's hospitals and neonates for Fiscal Year 1999. For Fiscal Year 1993, HCFA changed the payment procedures for day outlier per diems under the PPS. Prior to this change, the day outlier per diem was calculated using the DRGs geometric mean length of stay and a marginal payment factor of 60 percent. For discharge occurring on or after October 1, 1992, HCFA revised the day outlier payment policy to reflect that the per diem payment would be calculated using the arithmetic mean and a marginal payment factor of 55 percent. This meant that the per diem day outlier payment under the PPS for operating costs would be determined by dividing the standard DRG payment by the arithmetic mean length of stay for that DRG, and multiplying the result by 55 percent. The change in the payment policy for day outliers provided better protection against costly cases for hospitals, while maintaining a more appropriate level of payment for cases with extraordinary long lengths of stay that were not also extraordinarily costly.

CHAMPUS did not adopt the PPS per diem day outlier changes at that time because it required a regulatory change and there was a moratorium on publication of rules. Over the years, HCFA has reduced the marginal payment factor for day outliers from 55 percent to 47 percent to 44 percent, to 33 percent, to the point of eliminating payment of day outliers, effective with discharges occurring after September 30, 1997. CHAMPUS adopted the day

outlier marginal payment factor of 47 percent for Fiscal Year 1995, 44 percent for Fiscal Year 1996, and 33 percent for Fiscal Year 1997, but has not adopted the arithmetic mean to calculate the per diem payment. As a result, CHAMPUS has been paying more than Medicare on claims qualifying for long-stay day outliers. Although we eliminate the long stay outliers for all cases except children's hospitals and neonates for Fiscal Year 1998, and proposed to eliminate the long stay outliers for them in Fiscal Year 1999, we still proposed to adopt the arithmetic mean to calculate the per diem, in order to be consistent with the Medicare PPS in calculating payments of outlier cases.

**Analysis of Major Public Comments.** One commenter recommended that children's hospitals' outlier cases be exempt from the 100-day Medicare cap because children, unlike elderly adults in long stay cases are almost never discharged to nursing home care from the hospital.

**Response.** CHAMPUS does not apply the 100 day Medicare cap to any cases, therefore the comment is not applicable.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

#### 5. Cost Outliers (Revisions to 32 CFR 199.14(a)(1)(iii)(E)(I)(ii) (A) and (B))

**Provisions of the Proposed Rule.** Beginning in Fiscal Year 1998, HCFA adopted a requirement that in determining the additional payment for IME (referred to as IDME under CHAMPUS), the IME adjustment factor will only be applied to the base DRG payment. In addition, the fixed loss cost outlier threshold is based on the sum of the DRG payment plus IME plus a fixed dollar amount. CHAMPUS adopted this requirement in Fiscal Year 1998 for all cases except children's hospitals and neonates. We proposed to adopt this same requirement for children's hospitals and neonates in Fiscal Year 1999.

**Analysis of Major Public Comments.** One commenter was concerned that this policy is not budget neutral, there is no special per diem for neonates, and that Children's hospitals are not exempt from the 100-day Medicare cap. The commenter suggested that the 1998 HCFA-adopted requirement be implemented in a budget neutral fashion. We agree and we plan to establish an outlier ratio designed to be budget neutral.

**Provisions of the Final Rule.** Effective October 1, 1998, Children's hospitals will have their cost outlier payments adjusted so that these payments are budget neutral with the FY94 outlier

policies for children's hospitals. The Department will calculate an adjustment factor which will be applied to all cost outlier payments in FY99 and thereafter. This adjustment factor will be applied equally to the cost outlier payments for all Children's hospitals. The adjustment factor will be equal to the ratio of CHAMPUS outlier payments using the FY94 CHAMPUS long stay and cost outlier payment methods to the CHAMPUS outlier payment methods using the FY99 cost outlier payment methods. We will calculate this ratio in late FY98 once the CHAMPUS FY99 cost outlier payment policy has been determined. The ratio will be calculated using CHAMPUS claims data from the Children's hospitals in FY95 and FY96. In order to ensure that budget neutrality is achieved with this ratio, the Department will monitor outlier payments and recalculate the ratio of payments under the FY94 outlier policies to actual outlier payments in FY99 using actual cost outlier cases at Children's hospitals in FY99. This calculation will be done in FY 2000. If the ratio has changed significantly, a new ratio will be used to pay Children's hospital outlier cases in FY 2001 and thereafter. The final rule has been modified to reflect these adjustment procedures.

#### 6. Payment for Transfer Cases (Revisions to 32 CFR 199.14(a)(1)(i)(C)(6)(iv))

**Provisions of the Proposed Rule.** Beginning in Fiscal Year 1996, HCFA adopted a graduated per diem payment methodology for transfer cases. As of October 1, 1996, CHAMPUS adopted this payment methodology; however, we elected not to offset these additional payments with reductions in outlier payments. Using this payment methodology, CHAMPUS proposed to pay transferring hospitals twice the per diem amount for the first day of any transfer stay plus the per diem amount for each of the remaining days before transfer, up to the full DRG amount. For neonatal cases, other than normal newborns, we proposed paying the transferring hospital twice the per diem amount for the first day of any transfer stay plus 125 percent of the per diem rate for all remaining days before transfer, up to the full DRG amount. This change allows hospitals to be compensated more appropriately for the treatment they furnish to patients before transfer. We proposed continuing to pay transferring hospitals in full for discharges classified into DRG 456 (burns, transferred to another acute care facility or DRG 601 (neonate, transferred less or equal to 4 days old).

**Analysis of Major Public Comments.** One commenter suggested a higher reimbursement rate of 150 percent for days after the first day for Children's hospitals suggesting that their costs were higher.

**Response.** We were unable to determine any differences between Children's hospitals and other hospitals in this regard. Thus we have not changed the reimbursement rate.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

#### 7. Elimination of Separate Adjusted Standardized Amounts for Rural Areas (Revision to 32 CFR 199.14(a)(1)(iii)(D) (1) and (5))

**Provisions of the Proposed Rule.** Beginning in Fiscal Year 1995, HCFA's average standardized amounts for hospitals located in "rural" areas were required to be equal to the average standardized amount for hospitals located in "other urban" areas. Based on this, separate national average standardized amounts for "other urban" and "rural" areas no longer existed. As of Fiscal Year 1995, CHAMPUS no longer differentiated between "other urban" and "rural" areas. We proposed that the adjusted standardized amounts for "other urban" and "rural" areas be listed as "other" areas.

**Analysis of Major Public Comments.** No comments were received.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

#### 8. Payment for Blood Clotting Factor (Revisions to 32 CFR Section 199.14(a)(1)(ii)(C)(10))

**Provisions of the Proposed Rule.** For Fiscal Year 1994, HCFA reinstated payments for the cost of administering blood clotting factor to beneficiaries who have hemophilia through discharges occurring before October 1, 1994. CHAMPUS also reinstated payments for the cost of administering blood clotting factor through discharges occurring before October 1, 1994. For Fiscal Year 1998, HCFA again reinstated payments for the cost of administering blood clotting factor. CHAMPUS also proposed to reinstate payments for discharges occurring on or after October 1, 1997.

**Analysis of Major Public Comments.** No comments were received.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**9. Effect of Change of Ownership on Exclusion of Long-Term Care Hospitals (Revisions to 32 CFR 199.14(a)(1)(ii)(D)(4))**

**Provisions of the Proposed Rule.** Beginning in Fiscal Year 1996, HCFA adopted new requirements for certain long-term care hospitals excluded from the PPS. The requirements specify that if a hospital undergoes a change of ownership at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare. CHAMPUS proposed to adopt these new requirements beginning in Fiscal Year 1996.

**Analysis of Major Public Comments.** No comments were received.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**10. Empty and Low-Volume DRGs (Revision to 32 CFR 199.14(a)(1)(iii)(B))**

**Provisions of the Proposed Rule.** Currently, 32 CFR 199.14(a)(1)(iii)(B) specifies that the Medicare weight shall be used for any DRG with less than 10 occurrences in the CHAMPUS database. Since the CHAMPUS weights are used by military treatment facilities and by an increasingly large number of state Medicaid programs, the direct substitution of the Medicare weight for the CHAMPUS weight, causes inconsistencies. These inconsistencies may pose more of a problem for other payors than it does for CHAMPUS, particularly if they have more cases in the DRG categories where the substitutions have occurred. Because of these inconsistencies, we proposed that the Director, TRICARE Management Activity, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DRG categories.

**Analysis of Major Public Comments.** No comments were received.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**11. Hospitals Within Hospitals (Revisions to 32 CFR 199.14(a)(1)(ii)(D)(5))**

**Provisions of the Proposed Rule.** For Fiscal Year 1998, HCFA established additional criteria for excluding from

the PPS, long-term care hospitals that occupy space in the same building or on the same campus as another hospital, sometimes called "hospitals within hospitals". The additional criteria extends the hospital within hospital criteria to excluded hospitals other than long-term care hospitals. CHAMPUS proposed to adopt these requirements beginning in Fiscal Year 1998.

**Analysis of Major Public Comments.** No comments were received.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**B. Proposed Changes Regarding Elimination of Physician Attestation Requirement (Revision to 32 CFR 199.15(c)(2))**

**Provisions of the Proposed Rule.** On September 1, 1995, Medicare eliminated the requirement for the physician attestation form that requires doctors to certify the accuracy of all diagnoses and procedures before submitting claims for payment. In addition, instead of requiring a physician to sign an acknowledge statement every year, Medicare changed its regulations to require a physician need only sign the acknowledgment statement upon receiving admitting privileges at a hospital. CHAMPUS proposed to adopt these requirements effective the same date.

**Analysis of Major Public Comments.** One commenter appreciated DoD's elimination of the annual physician attestation policy.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**C. Proposed Changes Regarding Clarification of Payment Reduction for Noncompliance With Required Utilization Review Procedures (revision to 32 CFR 199.15(b)(4)(iii)(B))**

**Provisions of the Proposed Rule.** To cover those situations where network providers have agreements with the managed care contractors for denial of payments of the provider's failure to obtain the required preauthorization, we are proposing to add the words "at least" before the words "ten percent". By adding the words "at least", the managed care support contractor is authorized to apply reductions in payments in accordance with the network provider's contract.

**Analysis of Major Public Comments.** No comments were received.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**D. Clarification Regarding List of Ambulatory Surgery Procedures**

**Provisions of the Proposed Rule.** On October 1, 1993, we published a final rule (58 FR 51227) which included prospective payment procedures for ambulatory surgery. These procedures were modeled on the Medicare methodology. In that final rule, we stated that "A list of ambulatory surgery procedures will appear as Attachment 2 (to be published later) to this preamble." We subsequently published the list of procedures on October 15, 1993, (58 FR 53411).

The list of procedures published on October 15, 1993, was not made part of the Code of Federal Regulations (CFR) at that time, and it was not, and continues not to be, our intention that it be part of the CFR. However, the final rule did not make this clear. We proposed that the list of procedures to be "published periodically by the Director, OCHAMPUS," as cited in section 199.14 paragraph (d)(1), is contained in the TRICARE/CHAMPUS Policy Manual.

**Analysis of Major Public Comments.** No comments were received.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**E. Proposed Changes Regarding Limits on Ambulatory Surgery Group Payment Rates (Revisions to 32 CFR 199.14(d)(3)(iv))**

**Provisions of the Proposed Rule.** Effective November 1, 1994, CHAMPUS identified a number of procedures which can be performed safely and effectively as ambulatory surgery and established prospective payment procedures for reimbursing these services. Ambulatory surgery often is less disruptive to the patient's life than an inpatient stay. It also provides a less expensive alternative to an inpatient stay, since the patient does not require a hospital room and all the costs associated with it. As a result, the OCHAMPUS wants to encourage the use of ambulatory surgery whenever it is reasonable, but we do not believe it ever should be more expensive than an inpatient stay. Therefore, we proposed to add a provision that gives discretion to the Director, TMA, to limit the ambulatory surgery group payment rate to the amount that would be allowed if the services were provided on an inpatient basis. To calculate the allowable inpatient amount we proposed multiplying the applicable DRG relative weight times the national large urban adjusted standardized amount (ASA). We proposed to use the large urban ASA rather than the "other

area" ASA because it is higher and will not economically disadvantage any provider, and we expect that most ambulatory surgery centers are located in large urban areas.

*Analysis of Major Public Comments.* No comments were received.

*Provisions of the Final Rule.* The final rule is consistent with the proposed rule. We want to clarify, however, that the CHAMPUS-determined inpatient allowable amount that serves as a limit on the ambulatory surgery group payment amounts includes adjustments for hospital wage indexes.

#### F. Proposed Changes Regarding Balance Billing (Revisions to 32 CFR 199.14(h))

*Provisions of the Proposed Rule.* Section 731 of the National Defense Authorization Act for Fiscal Year 1996, revised 10 U.S.C. 1079(h) which provides the statutory basis for limits on balance billing of CHAMPUS beneficiaries established in section 199.14(h)(1)(i)(D). Section 731 extends the balance billing limit authority to non-institutional, non-professional providers, such as clinical laboratories and ambulance companies.

We proposed that non-institutional, non-professional providers will be limited in the amount they may bill a TRICARE/CHAMPUS-eligible beneficiary an actual charge in excess of the allowable amount. This provides financial protection for our beneficiaries by preventing excessively high billing by providers by establishing the balance billing limit to these new categories of providers as the same percentage as that used for TRICARE/CHAMPUS professional providers: 115 percent of the allowable charge. In order to provide flexibility to continue CHAMPUS benefits in special circumstances in which a beneficiary may feel strongly about using a particular provider, notwithstanding high fees, we proposed that the limitation may be waived on a case-by-case basis.

*Analysis of Major Public Comments.* While noting that the proposed rule applied to non-institutional, non-professional providers, one commenter was opposed to across-the-board balance billing limits for physicians and called on the Department to articulate and publish criteria for allowing a waiver of the balance billing limits on a case-by-case basis.

*Response.* As we have stated in the past, we believe it is appropriate to protect beneficiaries against excessive balance billing. We have committed ourselves to monitoring carefully balance billing trends with an objective of assuring that a majority of claims in all localities for all procedures of

appreciable volume have zero balance billing. Where this is not maintained, we are willing to maintain CHAMPUS payment rates a level higher than Medicare's. Based on our willingness to do this, we do not believe providers need to also maintain balance billing levels higher than Medicare, absent some special circumstance. As we have noted, in a special circumstance, the limitation can be waived if requested by the beneficiary. We do not have set criteria we use when evaluating and granting a waiver to our balance billing protections, rather each request is evaluated by the Director, TMA, based on the specific facts provided by a beneficiary.

*Provisions of the Final Rule.* The final rule is consistent with the proposed rule.

#### G. Proposed Changes Regarding CMAC Rates (Revisions to 32 CFR 199.14(h)(1)(iii)(D))

*Provisions of the Proposed Rule.* CHAMPUS policy, based on Congressional enactment, is to set CHAMPUS Maximum Allowable Charge (CMAC) rates comparable to Medicare rates. For almost all procedure codes, the CMAC rate has been reduced to equal the Medicare rate or is in the process of being phased down to that level. For a very small number of procedures, for unusual reasons or idiosyncrasies of the data used for calculations, however, the CMAC rate is less than the Medicare rate. We proposed to establish a special rule for these cases to permit an increase in the CMAC up to the Medicare rate. This is based on the authority of 10 U.S.C. 1079(h)(4), which allows for exceptions to the normal statutory payment limitation if DoD determines it necessary to assure that beneficiaries have adequate access to health care services. Because the Medicare rates are products of a system that reflects careful governmental judgments of factors suggesting fair payment rates, we proposed to adopt these rates as indicators of payment levels associated with adequate access. In addition, under the applicable Appropriations Act general provision, DoD may increase CMAC rates that are lower than Medicare rates by reference to appropriate economic index data similar to that used by Medicare. We have heretofore utilized only the Medicare Economic Index in this connection, but we proposed to adopt an additional Medicare indicator of economic factors, namely the data used for the Medicare fee determination, to adjust the rates in these special cases. This is set forth in

the proposed new section 199.14(h)(1)(iii)(D).

*Analysis of Major Public Comments.* One commenter was pleased by the proposed change and suggested that we publish the list of procedures that will be increased to the Medicare rates. We agree and we have included the list at the end of the preamble.

*Provisions of the Final Rule.* The final rule is consistent with the proposed rule.

#### H. Proposed Changes Regarding Government-Wide Effect of Exclusion or Suspension From CHAMPUS (Revisions to 32 CFR 199.9(m))

*Provisions of the Proposed Rule.*

Section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, October 13, 1994, and Executive Order 12549, "Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs," February 18, 1986, required that any entity debarred, suspended, or otherwise excluded under any program or activity involving Federal financial assistance shall also be debarred, suspended, or otherwise excluded from all other programs and activities involving Federal financial assistance. We are restating this requirement in the context specific to CHAMPUS through a proposed addition to section 199.9. The proposed addition provides that any health care provider excluded or suspended from CHAMPUS shall, as a general rule, also be debarred, suspended, or otherwise excluded from all other programs and activities involving the Federal financial assistance. Among these other such programs are Medicare and Medicaid. Other regulations related to this authority are 32 CFR Part 24 (DoD rules) and 45 CFR Part 76 (HHS rules).

In conjunction with implementation of this government-wide debarment rule, we are strengthening the linkage between CHAMPUS and these other programs on the important issue of balance billing by providers. Current regulations generally require providers to limit balancing billing to 15% greater than the CHAMPUS Maximum Allowable Charge (CMAC). These regulations also provide that violations are grounds for exclusion or suspension from CHAMPUS. We are proposing to reinforce these compliance provisions by adding a violation of this requirement to the list of provider actions that are considered abuse of the program for purposes of termination, suspension and other administrative remedies.

A principal effect of this proposed revision is that any provider who

exceeds the balance billing limits risks not only exclusion or suspension from CHAMPUS, but also exclusion or suspension from Medicare, Medicaid, and other Federal programs.

**Analysis of Major Public Comments.** One commenter suggested that CHAMPUS should require the same level of intent as is currently required for exclusion or suspension in the Medicare and Medicaid programs. They recommended that there be evidence that the physician "knowingly and willfully" failed to comply with CHAMPUS requirements.

**Response.** The comment is not pertinent to the proposed rule because the proposed rule does not make changes to our requirements in 32 CFR 199.6 which sets forth general policies and program requirements for authorized providers.

**Provisions of the Final Rule.** The final rule is consistent with the proposed rule.

**I. Elimination of Mandatory Claims Filing Requirement (Revision to 32 CFR 199.6(a)(11))**

This final rule conforms the CHAMPUS regulation to title 10, as revised by a provision of the National Defense Authorization Act for Fiscal Year 1998 that eliminated the requirement that all providers file claims on behalf of CHAMPUS beneficiaries.

**J. Revision of Ambulatory Surgery Cost-Share Information (Revision to 32 CFR 199.18(d)(3)(v))**

When a dependent of an active-duty member receives approved ambulatory surgery services, the cost-share is \$25. This single cost-sharing amount covers the facility claim as well as any claims for professional (surgeon, anesthesia, etc.) services. In order to ensure consistency and for administrative ease, we have required that the \$25 cost-share be assessed against the facility claim. When the regulation for the TRICARE uniform HMO benefit was published (32 CFR 199.18), that part inadvertently stated that the ambulatory surgery cost-share is to be assessed against the claim for the primary surgeon's services. Since this does not conform to established practices, we are revising this paragraph to enable the cost-share to be assessed against the facility claim. This will have no effect on either the collection or the amount of the cost-share.

**III. Regulatory Procedures**

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual

effect on the economy of \$100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this rule have been submitted to OMB for review under 3507(d) of the Act.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the collection of information to allow TRICARE to properly reimburse institutional providers based on diagnosis-related groups (DRGs) for their share of these costs. The collection of this information is authorized by 32 CFR 199.14(a)(1)(iii)(G)(1) and (2). The CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and was implemented on October 1, 1987.

**Affected Public:** Individuals; business or other for profit.

**Annual Burden Hours:** 5,532.

**Number of Respondents:** 5,400.

**Responses per Respondent:** 1.

**Average Burden per Response:** 5 minutes for physicians.

**Frequency:** On occasion.

Respondents are institutional providers and admitting physicians. Institutional providers are requesting reimbursement for allowed capital and direct medical education costs from the TRICARE/CHAMPUS contractor. The information can be submitted in any form, most likely in the form of a letter. The contractor will calculate the TRICARE/CHAMPUS share of capital and direct medical education costs and make a lump-sum payment to the hospital.

Physicians sign a physician acknowledgement, maintained by the institution, at the time the physician is granted admitting privileges. This acknowledgement indicates the physician understands the importance of a correct medical record, and misrepresentation may be subject to penalties.

**List of Subjects in 32 CFR Part 199**

Claims, Health insurance, Individuals with disability, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR Part 199 is amended as follows:

**PART 199—[AMENDED]**

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

**§ 199.6 [Amended]**

2. Section 199.6 is amended by removing paragraph (a)(11) and redesignating paragraph (a)(12) as (a)(11).

3. Section 199.9 is amended by adding new paragraph (m) to read as follows:

**§ 199.9 Administrative remedies for fraud, abuse, and conflict of interest.**

\* \* \* \* \*

(m) *Government-wide effect of exclusion or suspension from CHAMPUS.* As provided by section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, October 13 1994, and Executive Order 12549, "Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs," February 18, 1986, any health care provider excluded or suspended from CHAMPUS under this section shall, as a general rule, also be debarred, suspended, or otherwise excluded from all other programs and activities involving Federal financial assistance. Among the other programs for which this debarment, suspension, or exclusion shall operate are the Medicare and Medicaid programs. This debarment, suspension, or termination requirement is subject to limited exceptions in the regulations governing the respective Federal programs affected. (Note: Other regulations related to this government-wide exclusion or suspension authority are 32 CFR Part 25 and 45 CFR Part 76.)

4. Section 199.14 is amended by revising first sentences of (a)(1) introductory text and (a)(1)(i)(C)(6)(iv), and by revising paragraphs (a)(1)(ii)(C)(2), (3), (4) and (10) first sentence, (a)(1)(ii)(D)(4), redesignating paragraphs (a)(1)(ii)(D)(5) through (a)(1)(ii)(D)(8) as (a)(1)(ii)(D)(6) through (a)(1)(ii)(D)(9), (a)(1)(iii)(B), (a)(1)(iii)(D)(1) first sentence and (5), (a)(1)(iii)(E)(1)(A) and (B), (a)(1)(iii)(E)(1)(ii)(A) and (B), (a)(1)(iii)(G)(3) introductory text, (d)(3)(iv), and (h) introductory text, and

by adding a new sentence after the first sentence of paragraph (a)(1)(i)(C)(6)(iv), and by adding new paragraphs (a)(1)(ii)(D)(5), and (h)(1)(iii)(D), to read as follows:

**§ 199.14 Provider reimbursement methods.**

\* \* \* \*

(a) \*

(1) *CHAMPUS Diagnosis Related Group (DRG)-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applied on a per discharge basis using DRGs. \*

(i) \*

(C) \*

(6) \*

(iv) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital subject to the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate (except that in neonatal cases, other than normal newborns, the hospital will be paid at 125 percent of that per diem rate), as determined under instructions issued by TSO, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. For admissions occurring on or after October 1, 1995, the transferring hospital shall be paid twice the per diem rate for the first day of any transfer stay, and the per diem amount for each subsequent day, up to the limit described in this paragraph.

\* \* \* \*

(ii) \*

(C) \*

(2) All services related to solid organ acquisition for CHAMPUS covered transplants by CHAMPUS-authorized transplantation centers.

(3) All services related to heart and liver transplantation for admissions prior to October 1, 1998, which would otherwise be paid under DRG 103 and 480, respectively.

(4) All services related to CHAMPUS covered solid organ transplants for which there is no DRG assignment.

\* \* \* \*

(10) For admissions occurring on or after October 1, 1990, and before October 1, 1994, and for discharges occurring on or after October 1, 1997, the costs of blood clotting factor for hemophilia inpatients. \*

(D) \*

(4) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, TSO, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of Title 42 CFR.

(5) *Hospitals within hospitals.* A hospital within a hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a hospital within a hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, TSO, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.22 and the criteria for one or more of the excluded hospital classifications described in § 412.23 of Title 42 CFR.

\* \* \* \*

(iii) \*

(B) *Empty and low-volume DRGs.* For any DRG with less than ten (10) occurrences in the CHAMPUS database, the Director, TSO, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DRG categories.

\* \* \* \*

(D) \*

(1) *Differentiate large urban and other area charges.* All charges in the database shall be sorted into large urban and other area groups (using the same definitions for these categories used in the Medicare program). \*

\* \* \* \*

(5) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban or other area group and dividing by the total number of discharges in the respective group.

\* \* \* \*

(E) \*

(I) \*

(j) \*

(A) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's arithmetic LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of

the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the arithmetic mean length-of-stay for the DRG.

(B) *Long-stay outliers.* Any discharge (except for neonatal services and services in children's hospitals) which has a length-of-stay (LOS) exceeding a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.82 shall be classified as a long-stay outlier. Any discharge for neonatal services or for services in a children's hospital which has a LOS exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's arithmetic mean LOS also shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The per diem rate shall equal the DRG amount divided by the arithmetic mean LOS for the DRG. For admissions on or after October 1, 1997, the long stay outlier has been eliminated for all cases except children's hospitals and neonates. For admissions on or after October 1, 1998, the long stay outlier has been eliminated for children's hospitals and neonates.

(ii) \*

(A) *Cost outliers except those in children's hospitals or for neonatal services.* Any discharge which has standardized costs that exceed a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.84 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(4) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1997, the standardized costs are no longer adjusted for indirect medical education costs.

(B) *Cost outliers in children's hospitals and for neonatal services.* Any discharge for services in a children's hospital or for neonatal services which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or \$13,500 shall

qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(4) (adjusted to include average capital and direct medical education costs) and adjusting this amount for indirect medical education costs. Cost outliers for services in children's hospitals and for neonatal services shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1998, standardized costs are no longer adjusted for indirect medical education costs. In addition, CHAMPUS will calculate the outlier payments that would have occurred at each of the 59 Children's hospitals under the FY99 outlier policy for all cases that would have been outliers under the FY94 policies using the most accurate data available in September 1998. A ratio will be calculated which equals the level of outlier payments that would have been made under the FY94 outlier policies and the outlier payments that would be made if the FY99 outlier policies had applied to each of these potential outlier cases for these hospitals. The ratio will be calculated across all outlier claims for the 59 hospitals and will not be hospital specific. The ratio will be used to increase cost outlier payments in FY 1999 and FY 2000, unless the hospital has a negotiated agreement with a managed care support contractor which would affect this payment. For hospitals with managed care support agreements which affect these payments, CHAMPUS will apply these payments if the increased payments would be consistent with the agreements. In FY 2000 the ratio of outlier payments (long stay and cost) that would have occurred under the FY 94 policy and actual cost outlier payments made under the FY 99 policy will be recalculated. If the ratio has changed significantly, the ratio will be revised for use in FY 2001 and thereafter. In FY 2002, the actual cost outlier cases in FY 2000 and 2001 will be reexamined. The ratio of outlier payments that would have occurred under the FY94 policy and the actual cost outlier payments made under the FY 2000 and FY 2001 policies. If the ratio has changed significantly, the ratio will be revised for use in FY 2003.

\* \* \* \* \*

(G) \* \* \*

(3) *Information necessary for payment of capital and direct medical education costs.* All hospitals subject to the

CHAMPUS DRG-based payment system, except for children's hospitals, may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Beginning October 1, 1998, such request shall be filed with CHAMPUS on or before the last day of the twelfth month following the close of the hospitals' cost reporting period, and shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. An extension of the due date for filing the request may only be granted if an extension has been granted by HCFA due to a provider's operations being significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

\* \* \* \* \*

(d) \* \* \*  
(3) \* \* \*

(iv) *Step 4: standard payment amount per group.* The standard payment amount per group will be the volume weighted median per procedure cost for the procedures in that group. For cases in which the standard payment amount per group exceeds the CHAMPUS-determined inpatient allowable amount, the Director, TSO or his designee, may make adjustments.

\* \* \* \* \*

(h) *Reimbursement of individual health care professionals and other non-institutional, non-professional providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the service of an individual health care professional or other non-institutional, non-professional provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(1) \* \* \*  
(iii) \* \* \*

(D) *Special rule for cases in which the national CMAC is less than the Medicare rate.*

**Note:** This paragraph will be implemented when CMAC rates are published.

In any case in which the national CMAC calculated in accordance with paragraphs (h)(1)(i) through (iii) of this section is less than the Medicare rate, the Director, TSO, may determine that the use of the Medicare Economic Index under paragraph (h)(1)(iii)(B) of this section will result in a CMAC rate below the level necessary to assure that beneficiaries will retain adequate access to health care services. Upon making such a determination, the Director, TSO, may increase the national CMAC to a level not greater than the Medicare rate.

5. Section 199.15 is amended by revising paragraphs (b)(4)(iii)(B), (c)(2), (d)(2)(iii) and (e)(3)(i) and (ii), to read as follows:

#### § 199.15 Quality and utilization review peer review organization program.

\* \* \* \* \*

(b) \* \* \*  
(4) \* \* \*  
(iii) \* \* \*

(B) In a case described in paragraph (b)(4)(iii)(A) of this section, reimbursement will be reduced, unless such reduction is waived based on special circumstances. The amount of this reduction shall be at least ten percent of the amount otherwise allowable for services for which preauthorization (including preauthorization for continued stays in connection with concurrent review requirements) approval should have been obtained, but was not obtained.

\* \* \* \* \*

(c) \* \* \*

(2) The physician acknowledgment required for Medicare under 42 CFR 412.46 is also required for CHAMPUS as a condition for payment and may be satisfied by the same statement as required for Medicare, with substitution or addition of "CHAMPUS" when the word "Medicare" is used.

\* \* \* \* \*

(d) \* \* \*  
(2) \* \* \*

(iii) Review for physician's acknowledgement of annual receipt of the penalty statement as contained in the Medicare regulation at 42 CFR 412.46.

\* \* \* \* \*

(e) \* \* \*  
(3) \* \* \*

(i) If the diagnostic and procedural information in the patient's medical

record is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding on the CHAMPUS claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignment.

(ii) If the information stipulated under paragraph (d)(2) of this section is found not to be correct, the PRO will change the coding and assign the appropriate DRG on the basis of the changed coding.

\* \* \* \* \*

6. Section 199.18 is amended by revising paragraph (d)(3)(v) introductory text to read as follows:

**§ 199.18 Uniform HMO Benefit.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(v) For ambulatory surgery services, the per service fee is as follows:

\* \* \* \* \*

Dated: August 31, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98-23842 Filed 9-9-98; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 1**

RIN 0651-AA88

**Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Disclosures; Correction**

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains a correction to the rules relating to the format for nucleotide and/or amino acid sequence disclosures in patent applications.

**EFFECTIVE DATE:** September 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Esther M. Kepplinger, by telephone at (703) 308-1495; by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231 marked to her attention; by facsimile to (703) 305-3935; or by electronic mail at esther.kepplinger@uspto.gov.

**SUPPLEMENTARY INFORMATION:** Appendix B to subpart G to part 1 of title 37 of the Code of Federal Regulations is a listing entitled "Headings for Information Items in § 1.823." It contains the headings that were required prior to the June 1, 1998, amendment of the rules.

On June 1, 1998, the Patent and Trademark Office published a final rule entitled "Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Disclosures" in the **Federal Register** (63 FR 29620). The listing of headings in appendix B is no longer correct in view of the final rule. The headings adopted in the final rule replaced those used in appendix B. For this reason, appendix B should have been removed from the final rule. Because appendix B may be misleading, it is now being removed.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Incorporation by reference, Reporting and recordkeeping requirements, Small businesses.

**PART 1—RULES OF PRACTICE IN PATENT CASES**

Accordingly, 37 CFR Part 1 is corrected by making the following correcting amendment:

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

**Authority:** 35 U.S.C. 6, unless otherwise noted.

**Appendix B To Subpart G To Part 1 [Corrected]**

2. Remove Appendix B To Subpart G To Part 1.

Dated: September 4, 1998.

**Albin F. Drost,**

*Deputy Solicitor.*

[FR Doc. 98-24358 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-16-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-6157-8]

**National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List**

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

**ACTION:** Notice of deletion for the Golden Strip Septic Tank Superfund Site from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Golden Strip Septic Tank Superfund Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and

Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environment Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of South Carolina Department of Health and Environmental Control (SCDHEC) have determined that all remedial action objectives have been met and the Site poses no significant threat to public health or the environment. Therefore, further remedial measures are not appropriate.

**EFFECTIVE DATE:** September 10, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Craig Zeller, P.E., Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, Waste Management Division—North Site Management Branch, 61 Forsyth Street, SW, Atlanta, GA 30303, (404) 562-8827 or toll free at 1-800-435-9233.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Golden Strip Septic Tank Superfund Site in Simpsonville, South Carolina.

A Notice of Intent to Delete for this site was published on July 9, 1998, (FR-6121-9) (63 FR 37085). The closing date for comments on the Notice of Intent to Delete was August 10, 1998. EPA received no comments.

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

**List of Subjects in 40 CFR Part 300**

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

Dated: August 24, 1998.

**A. Stanley Meiburg,**

*Deputy Regional Administrator, Region 4.*

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

The authority citation for part 300 continues to read as follows:

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

**Appendix B [Amended]**

2. Table 1 of appendix B to part 300 is amended by removing the Golden Strip Septic Tank Service, Simpsonville, South Carolina.

[FR Doc. 98–24143 Filed 9–9–98; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

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

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 201

#### RIN 0580-AA65

#### Prohibition on the Non-Reporting of Price as a Condition of the Purchase or Sale of Livestock

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Department of Agriculture (USDA) has received information that some livestock transactions are conditioned on an agreement that the transaction price not be reported to public or private reporting services. USDA is concerned that the non-reporting of price as a condition of the purchase or sale of livestock may result in inaccurate and incomplete price information, adversely affecting the price discovery process. Therefore, USDA is considering a proposed rulemaking that would prohibit, as a violation of the Packers and Stockyards Act (P&S Act), the non-reporting of price as a condition of the purchase or sale of livestock. In order to assess the need for regulatory action, this Advance Notice of Proposed Rulemaking invites comments from all interested parties.

**DATES:** Comments concerning this potential regulatory action must be received on or before December 9, 1998.

**ADDRESSES:** An original and two copies of all comments may be sent to the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, D.C. 20250-3641. Comments may also be sent by fax to (202) 205-3941 or by e-mail to PSP.GIPSA@USDA.GOV.

**FOR FURTHER INFORMATION CONTACT:**  
Daniel L. Van Ackeren, Director, Office

of Policy/Litigation Support at (202) 720-6951.

**SUPPLEMENTARY INFORMATION:** The Packers and Stockyards Programs (P&S), GIPSA, monitors and regulates purchases and sales of livestock in interstate commerce. The Market News Service, Agricultural Marketing Service, USDA, and other public and private reporting entities collect and disseminate reported spot market transaction prices for cattle and other livestock. This price information is used by livestock industry members to evaluate the purchase or sale price of livestock.

Currently, the price reporting system is voluntary; neither party to a sale is required to report a spot market transaction price. Because the reporting system is voluntary and some prices may not be reported by the parties to the transaction, the prices reported to Market News Service and other price reporting services may not reflect the highest and lowest prices paid for livestock. As a result, the prices reported by Market News Service and other price reporting services may not be complete. Many sellers may make decisions on when or at what price to sell based on the prices reported by these reporting services. Consequently, conditioning the purchase or sale of livestock on non-reporting of prices may be an unfair trade practice in violation of the P&S Act. Additionally, a regulation that prohibits non-reporting of price as a condition of the purchase or sale of livestock may enhance the availability and accuracy of complete market information.

The livestock industry has a vested interest in the accuracy and completeness of price information. The importance of price information to the livestock industry, particularly small cattle producers, was made evident during the public hearings held by the USDA Advisory Committee on Agricultural Concentration.<sup>1</sup> This perspective was echoed in the comments<sup>2</sup> filed in response to the

<sup>1</sup> The substance of the hearings conducted by the Advisory Committee is contained in Agricultural Marketing Service, USDA, Concentration in Agriculture: A Report of the USDA Advisory Committee on Agricultural Concentration (June 1996).

<sup>2</sup> Comments filed in response to WORC's petition are available for review in the Office of the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA. GIPSA's analysis of the petition and

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petition<sup>3</sup> for rulemaking filed by the Western Organization of Resource Councils.

As early as 1991, P&S received complaints from cattle sellers that some sales were conditioned on the seller not reporting the price to Market News Service. The sellers complained that buyers were conditioning the purchase of higher quality cattle on a commitment not to report the price to Market News Service. Because the highest prices may not be reported, the reported prices may not reflect the prices actually paid for cattle. Consequently, higher quality cattle purchased in other sales may obtain lower prices than would be obtained if sellers were permitted to report the actual price obtained in all sales.

Conversely, sellers of livestock may request that buyers make a commitment not to report low prices. Because the lowest prices may not be reported, the reported prices may not reflect the prices actually paid for some cattle. Consequently, lower quality cattle purchased in other sales may obtain higher prices than would be obtained if buyers were permitted to report the actual price paid in all purchases.

In addition to affecting the prices (including the low, high, and average prices) reported by Market News Service and other price reporting services, conditioning the purchase or sale of livestock on the non-reporting of prices may serve to give the buyers a competitive advantage over the sellers of livestock in the form of greater market information. Because the buyers of livestock generally are parties to more purchase transactions than are the sellers of livestock, the buyers may have more market information available to them than do the sellers. As a result, sellers of livestock may rely more heavily on publicly reported prices when making their sales decisions. Buyers, on the other hand, may supplement the market information they have assimilated from other purchases (including the purchase prices of

comments is available on GIPSA's Internet site (<http://www.usda.gov/gipsa/lateadd/lateadd.htm>) or by contacting the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, D.C. 20250.

<sup>3</sup> 63 Fed. Reg. 1845-59 (January 14, 1997). WORC's petition is also available on GIPSA's Internet site (<http://www.usda.gov/gipsa/lateadd/lateadd.htm>).

transactions that are not reported) with reported market prices, which may give them an advantage over sellers.

Because conditioning the purchase or sale of livestock on non-reporting of prices may be an unfair trade practice in violation of the P&S Act, P&S is considering taking regulatory action to prohibit non-reporting of price as a condition of the purchase or sale of livestock on spot market transactions. The Agency is interested in receiving information from members of the public, segments of the livestock industry (including producers, marketing firms, packers, associations, etc.), academia, and industry consultants on this issue. The Agency is particularly interested in receiving information from small entities that would be affected by regulatory action. Small entities are defined as firms that meet the following standards: (1) beef cattle feedlots with annual receipts of \$1.5 million or less; (2) beef cattle producers, except feedlots, and producers of hogs, sheep, goats, and horses or other equines, with annual receipts of \$500,000 or less for beef cattle, hog, sheep, goat, and horse or other equine sales; and (3) meat packing plants with 500 employees or less.

We are seeking information on how frequently conditioning the purchase or sale of livestock on the non-reporting of prices occurs and how different segments of the industry are affected by this practice. The information received in response to the following questions will be considered in determining whether this practice violates the P&S Act and whether regulatory action is warranted.

- Do you use reported market prices in making livestock purchase or sales decisions? If so, how do you use reported market prices? For example, do you use reported market prices to determine what purchase price to bid or what sales price to offer? If so, how? Do you use reported market prices to determine whether to accept or reject a buyer's bid or a seller's offer? If so, how?

- Do you encounter or engage in non-reporting of price as a condition of purchasing or selling livestock? If so, please describe the circumstances under which this practice occurs, the frequency with which it occurs, whether you participate in this practice, and the business reasons for your decision.

When this practice occurs, are the prices higher, lower, or about the same as concurrent reported prices?

- What benefits, if any, would a prohibition on non-reporting of price as a condition of the purchase or sale of livestock have on your business? The livestock and meat packing industries?

The accuracy of reported market prices? Prices paid for livestock? The quality of livestock available for purchase or sale? The price discovery process? Competition? Please describe the bases for your conclusions.

- What harm or costs, if any, would a prohibition on non-reporting of price as a condition of the purchase or sale of livestock have on your business? The livestock and meat packing industries? The accuracy of reported market prices? Prices paid for livestock? The quality of livestock available for purchase or sale? The price discovery process? Competition? Please describe the bases for your conclusions.

- Do you have available any economic, statistical, or other research relevant to the use and effects of non-reporting of price as a condition of the purchase or sale of livestock? If so, please provide us with a copy of the research and a brief summary of the conclusions.

USDA is seeking extensive public comment from all sectors of the livestock and meat packing industries concerning the practice of non-reporting of price as a condition of the purchase or sale of livestock. We strongly encourage participation in this important process.

Dated: September 3, 1998.

**James R. Baker,**  
Administrator.

[FR Doc. 98-24329 Filed 9-9-98; 8:45 am]  
BILLING CODE 3410-EN-P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

[Docket Number EE-TP-98-101]

### Workshop Regarding Test Procedures, Standards and Related Matters for Commercial Water Heaters, Boilers, Furnaces, Air Conditioners and Heat Pumps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Department of Energy (the Department or DOE) will hold a public workshop to discuss issues and gather information related to DOE's development of proposed provisions for energy efficiency test procedures and standards compliance as they relate to commercial water heaters, boilers, furnaces, air conditioners, and heat

pumps. All persons are hereby given notice of the opportunity to attend and participate in this public workshop and to submit written comments.

**DATES:** The public workshop will be held on Tuesday, October 13, 1998, from 8:00 a.m. to 5:30 p.m.

**ADDRESSES:** The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW, Washington, DC 20585-0121.

Written comments are welcome, especially following the workshop. Please submit by November 13, 1998, ten copies (no faxes) and a computer diskette (WordPerfect 6.1) to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Commercial Products: Water Heaters, Boilers, Furnaces, Air Conditioners, and Heat Pumps, Docket No. EE-TP-98-101, EE-43, 1000 Independence Avenue, SW, Washington, DC 20585-0121. Telephone: (202) 586-2945.

Copies of the transcript of the public workshop, public comments received, and this notice may be read (or copied) at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Cyrus Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-43, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-9138, e-mail: cyrus.nasseri@ee.doe.gov; or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507, e-mail: edward.levy@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** The Department of Energy is drafting a proposed rule to implement certain provisions of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6311-6314, 6316, regarding energy efficiency test procedures and energy conservation standards for commercial water heaters, boilers, furnaces, air conditioners, and heat pumps. While EPCA generally calls for adoption of test procedures referenced in the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), Standard 90.1, several issues have been raised concerning interpretation of EPCA and the Standard concerning matters not addressed in

Standard 90.1. These issues were discussed at a previous public workshop on April 14 and 15, 1998. Proceedings of this workshop, including transcripts, are available for inspection in Docket No. EE-TP-98-101 at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Transcripts may also be purchased from Neal R. Gross, Court Reporters and Transcripts, 1323 Rhode Island Ave., NW, Washington, DC 20005-3701, (202) 234-4433.

Since that time, the DOE has analyzed the comments, and the National Institute of Standards and Technology (NIST) has developed recommendations for DOE's consideration in drafting the notice of proposed rulemaking. The purpose of this public workshop is to discuss the resolution of the issues raised in the April 1998, workshop and to obtain reactions to NIST's proposals.

NIST is developing a paper entitled, "Proposed Provisions for a Rulemaking on Test Procedures for Commercial Water Heaters, Boilers, Furnaces, Air Conditioners and Heat Pumps," which will set forth approaches for DOE to consider in the Notice of Proposed Rulemaking and it explains recommended provisions. This paper will be available after September 28, 1998, and can be found on the Internet at the following URL address: [http://www.eren.doe.gov/buildings/codes\\_standards/index.htm](http://www.eren.doe.gov/buildings/codes_standards/index.htm). Hard copies can be obtained by mail from Ms. Brenda Edwards-Jones, at (202) 586-2945, or may be read at the DOE Freedom of Information Reading Room mentioned above.

At this workshop, the Department is particularly interested in receiving comments and views of interested parties concerning: (1) the ideas for resolution of the issues discussed in April and (2) provisions recommended by NIST for DOE's consideration for inclusion in the Notice of Proposed Rulemaking. The Department encourages those who wish to participate in the workshop to obtain the NIST paper and to make presentations that address its contents. Workshop participants need not limit their statements to these topics. The Department is interested in receiving views concerning other issues that participants believe would affect the test procedures or standards compliance for commercial water heaters, boilers, furnaces, air conditioners, and heat pumps.

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated under antitrust law. After the meeting and period for written comments, the Department will consider the views presented in formulating a Notice of Proposed Rulemaking regarding energy efficiency test procedures and standards compliance as they relate to commercial water heaters, boilers, furnaces, air conditioners, and heat pumps.

If you would like to participate in the workshop, receive workshop materials, or be added to the DOE mailing list to receive future notices and information regarding commercial water heaters, boilers, furnaces, air conditioners, and heat pumps, please contact Ms. Brenda Edwards-Jones at (202) 586-2945.

Issued in Washington, DC, on September 4, 1998.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 98-24330 Filed 9-9-98; 8:45 am]

BILLING CODE 6450-01-P

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 102, 103, and 106

[Notice 1998-14]

#### Prohibited and Excessive Contributions; "Soft Money"

AGENCY: Federal Election Commission.

ACTION: Extension of Comment Period and Change of Public Hearing Date.

**SUMMARY:** On July 13, 1998, the Federal Election Commission published proposed rules and announced a public hearing relating to funds received by party committees outside the prohibitions and limitations of the Federal Election Campaign Act, also known as "soft money." 63 FR 37721 (July 13, 1998). The Commission has extended the comment period until October 2, 1998. The Commission has also rescheduled the public hearing for October 21, 1998 at 10:00 a.m. so that all newly confirmed Commissioners may participate.

**DATES:** Comments must be received on or before October 2, 1998. The hearing will be held on October 21, 1998 at 10:00 a.m. Persons wishing to testify must so indicate in their written comments.

**ADDRESSES:** All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463.

Faxed comments should be sent to (202) 219-3923, with printed copy follow up. Electronic mail comments should be sent to softmoneynpr@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

The public hearing will be held in the Commission's public hearing room, 999 E Street, N.W., Washington, DC, Ninth Floor.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

Dated: September 3, 1998.

**Joan D. Aikens,**

*Chairman, Federal Election Commission.*

[FR Doc. 98-24272 Filed 9-9-98; 8:45 am]

BILLING CODE 6715-01-P

## EXPORT-IMPORT BANK OF THE UNITED STATES

### 12 CFR Part 404

#### Comprehensive Revision of Export-Import Bank of the United States Freedom of Information Act, Privacy Act, and Other Information Disclosure Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Export-Import Bank of the United States.

ACTION: Supplemental proposed rule; Reopening of comment period.

**SUMMARY:** This document sets forth one proposed section that was not included in the Export-Import Bank's original proposed rule, published on December 4, 1997 (62 FR 64177). This section will notify interested parties that disclosures of information in connection with program development, asset disposition, debt collection, and risk reduction efforts may take place when the Ex-Im Bank President determines that disclosure is needed to support the Bank's promotion of policy and

programmatic objectives and that disclosure in such limited circumstances will not subject the submitter of the information to commercial harm. This supplemental notice was originally published in the **Federal Register** on August 4, 1998, and had an ending comment period of September 3, 1998. Due to several request for extension, the Export-Import Bank has decided to extend the comment period.

**DATES:** Interested persons are invited to submit comments on or before September 24, 1998.

**ADDRESSES:** Address all comments concerning this proposed rule to Howard A. Schweitzer, Counsel for Administration, Export-Import Bank of the United States, 811 Vermont Avenue, N.W., Room 951, Washington, D.C. 20571.

**FOR FURTHER INFORMATION CONTACT:**

Howard A. Schweitzer, (202) 565-3229.

**SUPPLEMENTARY INFORMATION:** The Export-Import Bank of the United States (Ex-Im Bank or "the Bank") is proposing the following amendment under the authority of the Export-Import Bank Act of 1945, 12 U.S.C. 635. The purpose of the proposed amendment is to ensure that necessary disclosures of information in connection with developing Bank programs are consistent with relevant law and regulation. The following proposed section provides for disclosure of such information only when the disclosure is necessary to support the Bank's promotion of policy and programmatic objectives and only if Ex-Im Bank's President determines that the disclosure will not subject the submitter of the information to commercial harm.

The determinations concerning the Regulatory Flexibility Act, Executive Order 12866, the Unfunded Mandates Reform Act, and the Small Business Enforcement Fairness Act of 1996 that Ex-Im Bank made in connection with publication of the original proposed rule apply to this supplemental notice of proposed rulemaking.

**List of Subjects in 12 CFR Part 404**

Administrative practice and procedure, Confidential business information, Freedom of Information, Privacy.

For the reasons stated in the preamble, Ex-Im Bank proposes to amend 12 CFR chapter IV as follows:

**PART 404—INFORMATION DISCLOSURE**

1. The authority citation for part 404 is revised to read as follows:

**Authority:** 5 U.S.C. 552 and 552a. Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235. Section 404.21 also issued under 5 U.S.C. 552a note. Section 404.70 issued under 12 U.S.C. 635.

2. Part 404, as proposed to be revised at 62 FR 64178, is further amended by adding and reserving subparts C and D and adding subpart E to read as follows:

**PART 404—INFORMATION DISCLOSURE**

**Subpart E—Miscellaneous Information Disclosure Provisions**

Sec.

404.70 Asset disposition, program development, and risk reduction efforts.

**Subpart E—Miscellaneous Information Disclosure Provisions**

**§ 404.70 Asset disposition, program development, and risk reduction efforts.**

(a) *Purpose and scope.* The purpose of this section is to provide for disclosure, only in the context of program development, asset disposition, debt collection, and risk reduction efforts, of confidential commercial or financial information when such disclosure is needed to facilitate the Bank's support of the export of goods and services. Ex-Im Bank shall disclose such information only to persons, as defined in § 404.2, who require access to such information to perform their intended services on behalf of the Bank.

(b) *Disclosure of information.* Ex-Im Bank may in connection with program development, asset disposition, debt collection and risk reduction efforts, disclose information described in 5 U.S.C. 552(b)(4) that is provided to Ex-Im Bank in connection with applications for financial support or related transactions, when the Ex-Im Bank President determines that disclosure is needed to support the Bank's promotion of policy and programmatic objectives and that disclosure in such limited circumstances will not subject the submitter of the information to commercial harm. Ex-Im Bank does not waive its right to withhold information, in response to a FOIA request, that has been or could be disclosed pursuant to this section if Ex-Im Bank determines that such disclosure could subject the submitter of the information to commercial harm.

(c) *Protections.* Whenever possible, Ex-Im Bank shall enter into confidentiality agreements intended to protect the confidentiality of any commercial or financial information disclosed pursuant to this section.

Dated: September 3, 1998.

**Elaine Stangland,**

*Deputy General Counsel.*

[FR Doc. 98-24274 Filed 9-9-98; 8:45 am]

BILLING CODE 6690-01-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

[CGD05-98-069]

RIN 2115-AE47

**Drawbridge Operation Regulations; Perquimans River, Hertford, North Carolina**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the drawbridge across Perquimans River, mile 12.0, in Hertford, North Carolina, by decreasing its hours of operation during specific times of inactivity. This proposed rule is intended to lessen the high cost of manning the drawbridge 24 hours a day while still providing for the reasonable needs of navigation.

**DATES:** Comments must be received on or before November 9, 1998.

**ADDRESSES:** Comments may be mailed to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Comments will become a part of this docket and will be available for inspection and copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05-98-069), the specific section of this rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying.

and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander, (Aowb) Fifth Coast Guard District, at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The current regulations at 33 CFR 117.835 require the U.S. Route 17 drawbridge across the Perquimans River, mile 12.0, in Hertford, North Carolina to operate as follows: The draw shall open on signal from 8 a.m. to midnight from April 1 through September 30, and from 10 a.m. to 10 p.m. from October 1 through March 31. The draw need not be opened at all other times. The Town of Hertford, through the North Carolina Department of Transportation (NCDOT), has requested permission to decrease the number of hours the bridge is attended. In support of its request, NCDOT asserts that 3 years of drawbridge opening logs (from 1995 through 1997) show that marine vessel traffic significantly decreased during April and at night from 10 p.m. to midnight throughout the year.

The Coast Guard has reviewed these logs (copies of which are included in the docket for this rulemaking) and they appear to support NCDOT's request. According to the January 1995 to December 1997 drawbridge logs, 233 openings occurred, which is a decrease from the previous three years (1992–94), when there were 370 openings.

The decrease in the overall number of openings plus the decrease in openings during the registered time periods indicate that it would be advantageous to change the drawbridge operating regulations. Based on this data, the Coast Guard believes that closure during the proposed time periods would not overburden marine traffic while lessening the high cost of manning the bridge 24 hours per day. This proposed rule is intended to decrease the high cost of manning the drawbridge while

still providing for the reasonable needs of navigation.

#### Discussion of Proposed Rule

The Coast Guard is proposing a new regulation governing the operation of this drawbridge. The proposed rule would require the draw to operate as follows:

- During May through September, the draw would open on signal from 8 a.m. to 10 p.m., seven days a week.
- During April and October, the draw would open on signal from 8 a.m. to 10 p.m., Saturdays and Sundays.
- During March and November, the draw would open on signal from 10 a.m. to 10 p.m., Saturdays and Sundays.
- During December, January, and February, twenty-four hours advance notice would be required for openings.
- At all other times, the draw would not be required to open.

The drawbridge would continue to be required to operate in compliance with 33 CFR 117.31(b), Operation of draw for emergency situations, and 33 CFR 117.55, Posting of requirements.

#### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. 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). The Coast Guard believes that closure during the proposed time periods would not overburden marine traffic due to the lack of use during these periods. Therefore, the Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposed rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal,

if adopted, will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

#### Federalism

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

#### Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under Figure 2–1, paragraph (32)(e) of COMDTINST M16475.1C, this proposed rule is categorically excluded from further environmental documentation based on the fact that it is a promulgation of the operating regulations for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.835 is revised to read as follows:

#### § 117.835 Perquimans River.

The draw of the US17 Bridge over Perquimans River, mile 12.0, in Hertford, North Carolina shall operate as follows:

(a) During May through September, the draw shall open on signal from 8 a.m. to 10 p.m., seven days a week.

(b) During April and October, the draw shall open on signal from 8 a.m. to 10 p.m., Saturdays and Sundays.

(c) During March and November, the draw shall open on signal from 10 a.m. to 10 p.m., Saturdays and Sundays.

(d) During December, January, and February, twenty-four hours advance notice is required for openings.

(e) The draw need not be opened at all other times.

Dated: September 1, 1998.

**Roger T. Rufe, Jr.,**

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

[FR Doc. 98-24289 Filed 9-9-98; 8:45 am]

BILLING CODE 4910-15-M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 1 and 2

#### RIN 2900-AH98

#### Release of Information From Department of Veterans Affairs Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend Department of Veterans Affairs (VA) regulations governing the confidentiality and release of VA records subject to the Privacy Act, the Freedom of Information Act (FOIA) (including the Electronic Freedom of Information Act Amendments of 1996, and the veterans' records confidentiality statute. The proposed rule sets forth a mechanism for the public to obtain information from the VA. The proposed rule is intended to maximize public availability of VA records to the extent permitted by law and considerations such as personal privacy or law enforcement. Essentially these provisions consist of restatements of statute, interpretations of statute, interpretations of case law, interpretations of Executive Orders, and clarification. The proposed amendments also would implement the Electronic Freedom of Information Act Amendments of 1996, court decisions and Executive Branch guidance issued since the regulations were originally published.

Further, this document proposes to delegate authority to the Assistant General Counsel for Professional Staff Group IV for making final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701 and 5705. This would simplify decision making by allowing the highest level individual with direct responsibility for decision making to issue decisions.

**DATES:** Comments must be received on or before November 9, 1998.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, D.C. 20420. Comments should indicate that they are submitted in response to "RIN 2900-AH98." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Lorrie Johnson, Deputy Assistant General Counsel (024A), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, D.C. 20420, telephone number (202) 273-6358, fax number (202) 273-6388.

**SUPPLEMENTARY INFORMATION:** Current regulations promulgated pursuant to section 5701 appear in 38 CFR 1.500 through 1.527; current regulations promulgated pursuant to FOIA appear in §§ 1.550 through 1.558; and current regulations promulgated pursuant to the Privacy Act appear in §§ 1.575 through 1.584. These amendments consolidate regulations governing the release of information pursuant to all three statutes (§ 5701, FOIA and the Privacy Act) into one set of regulations, new §§ 1.500 through 1.512. The following current sections have been rewritten to simplify and clarify: §§ 1.500(b)-(d); § 1.502; § 1.507; §§ 1.511(a)-(f); § 1.512; § 1.513(a) and (b)(3); § 1.514 (in part); § 1.519; § 1.522; § 1.524; § 1.525; § 1.526; § 1.527; § 1.550; § 1.552(a); § 1.553; § 1.553a(a), (e) and (f); § 1.554(b); § 1.554a; § 1.555; § 1.556 (in part); § 1.557; § 1.577(b)-(d), (f) and (g); § 1.579(a)-(c); and § 1.580.

Provisions that essentially restate statutory language have been deleted: §§ 1.500(a); § 1.501; § 1.503; § 1.506(a); § 1.509; § 1.510; § 1.512(c)(2) and (e); § 1.513 (in part); § 1.551(b) and (c); § 1.552(c) and (d); § 1.553a(b) and (c); § 1.554(a) and (c); § 1.575(a) and (b); § 1.576(a)-(g); § 1.577(a) and (e); and § 1.579(d).

These amendments implement new statutes (or amendments to statutes), court decisions, and Executive Branch guidance, which have been enacted or issued since the regulations were originally published. The following were implicitly repealed or superseded: § 1.504; § 1.505; § 1.506(a) and (b) (in part); § 1.508; § 1.510 (in part); § 1.513(b)(1)(i)-(vii) and (ix),(x); § 1.513(b)(2); § 1.514 (in part); § 1.514a;

§ 1.515; § 1.516; § 1.518; § 1.521; and § 1.553a (in part).

Regulations governing internal policy matters have been deleted: § 1.513(b)(1)(viii); § 1.517; § 1.520; § 1.551(a); and § 1.552(b).

The provisions of § 1.511(g) and § 1.513a have been repealed, since they were superseded by 38 CFR 1.460 *et seq.*

The text of current § 1.582 remains substantially the same, and is redesignated as § 1.512.

The provisions of § 1.527, § 1.557, § 1.580, and § 2.6(e)(11) have been amended to delegate to the Assistant General Counsel for Professional Staff Group IV, the same authority and responsibility to act for the Secretary as was previously granted to the General Counsel and Deputy General Counsel to make final Departmental decisions on appeals under FOIA, the Privacy Act, 38 U.S.C. 5701 and 5705.

#### The Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Almost all requests for information are submitted by individuals. Further, it would be extremely rare, if ever, that a request for information by a small entity would have a significant impact on the business of the small entity. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

#### List of Subjects

##### 38 CFR Part 1

Administrative procedures, Privacy Act, Freedom of Information, Recordkeeping.

##### 38 CFR Part 2

Authority delegations (Government agencies).

Approved: March 9, 1998.

**Togo D. West, Jr.,**  
*Acting Secretary.*

For the reasons set out in the preamble, 38 CFR parts 1 and 2 are proposed to be amended as follows:

#### PART 1—GENERAL

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

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

2. The undesignated center heading preceding § 1.500 and §§ 1.500 through 1.512 are revised to read as follows:

## Requesting Records From the Department of Veterans Affairs

### § 1.500 General.

The Department of Veterans Affairs (VA) ordinarily will process a request for records under these rules (§§ 1.500 through 1.512), which incorporate the requirements of FOIA (the Freedom of Information Act), the Privacy Act, and section 5701 (the VA statute protecting the confidentiality of claims records, 38 U.S.C. 5701). VA policy is to maximize public availability of department records to the extent permitted by law and considerations such as personal privacy or law enforcement.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701)

### § 1.501 Definitions.

(a) *Beneficiary* is a veteran or any other individual who has received benefits (including medical benefits) or, for the purposes of this series of rules (§§ 1.500 through 1.512), has applied for benefits, pursuant to title 38, United States Code.

(b) *Benefits records* are an individual's records—regardless of whether the veteran or other individual is living or dead or is a U.S. citizen—which pertain to programs under any of the benefits laws administered by the VA Secretary, including medical care, compensation, pension, education, loan guaranty, insurance, and cemetery records.

(c) *Component* means any VA entity, including Administrations and staff offices in VA Central Office, and medical centers, satellite clinics, Regional Offices, and National Cemetery Offices, and other facilities in the field.

(d) *Confidential commercial information* means records containing trade secrets or confidential business information, provided to the government by a submitter, that are arguably exempt from release under subsection (b)(4) of FOIA because disclosure could reasonably be expected to cause substantial competitive harm.

(e) *A consent* is an authorization for VA to release an individual's records to a third party.

(1) The consent must:

(i) Be an original writing by the individual,

(ii) Specify that VA is authorized to make the disclosure, and

(iii) Contain the signature of the individual, the date signed, a reasonable description of the records to be released, and identification of the third party, such as the party's name and address.

(2) Revocation of a consent must be done by an original writing and is effective when delivered to the FOIA/

Privacy Act Officer of the component which maintains the records.

(f) *Court order* is a document which has been signed or otherwise specifically approved by a judge in the judicial (not executive or legislative) branch of government. An order signed by an administrative law judge or state board would not qualify as a court order.

(g) *Denial* of a records request includes withholding a record in whole or in part; determining that a record responsive to the request does not exist or cannot be located after a reasonable search; determining that a record is not subject to the Privacy Act, FOIA, or section 5701; disputing a fee determination; refusing to amend records under the Privacy Act; refusing to supply a list of names and addresses; releasing confidential commercial information; refusing a request for expedited treatment; and refusing a request for an accounting under the Privacy Act.

(h) A *dependent* is an individual who is (or at the time the record in question was created, was) a dependent of a beneficiary. A veteran's spouse and children are presumed to be dependents for purposes of this series of regulations (§§ 1.500 through 1.512).

(i) *FOIA* is the abbreviation for the Freedom of Information Act, 5 U.S.C. 552.

(j) *The FOIA Guide*, required by subsection (g) of FOIA, explains how to request records from the VA; it may be found in VA's public reading rooms.

(k) *The FOIA/Privacy Act Officer* is the official at VA Central Office or within a component holding that title, or other official within a component generally responsible for processing a request for records under these rules (§§ 1.500 through 1.512).

(l) *An individual's own records* or an individual's records means information about a living individual—veterans and other individuals—which is retrieved from a system of records by the individual's name or other personal identifier, such as social security number or claims file number. The term does not include other VA records concerning individuals which are not stored in a system of records.

(m) *An original writing* means the actual, signed written communication, and does not include photocopies, e-mail, or telefacsimiles (faxes).

(n) *The Privacy Act* refers to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(o) *Proof of identity* is a credential, establishing the identity of an individual, such as a driver's license

containing a picture, name, current address, date of birth, and signature.

(p) *Public reading rooms* are spaces made available (as needed) in most VA components and VA computer telecommunications sites, which make records available pursuant to FOIA. The VA component providing a public reading room space will often (but not always) be the component which maintains the record.

(q) The term *record(s)* includes portions of a record, and information contained within a record, and can include information derived from a record. Records may be maintained in paper, electronic, and other forms, but records do not include objects, such as tissue slides, blood samples, or computer hardware.

(r) *Regular duty hours* generally means 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays, in most VA components.

(s) The *Secretary* means the Secretary of Veterans Affairs.

(t) *Section 5701* refers to the veterans records confidentiality statute, 38 U.S.C. 5701. Records covered by section 5701 include all records of an identifiable individual, pertaining to VA benefits, including medical care.

(u) *Section 7332* records means records covered by 38 U.S.C. 7332, as implemented in 38 CFR 1.460 through 1.499, which protects the confidentiality of VA medical treatment records relating to drug and alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

(v) *Sensitive records* refers to medical records containing information that, with a reasonable degree of medical certainty, are likely to have a serious adverse effect on an individual's mental or physical health if revealed to him or her.

(w) *Submitter* means any person or entity (including corporations, State and foreign governments) who provides confidential commercial information to the government.

(x) *VA* means the federal Department of Veterans Affairs.

(y) *VA Central Office* refers to the headquarters of the Department of Veterans Affairs. The mailing address is 810 Vermont Avenue NW., Washington, DC 20420.

(z) *Written request* or *in writing* means a written communication, including letters, photocopies of letters, and telefacsimiles (faxes) of letters. The term does not include electronic mail.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701, 7332.)

**§ 1.502 Public access to records.**

(a) How to apply these rules (§§ 1.500 through 1.512). Many VA records are considered for disclosure under these rules. Some, however, are processed under other rules; for example:

(1) Some records are made available by means of publication in the **Federal Register**. These may be obtained in public libraries and other sources outside VA.

(2) Some records are available by visiting a public reading room; these include VA directives and handbooks.

(3) Some requests for certain types of records require application of other rules as well as these rules in §§ 1.500 through 1.512. For example, medical treatment records involving drug/alcohol abuse, sickle cell anemia or infection with HIV (section 7332 records), see 38 CFR 1.460 through 1.499; medical quality assurance records, see 38 CFR 17.500 through 17.511.

(4) Some records are made routinely available to the public without further reference to these rules (§§ 1.500 through 1.512).

(b) Making a request. Anyone may request that VA disclose any record. (An individual who seeks his or her own records should first follow the rules in paragraph (c) of this section.) Except as otherwise provided, a requester:

(1) Must submit a signed, written request, describing the record so it may be located with a reasonable amount of effort, and should address it to the FOIA/Privacy Act Officer of the component which maintains the record or, if not known, as follows:

(i) For medical records, to the Director of the VA medical facility where the individual was last treated or to the FOIA/Privacy Act Officer, Veterans Health Administration, VA Central Office.

(ii) For National Cemetery System records, to the Director, National Cemetery Area Office, or to the FOIA/Privacy Act Officer, National Cemetery System, VA Central Office.

(iii) For other benefits records (including compensation and pension examination records), to the FOIA/Privacy Act Officer at the VA Regional Office serving the individual's jurisdiction or to the FOIA/Privacy Act Officer, Veterans Benefits Administration, VA Central Office.

(iv) For all Inspector General records, to the FOIA/Privacy Act Officer, Office of the Inspector General, VA Central Office.

(v) For all other records, to the FOIA/Privacy Act Officer of the nearest field facility or VA Central Office.

(2) Should write "Attention, FOIA/Privacy Act Officer" on the envelope and on the request.

(3) May provide (if a request involves records about another individual) an original writing which authorizes disclosure of that individual's records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary). Providing such documentation may enable VA to disclose more records than might otherwise be lawful.

(4) Make any personal contacts during the regular duty hours of the component concerned.

(c) Access to an individual's own records. (1) Individuals may ask for their own records orally, in writing, and by e-mail. The request should:

(i) Describe the record so it may be located with a reasonable amount of effort, and  
 (ii) Be submitted to the FOIA/Privacy Act Officer of the component which maintains the record or, if not known, as described in paragraph (b)(1) (i) through (iv) of this section.

(2) VA will provide an individual access to an individual's own records except for portions that:

(i) Have been exempted pursuant to § 1.512,  
 (ii) Have been compiled in reasonable anticipation of a civil action, or  
 (iii) Constitute sensitive records subject to the special procedures contained in paragraph (e) of this section. When one of these exceptions applies, VA will process the request under paragraph (b) as well.

(3) When a veteran and a dependent of a veteran receive VA benefits, VA may maintain records on both in a single benefits file, retrieved by the veteran's personal identifier. Only the records that pertain to the issuance of the veteran's benefits constitute that individual's own records. The records that pertain to the issuance of the dependent's benefits constitute that individual's own records.

(4) An individual may believe that VA maintains records that are not the individual's own records, as defined, but involve the individual nonetheless. If the individual wants these records, he or she must clearly say so, describe the nature of the records, and follow the procedures contained in paragraph (b).

(d) *Processing a request.* A request (which otherwise complies with these rules, §§ 1.500 through 1.512) is effective when it is received by the FOIA/Privacy Act Officer of the component which maintains the record. In processing a request, the following may apply:

(1) *Proof of identity.* VA may require proof of identity in processing a request, if a personal privacy concern is involved.

(2) *Original writing.* VA may require an original writing for any records request.

(3) *Discretionary release.* If VA is authorized by FOIA to withhold a record in order to protect a governmental interest, VA will release it anyway on a discretionary basis to the extent law permits, unless VA can foresee that significant harm would occur to that governmental interest by releasing it.

(4) *Order of receipt.* VA will ordinarily process records requests and appeals according to their order of receipt by the FOIA/Privacy Act Officer of the component which maintains the record, or, for appeals, by the Office of General Counsel.

(5) *Expedited processing.*

(i) Requests and appeals may be taken out of order and expedited when the requester certifies to the best of the requester's knowledge or belief that:

(A) Failure to release the records would pose an imminent threat to an individual's life or safety, or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is a compelling need to inform the public about urgent questions concerning VA's activities.

(ii) The FOIA/Privacy Act Officer will decide requests for expedited processing within 10 days of receiving the request; the Office of General Counsel will decide appeals within 10 days of receiving a letter of appeal from an adverse determination for expedited treatment.

(6) *Referrals.* A VA FOIA/Privacy Act Officer may determine that another component or Federal agency would be better able to process a request. Whenever all or part of a request is referred, the FOIA/Privacy Act Officer will ordinarily notify the requester to whom the request has been referred.

(7) *Records responsive to a request.* In determining whether certain records are responsive to a request, VA will ordinarily include only those records in its possession and control as of the date of the receipt of the request by the FOIA/Privacy Act Officer of the component which maintains the records.

(8) *Electronic records.* A request for records includes a request for electronic records.

(9) *Multitrack processing.* If a component places a notice to the public in the FOIA Guide, a FOIA/Privacy Act Officer may process requests for records

in two or more tracks based upon the amount of work or time (or both) involved in processing the requests. The notice shall inform requesters of the limits of each track, and advise requesters how to qualify for a faster track by limiting the scope of the request.

(e) *Access to sensitive records.* Access to sensitive records is subject to the following special procedures:

(1) When an individual requests that individual's own records, the FOIA/Privacy Act Officer of the component which maintains the records will identify the presence of any potentially sensitive records.

(2) If sensitive records may be involved, the FOIA/Privacy Act Officer will refer the records to a VA physician (other than a rating board physician) for further review.

(3) The VA physician will advise the FOIA/Privacy Act Officer whether all or part of the records in question are sensitive records.

(4) The FOIA/Privacy Act Officer will notify the individual that VA will disclose the sensitive records to a VA physician who will explain the sensitive materials to the individual. Following such a discussion, access to the sensitive records will be provided to the individual. The only exception is when, notwithstanding the discussion, providing access would create a medical emergency. In that exceptional event, VA will provide access to the records once providing access would no longer constitute a medical emergency.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701)

#### **§ 1.503 Amendment of an individual's own records.**

(a) An individual may ask VA to amend that individual's own records.

(b) If an individual knows where that individual's records are located, the individual should submit an original writing requesting amendment to the FOIA/Privacy Act Officer at the component which maintains the records. If an individual does not know where VA maintains the records, see § 1.502(b)(1) for the FOIA/Privacy Act Officer to contact.

(c) A request for VA to amend an individual's own record must:

(1) Identify each of the specific portions of the record which the individual wishes VA to amend.

(2) Describe how the individual wishes VA to amend each portion of the record, whether by deletion, substitution, or addition. The individual should provide VA with language he or she wishes to substitute or add to the record.

(3) State concisely the reasons why each amendment should be made, and provide any supporting documentation.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 501)

#### **§ 1.504 Administrative review.**

(a) The FOIA/Privacy Act Officer will make the initial decision whether to grant a request for records under FOIA (including a request for expedited treatment), whether to assess fees, and whether to grant access to, or amendment of, an individual's own records.

(b) Upon denial of a records request, VA will: inform the requester in writing, cite the specific reasons for the denial at the place where the information has been redacted, indicate the number of pages withheld in their entirety, set forth the name and title of the responsible official, and advise that the denial may be appealed to the General Counsel (024) at VA Central Office within the time prescribed in paragraph (c) of this section.

(c) The General Counsel, the Deputy General Counsel, or the Assistant General Counsel (024) will make the final VA decision on an appeal from a denial of a records request. An appeal must be an original writing, and it must be received by the Office of General Counsel (024) within 60 work days from the date of the denial; however, an appeal by a submitter of confidential commercial information must be received by the Office of General Counsel within 10 work days of the date of receipt of the initial Department decision to release the records.

(d) The letter of appeal should identify the records at issue, the component that denied the request, and the date of the denial. It is helpful to include related information or materials, such as a copy of the original request, the denial letter, and an explanation concerning why the denial was erroneous.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701.)

#### **§ 1.505 Amount of monetary benefits.**

VA shall release, to any person who requests such information, the amount of the most recent recurring monthly VA benefit payment made to a beneficiary (who has been identified by the requester) for pension, compensation, dependency and indemnity compensation, retirement pay, subsistence allowance, or educational assistance allowance. However, if releasing the amount of such payment would in effect disclose other information about the beneficiary, this section will not apply and the request will be processed under § 1.502.

(Authority: 38 U.S.C. 501, 5701(c)(1)

#### **§ 1.506 Request for benefits records in judicial proceedings.**

(a) *General.* For an individual's records that are not benefits records, see § 1.509(d).

(1) When VA is not a party to a judicial proceeding, release must also be authorized pursuant to 38 CFR 14.800 through 14.801.

(2) Generally, the FOIA/Privacy Act Officer of the component which maintains the records will decide whether to disclose records requested for use in a judicial proceeding (except in cases before the Court of Veterans Appeals). If the FOIA/Privacy Act Officer determines that the records will be used against the beneficiary or dependent, the process will be referred to the Regional Counsel for disposition.

(3) Federal Tort Claims Act cases. If a claim under the Federal Tort Claims Act has been filed or is anticipated, the appropriate Regional Counsel will determine whether records will be disclosed. The Regional Counsel will limit disclosure of records to that which would be available pursuant to discovery if the matter were in litigation. The General Counsel must provide concurrence for disclosure of any other records.

(b) *Federal court proceeding.* (1) Court order. Upon receipt of a Federal court order, VA will disclose benefits records, except for section 7332 records, to whomever is designated in the court order or to the court. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(2) *Subpoena.* VA will not disclose benefits records pursuant to a Federal court or grand jury subpoena unless the beneficiary or dependent is deceased, is not a citizen of the United States, is an alien not lawfully admitted for permanent residence, or provides consent. If one of these exceptions applies, VA may, after due consideration, disclose such records (except for section 7332 records) to whomever is designated in the subpoena or to the court. If a subpoena is signed or is otherwise specifically approved by a judge, it will qualify as a court order. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(3) *Original records, fees.* If original records are offered and received into evidence, VA will seek permission to substitute copies. Where a party other than the United States issues a Federal court process, such party must prepay the appropriate fees.

(c) *State or local court proceeding.* (1) Court order. Upon receipt of a State or

local court order, VA will disclose benefits records (except for section 7332 records) in accordance with paragraphs (c) (3) and (4) of this section. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(2) ***Subpoena.*** VA will not disclose benefits records pursuant to a State or local court or grand jury subpoena unless the beneficiary or dependent is deceased, is not a citizen of the United States, is an alien not lawfully admitted for permanent residence, or provides consent. If one of these exceptions applies, VA may disclose such records (except for section 7332 records) in accordance with paragraphs (c) (3) and (4) of this section. If a subpoena is signed or is otherwise specifically approved by a judge, it will qualify as a court order. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(3) ***Additional requirements.*** VA will disclose benefits records pursuant to a State or local court process as follows:

(i) When the requester provides the beneficiary's or dependent's consent; or,

(ii) In the absence of consent, if the Regional Counsel determines that disclosure is necessary to prevent the perpetration of fraud or other injustice in the matter in question. The Regional Counsel may require additional documentation detailing the need for such disclosure, setting forth the character of the pending suit, and the purpose for which the benefits records will be used. If the Regional Counsel determines that disclosure is not warranted, the Regional Counsel or designee will advise the court that benefits records are confidential and privileged and may be disclosed only in accordance with applicable Federal regulations, and explain why the records cannot be disclosed. The Regional Counsel will take action to have the matter removed to Federal court if appropriate.

(4) ***Disclosure to whom, original records, fees.*** VA will disclose benefits records to whomever is designated in the State or local court process or to the court. The requester must first pay the appropriate fees to VA. If original records are offered and received into evidence, VA will seek permission to substitute copies.

(d) ***Notice requirements.*** When a court order becomes a matter of public record, the FOIA/Privacy Act Officer of the component which maintains the records will make reasonable efforts to notify the beneficiary or dependent that the benefits records were disclosed. A notice sent to the beneficiary's or dependent's last known address satisfies this requirement.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701, 7332)

#### **§ 1.507. Disclosure of loan guaranty information.**

(a) Any person is entitled to obtain, from loan guaranty records, copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems, if names and home addresses of beneficiaries or dependents are deleted. VA will disclose names and home addresses contained in loan guaranty records only in accordance with paragraphs (c) and (d) of this section.

(b) The address of the property involved shall be disclosed regardless of whether it also happens to be the home address of a beneficiary or dependent.

(c) In order to assist any applicant for (or recipient of) loan guaranty benefits, VA may disclose relevant information from loan guaranty records, including names and home addresses of beneficiaries or dependents to: the purchaser of a property; the current owner of a property; an entity that is considering making a loan to an individual with respect to a property; or an agent—such as an attorney or real estate broker—representing any of the above. VA must document any such disclosure in the loan guaranty record.

(d) In order to assess the credit capacity of an applicant for (or recipient of) loan guaranty benefits or a proposed purchaser of VA property, or in order to sell a loan or installment sale contract held by the Secretary, VA may release relevant information, including names and home addresses of beneficiaries or dependents, from loan guaranty records to: credit-reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies.

(Authority: 38 U.S.C. 501, 5701(h))

#### **§ 1.508. Disclosure of lists of names and addresses.**

(a) Any nonprofit organization wanting a list of names and addresses of VA beneficiaries must write to the Office of Management, Information Management Service (045A4), VA Central Office (except requests for lists of educationally disadvantaged veterans must be sent to the Director of the nearest VA Regional Office). The request must contain all of the following:

(1) The category of names and addresses sought.

(2) ***Proof of nonprofit status.***

Satisfactory proof includes evidence of

tax-exempt status pursuant to 26 U.S.C. 501, or that the organization is a governmental body.

(3) The purpose for which the list is sought, programs and resources the organization proposes to devote to this purpose, and how such purpose is directly connected with the conduct of programs and the utilization of benefits under Title 38, United States Code.

(4) A certification that the organization, and all members having access to the list, are aware of the penalty provisions of section 5701(f) and will not use the list for any purpose other than that stated in the application.

(b) The Assistant Secretary for Management, with the concurrence of the General Counsel, is authorized to release lists of names and addresses to organizations that have complied with all of the requirements in paragraph (a) of this section. Lists of names and addresses shall not duplicate lists released to other components of the same organization.

(c) For lists of educationally disadvantaged veterans, if the Director of the VA Regional Office finds that the requester is a nonprofit organization and operates an approved educational program as provided under 38 U.S.C., chapter 34, subchapter V, then the Director may release the list of names and addresses.

(d) If VA has previously compiled the requested list for its own use, and VA determines that the list can be released, the list may be furnished without charge for compilation. Otherwise, VA will charge a fee as set out in § 1.510.

(e) ***Forwarding mail.*** (1) ***Procedures.*** When VA does not furnish an address, VA may agree to forward a letter or judicial process. The sender must enclose the letter or process in an unsealed envelope showing no return address, bearing the name of the beneficiary or dependent and sufficient postage to cover full mailing costs, including the cost of certified or registered mail where applicable. (In addition to postage, VA may charge its costs in accordance with § 1.510.) The component will place its own return address on the envelope. When receipts (for certified or registered mail) or undelivered envelopes are returned to the component, VA will notify the original sender; VA will retain the receipt or the envelope.

(2) ***Limitations.*** This provision applies only if it does not interfere unduly with the functions of the component concerned. VA will not forward letters or judicial processes if the contents could be harmful to the physical or mental health of the recipient, or if they are for the purposes of canvassing,

harassment, propaganda, or debt collection.

(Authority: 38 U.S.C. 501, 5701(f)(1))

#### **§ 1.509 Miscellaneous special rules.**

(a) *Powers of attorney and legal guardians.* Persons authorized to exercise the rights of individuals requesting records, amending records, or appealing denial of a records request include persons holding a power of attorney meeting the requirements of 38 CFR 14.631 and legal guardians.

(b) *Genealogy.* VA will release records of a genealogical nature (except for names and addresses of VA beneficiaries and dependents) when disclosure would not invade the privacy of any living person or is not otherwise prohibited by law.

(c) *Requests for non-benefits records in judicial proceedings.* (1) This paragraph applies to a request for an individual's records (which are not benefits records) in judicial proceedings. For a request for benefits records in judicial proceedings, see § 1.506.

(2) When VA is not a party to a judicial proceeding, release must also be authorized pursuant to 38 CFR 14.800 through 14.811.

(3) Upon receipt of a Federal or state court order for non-benefits records, VA may, after due consideration, disclose an individual's records (except for section 7332 records) to whomever is designated in the court order or to the court. Disclosure of section 7332 records will also be subject to 38 CFR 1.490 through 1.499.

(4) VA will not disclose an individual's records (which are not benefits records) pursuant to a Federal or state court or grand jury subpoena unless the individual is deceased, is not a citizen of the United States, is an alien not lawfully admitted for permanent residence, or provides consent. If one of these exceptions applies, VA may, after due consideration, disclose such records (except for section 7332 records) to whomever is designated in the grand jury subpoena, or, in the Federal or state court subpoena or to the court. If a subpoena is signed or is otherwise specifically approved by a judge, it will qualify as a court order.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701, 7332)

#### **§ 1.510 Fees.**

(a) *Definitions.* For the purpose of this section, the following definitions apply:

(1) *Commercial use request* means a request for a purpose that furthers the requester's commercial, trade or profit interests. VA must consider the use to which a requester will put the records,

and where the use is not clear, VA may seek additional information from the requester.

(2) *Direct costs* means all of those expenditures which VA incurs to search for and duplicate (and in the case of Commercial Use Requests, review) records, or to provide other services not required by FOIA. Direct costs include the salary of the employee performing work, i.e., the basic rate of pay, plus 16 percent to cover benefits, and the cost of operating duplicating equipment. Overhead expenses (such as costs of space, heat, or light) are not included in direct costs.

(3) *Duplication* means making a copy of a record; copies may take the form of paper, microform, audiovisual materials or machine readable-documentation (e.g., magnetic tape or disk), among others.

(4) *Educational Institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Requests qualify for this category when they serve a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) *Representative of the news media* means any person actively gathering news for an entity that publishes or broadcasts news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and periodicals when they disseminate "news" for the general public. As traditional methods of news delivery evolve (e.g., dissemination of newspapers through the internet), such media will be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication; a publication contract would be clear proof, but VA may also consider the requester's past publication history. Freelancers who do not qualify under this category may seek a

reduction or waiver of fees under paragraph (f) of this section.

(7) *Review* means, in response to a Commercial Use Request, examining records, determining that records may be withheld, and processing records for disclosure by redacting them and otherwise preparing them for release.

(8) *Search* means all the time spent looking for records that are responsive to a request, including line-by-line identification of material within records. Searches may be done manually and by computer. The most efficient and least expensive manner will be used to minimize costs to VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is less expensive and quicker. The term search does not cover the time spent to review records.

(b) *Fees to be charged.* (1) Except as otherwise provided in paragraphs (c), (d), (f), (g), and (h) of this section, VA will charge fees that recoup the direct costs for responding to each request, in accordance with the schedule in Paragraph (e) and other requirements in these rules (§§ 1.500 through 1.512). VA will use the most efficient and least costly method.

(2) If VA estimates that charges are likely to exceed \$25, VA will notify the requester of the estimate, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with VA personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each component is authorized to contract with private-sector services to locate, reproduce, and disseminate records in response to FOIA requests only if it would be at least as efficient and no more costly than for the component to perform these functions. A component shall not contract out responsibilities which FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When VA records are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service, VA will advise the requester how to obtain records from those sources.

(c) *Restrictions on assessing fees.* With the exception of Commercial Use Requests, VA will not assess charges for duplicating the first 100 one-sided pages, or for the first two hours of

search time. Moreover, VA will not charge fees to any requester, including Commercial Use Requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that VA will not assess fees until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and requires duplication of 105 pages, VA is authorized to charge fees for 10 minutes of search time and for duplicating five pages. If these costs are equal to or less than VA's costs for billing the requester and processing the fee collected, VA will not assess any charges.

(1) For purposes of the restriction on assessing fees, the word "pages" refers to one-sided paper copies of the standard sizes 8½" × 11" or 8½" × 14" or 11" × 14". Requesters will not be entitled to 100 free microfiche or 100 free computer disks. One microfiche containing the equivalent of 100 pages ordinarily would meet the terms of the restriction.

(2) The term search time is based on manual searches. To calculate the computer search time for the purpose of applying the two-hour search restriction, VA will combine the hourly

cost of operating the computer with the operator's hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, VA will begin to assess charges for a computer search.

(d) *Categories of record requests and fees to be charged each category.* There are five categories of record requests from individuals for the purpose of charging fees. The levels in paragraphs (d) (1) through (5) are ranked from the lowest to the highest fee category. VA will process a request in the lowest category possible and will charge only those fees indicated for that category, subject to the requirements of paragraphs (c), (f), (g), and (h) of this section.

(1) *Requests by a VA beneficiary for his or her own records.* A beneficiary is entitled to receive one free copy of all pages of his or her own benefits records. (The term "pages" means paper records of a standard size, and does not include items such as x-rays, films, and EKG tracings.) In addition, any VA beneficiary who has an action on file

with the Court of Veterans Appeals is entitled to another free set of his or her benefits records.

(2) *Other requests for an individual's own records.* If an individual seeks a copy of his or her own records, and the request does not qualify under paragraph (d)(1), VA will charge a duplication fee after providing the first 100 one-sided standard size pages free.

(3) *Representative of the news media, non-commercial scientific institution, or educational institution requests.* VA will charge for the cost of reproduction only, and will provide the first 100 one-sided standard size pages free. Fee waiver or reduction will be considered in accordance with paragraph (f) of this section.

(4) *All other non-commercial use requests.* If the record request is not covered by any of the other categories in this paragraph (d), VA will charge duplication and search fees, after providing for free the first 100 one-sided standard size pages and the first two hours of search.

(5) *Commercial use requests.* VA will charge duplication, search, and review fees.

(e) *Schedule of fees:*

Activity	Fees
(1) Duplication of standard size (8½" × 11"; 8½" × 14"; 11" × 14") paper records to produce standard sized one-sided paper copies.	\$0.15 per page.
(2) Duplication of non-paper items (e.g., x-rays), paper records which are not of a standard size (e.g., EKG tracings), or other items which do not fall under category (1), in paragraph (d)(1) of this section.	Direct cost to VA.
(3) Record search by manual (non-automated) methods .....	Basic hourly salary rate of the employee(s), plus 16 percent.
(4) Record search using automated methods, such as by computer .....	Direct cost to perform search.
(5) Record review (for Commercial Use Requesters only) .....	Basic hourly rate of employees performing review to determine whether to release records and to prepare them for release, plus 16 percent. Direct cost to VA.
(6) Other activities, such as: Attesting under seal or certifying that records are true copies; sending records by special methods; forwarding mail; compiling and providing special reports, drawings, specifications, statistics, lists, abstracts or other extracted information; generating computer output; providing files under court process where the federal government is not a party to, and does not have an interest in, the litigation.	

(f) *Waiving or reducing fees.* (1) VA will waive or reduce fees for records provided in response to a FOIA request when VA determines that furnishing the record is in the public interest and is not primarily in the commercial interest of the requester.

(2) To determine public interest, VA will consider the following factors in sequence:

(i) The contents of the records must concern identifiable "operations of the government."

(ii) The disclosable portions of the records must be "likely to contribute" to an understanding of government operations. For example, records containing information already in the public domain would not satisfy this standard.

(iii) The records must contribute to the understanding of the "public at large," i.e., a reasonably broad audience of persons interested in the subject.

(iv) The records must contribute "significantly" to public understanding of government operations.

(3) To determine commercial interest, VA will consider the following factors in sequence:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the commercial interest is sufficiently large, in comparison with the public interest, that disclosure is primarily in the commercial interest of the requester.

(4) VA will process an appeal from an adverse fee determination pursuant to § 1.504.

(g) *Other fee considerations.* (1) *Interest.* The FOIA/Privacy Act Officer may charge interest (at the rate prescribed in section 3717 of Title 31 United States Code) to requesters who fail to pay fees in a timely manner. Interest begins to accrue thirty-one days after the date on the original bill, and ceases to accrue on the date the payment is received by VA.

(2) *Charges for unsuccessful search.* When search charges are applicable, VA will assess search charges even if records are not located, or if pertinent records are exempt from disclosure.

(3) *Aggregating requests.* When the FOIA/Privacy Act Officer reasonably believes that a requester, or a group of requesters acting in concert, is breaking down a request into a series of requests in order to evade fees, the FOIA/Privacy Act Officer may aggregate (combine) any such requests and charge accordingly.

(4) *Advance payments.* VA may not generally require a requester to make an advance payment, except under the following circumstances:

(i) If fees are likely to exceed \$250, VA will notify the requester of the estimated cost, and either obtain satisfactory assurance of full payment, or require an advance payment of up to the full estimated fee.

(ii) If a requester has previously failed to pay a fee charged within 30 days, before processing the new request, VA may require payment of the full amount owed on the previous request and an advance payment on the new request.

(5) *Debt collection.* VA may use the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365, as amended) to collect unpaid fees. This may include disclosure to consumer reporting agencies and use of collection agencies.

(h) VA may provide free copies of records or free services:

(1) In response to an official request from other government agencies and Congressional offices; and

(2) When a component head or designee determines that doing so will assist in providing medical care to a VA patient or will otherwise further performance of the VA mission.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 5701)

#### **§ 1.511 Notification procedures prior to disclosing confidential commercial information.**

(a) *General.* During the conduct of its business, VA may acquire records that contain confidential commercial information. FOIA requests for such

records will be handled under this section.

(b) *Notice to submitters.* When a FOIA request is received for record(s) that may contain confidential commercial information, the FOIA/Privacy Act Officer will notify the submitter in writing when required by paragraph (c) of this section. The notice will:

(1) Advise the submitter that VA has received a FOIA request for the submitter's records;

(2) Describe the records requested;

(3) Inform the submitter of the opportunity to object to the disclosure in writing within 10 working days and of the requirements for such a written objection, as described in paragraph (e) of this section; and

(4) Be sent by certified mail, return receipt requested.

(c) *The notice requirement.* Notice is required whenever the submitter has in good faith designated that the requested records contain confidential commercial information in accordance with paragraph (d) of this section; or, when the FOIA/Privacy Act Officer believes that disclosing the records could reasonably be expected to cause substantial competitive harm.

(d) *Designation by submitters.* (1) A submitter may designate that disclosure of certain records could reasonably be expected to cause substantial competitive harm, by marking the records with the words "confidential commercial information," or by describing the specific kinds of records that contain confidential commercial information.

(2) A designation will remain in effect for a period of not more than 10 years after receipt by VA, unless the submitter provides acceptable justification for a longer specific period. The submitters may designate a shorter period by including an expiration date.

(3) The submitter must certify that the records are in fact confidential commercial information and have not been made available to the public.

(4) The designation notifies VA that it should follow the procedures set forth in this paragraph (d); however, VA makes the final determination whether or not records contain confidential commercial information.

(e) *Opportunity to object.* (1) The submitter may object to the disclosure of the records in writing, addressed to the FOIA/Privacy Act Officer who provided notice, specifying the records that should not be disclosed and all grounds upon which disclosure is opposed, and explaining why the information is considered a trade secret or confidential commercial information.

(2) Submitters must present any objection to disclosure within 10 working days after receiving notice. If a submitter fails to respond within that time, VA will deem that the submitter has no objection to disclosing the records.

(3) If VA receives a timely objection, VA will consider all specified grounds for nondisclosure prior to making a decision. If VA decides to disclose the requested records, the FOIA/Privacy Act Officer will send the submitter a written decision containing: the reasons why the objections were overruled, a description or copy of the records to be disclosed, and a date the records will be disclosed of not less than 10 business days from the time mailed (to allow the submitter time to take necessary legal action to prevent VA from disclosing the information).

(f) *Notices to requester.* When VA receives a request for confidential commercial information, the FOIA/Privacy Act Officer will notify the requester that it will be processed under these rules (§§ 1.500 through 1.512), the submitter may comment upon the request, and there may be a delay in receiving a response. The notice to the requester should not include any specific information contained in the records being requested. When VA notifies a submitter of a final decision, the FOIA/Privacy Act Officer will notify the requester by separate correspondence.

(g) *Notices of lawsuit.* If a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, VA will promptly notify the submitter.

(h) *Exceptions to the notice requirements.* A notice to the submitter, described in paragraph (b), is not required if the FOIA/Privacy Act Officer determines that:

(1) The records should not be disclosed;

(2) The records have been published or have been officially made available to the public;

(3) Disclosure of the records is required by law (other than FOIA);

(4) The records requested have not been designated by the submitter as exempt, and the submitter had an opportunity to do so when the records were submitted or a reasonable time thereafter, and VA does not have substantial reason to believe that disclosure would result in competitive harm; or

(5) The designation made by the submitter appears obviously frivolous. VA must still provide the submitter with advance written notice of the decision to disclose not less than 10

working days prior to the specified disclosure date.

(Authority: 5 U.S.C. 552(b)(4); 38 U.S.C. 501; E.O. 12600 (52 FR 23781)

#### **§ 1.512 Exemptions.**

(a) Certain systems of records maintained by VA are exempted from provisions of the Privacy Act in accordance with exemptions (j) and (k).

(b) Exemption of Inspector General Systems of Records. VA provides limited access to two Inspector General Systems of Records: Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA and Federal Laws, Regulations, Programs, etc.—VA (11VA51); and Inspector General Complaint Center Records—VA (66VA53).

(1) These systems of records are exempted [pursuant to subsection (j)(2) of the Privacy Act] from Privacy Act subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), (H) and (I), (e)(5) and (8), (f) and (g); in addition, they are exempted [pursuant to subsection (k)(2) of the Privacy Act] from Privacy Act subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(2) These systems of records are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4), (d), (e)(4)(G) and (H), (f) and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still

plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated in paragraph (b)(2)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.

(iv) These systems of records are exempt from Privacy Act subsection (e)(1) because it is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In any investigation, the Inspector General may obtain information concerning violations of laws other than those within the scope of his/her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) The application of Privacy Act subsection (e)(2) would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) The reasons for exempting these systems of records from Privacy Act subsection (e)(3) are as follows:

(A) The disclosure to the subject of the purposes of the investigation would provide the subject with substantial information relating to the nature of the

investigation and could impede or compromise the investigation.

(B) Informing the complainant or the subject of the information required by this provision could seriously interfere with undercover activities, jeopardize the identities of undercover agents and impair their safety, and impair the successful conclusion of the investigation.

(C) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) Since the Privacy Act defines "maintain" to include the collection of information, complying with subsection (e)(5) would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not always possible to make this determination prior to collecting the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material that may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) The notice requirement of Privacy Act subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(c) Exemption of Loan Guaranty Service. VA provides limited access to two Loan Guaranty Service systems of records: Loan Guaranty Fee Personnel and Program Participant Records—VA (17VA26); and Loan Guaranty Home Condominium and Mobile Home Loan Applicant Records and Paraplegic Grant Application Records—VA (55VA26).

(1) These systems of records are exempted [pursuant to Privacy Act subsection (k)(2)] from Privacy Act subsections (c)(3), (d), (e)(1) and (e)(4)(G), (H) and (I) and (f), for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects would provide them with significant information concerning the nature of the investigation, it could result in the

altering or destruction of documentary evidence, improper influencing of witnesses and other activities that could impede or compromise the investigation.

(ii) These systems are exempt from Privacy Act subsections (d), (e)(4)(G) and (H) and (f) for the following reasons: Notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could: interfere with investigative and enforcement proceedings; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated in this paragraph, this exemption is still being cited in the event an individual wanted to know a specific source of information.

(iv) These systems of records are exempt from Privacy Act subsection (e)(1) because: It is not possible to detect relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In interviewing persons or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated.

(2) In addition, the system of records, Loan Guaranty Fee Personnel and Program Participant Records—VA (71VA26), is exempt [pursuant to Privacy Act subsection (k)(5)] from Privacy Act subsections (c)(3), (d), (e)(1),

(e)(4)(G), (H) and (I) and (f), for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects of background suitability investigations to the existence of the investigation and reveal that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in revealing the identity of a confidential source.

(ii) This system is exempt from Privacy Act subsections (d), (e)(4)(G) and (H) and (f) for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such an individual or to grant access to an investigative file would disclose the identity of confidential sources and reveal confidential information supplied by these sources.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose sufficient information to disclose the identity of a confidential source and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct background suitability investigations.

(iv) This system of records is exempt from Privacy Act subsection (e)(1) because: It is not possible to detect relevance and necessity of specific information from a confidential source in the early stages of an investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established regarding suitability for VA approval as a fee appraiser or compliance inspector. In interviewing persons or obtaining other forms of evidence during an investigation for suitability for VA approval, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated and disclosure might jeopardize the identity of a confidential source.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 501, 5701)

#### **§§ 1.513 through 1.584 [Removed]**

3. Sections 1.513 through 1.584, the undesignated center heading and the note immediately preceding § 1.550, and the undesignated center heading and note immediately preceding § 1.575 are removed.

#### **PART 2—DELEGATIONS OF AUTHORITY**

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

(Authority: 5 U.S.C. 302; 38 U.S.C. 501, 512; 44 U.S.C. 3702, unless otherwise noted.)

5. In § 2.6, paragraph (e)(11) is revised to read as follows:

#### **§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).**

\* \* \* \*

(e) \* \* \*

(11) The General Counsel, the Deputy General Counsel, and the Assistant General Counsel for Professional Staff Group IV are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701 and 5705.

(Authority: 38 U.S.C. 512)

\* \* \* \*

[FR Doc. 98-22858 Filed 9-9-98; 8:45 am]

BILLING CODE 8320-01-P

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 86**

[FRL-6159-4]

#### **Compliance Programs for New Light-Duty Vehicles and Light-Duty Trucks**

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

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is extending the public comment period on the Notice of Proposed Rulemaking (NPRM), which proposes new compliance procedures for light-duty vehicles and light duty trucks. The NPRM was published in the **Federal Register** on July 23, 1998 (63 FR 39653). The purpose of this notice is to extend the comment period from September 8, 1998 to September 24, 1998, to allow commenters additional time to respond to the NPRM.

**DATES:** EPA will accept comments on the NPRM until September 24, 1998.

**ADDRESSES:** Comments should be submitted in duplicate to the EPA Air

& Radiation Docket # A-96-50, Room 1500-M (Mail Code 6102), 401 M Street SW., Washington, DC 20460. Copies of information relevant to this NPRM are available for inspection in public docket A-96-50 at the above address, between the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the NPRM, contact Linda Hormes, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor MI 48105, Phone (734) 214-4502, E-mail: hormes.linda@epa.gov.

Dated: September 4, 1998.

**Robert Perciasepe,**  
Assistant Administrator, Air and Radiation.  
[FR Doc. 98-24339 Filed 9-9-98; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 083198D]

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone. The full Council meeting will begin after the joint meeting of the Council's Herring Committee and the Atlantic States Marine Fisheries Commission's (ASMFC) Herring Section.

**DATES:** The meeting will be held on Wednesday, September 23, 1998, at 1:30 p.m. and on Thursday, September 24, 1998, at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone (978) 283-4200. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (781) 231-0422.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

## SUPPLEMENTARY INFORMATION:

### Wednesday, September 23, 1998

The morning session will be a joint meeting of the Council's Herring Committee and ASMFC Herring Section to select proposed management measures for the Fishery Management Plan (FMP) for the Atlantic Herring Fishery. There will also be a discussion and possible recommendation of a control date for the herring fishery and consideration of two requests for foreign-directed fishing and joint venture herring allocations.

The full Council meeting will begin in the afternoon with reports on recent activities from the Council Chairman; Executive Director; the Acting Regional Administrator, Northeast Region, NMFS; the Northeast Fisheries Science Center and the Mid-Atlantic Fishery Management Council liaisons; and representatives of the Coast Guard, the ASMFC, and the U.S. Fish and Wildlife Service. The Habitat Committee's report will be presented, after which approval will be requested for the Essential Fish Habitat (EFH) Amendment documents, including the Council's Habitat Policy, the identification of fishing threats and non-fishing threats to EFH, EFH conservation and enhancement measures, research and information needs, and the EFH strategic plan.

### Thursday, September 24, 1998

The meeting will begin with the Herring Committee Report and a request for approval of the Atlantic Herring FMP proposed management measures, following review of public comments and committee and advisory panel recommendations. Additionally, the Council may also approve a control date for the herring fishery and approval of two requests for foreign-directed fishing and joint venture herring allocations. Final approval is also expected for the Northeast Multispecies FMP.

Amendment 9 submission documents (description of measures, draft proposed rule, and summary of impacts). Amendment 9 includes new overfishing definitions and the specification of optimum yield (OY), measures to rebuild Atlantic halibut, an increase in the minimum size for winter flounder to 13 inches (33 cm), postponement of the mandatory use of electronic vessel monitoring systems, a prohibition on the use of "streetsweeper" trawl gear, and the ability to approve individual aquaculture projects through the established framework adjustment process. Approval of the Groundfish Committee's recommendations on management strategies for cod to be transmitted as guidance to the Council's

Multispecies Monitoring Committee is also scheduled. The Scallop Committee will ask the Council for final approval of the Atlantic Sea Scallop FMP. Amendment 7 submission documents (description of measures, draft proposed rule, and summary of impacts). Amendment 7 includes a scallop rebuilding program, a new overfishing definition, the specification of OY, continuation of the Mid-Atlantic closed areas, an annual review and adjustment process, and a system for closing and opening areas to improve yield-per-recruit. The amendment also will include the following additional measures that may be implemented through a framework adjustment to the FMP: Leasing of days-at-sea, provided there is a full set of public hearings; scallop size restrictions, except a minimum individual meat size; and the approval of individual aquaculture projects. The Council's Scientific and Statistical Committee will present a briefing on the sea scallop overfishing definition and the scientific information that formed the basis for the most recent proposed management measures. The Interspecies Committee Chairman will ask for approval of management measures for the Vessel Permit Consistency Amendment. The amendment would improve consistency among New England and Mid-Atlantic Council FMPs concerning vessel permitting and upgrading (the action would amend the Council's Atlantic Sea Scallop, Northeast Multispecies, and American Lobster FMPs; and the Mid-Atlantic Council's Summer Flounder, Scup, and Black Sea Bass FMP, Atlantic Mackerel, Squid and Butterfish FMP, and Atlantic Surf Clam and Ocean Quahog FMP). Finally, the Interspecies Committee may also identify further vessel upgrade issues for the Council and ask for development of a response to a letter from the Federal Investment Task Force. The meeting will conclude once the Council has addressed any other outstanding business.

### Announcement of an Experimental Fishery Application

The Regional Administrator is considering the authorization of a limited experimental fishery conducted by the Northeast Fisheries Science Center (NEFSC) on the NOAA Research Vessel (R/V) Delaware II. The experimental fishery would be conducted to evaluate trawl performance of trawl gear used on NOAA research vessels in resource surveys routinely conducted by the NEFSC. An exempted fishing permit would be issued to exempt the R/V Delaware II from fishery regulations that

would otherwise prohibit the R/V's activities.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document.

#### **Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 4, 1998.

**Richard W. Surdi,**

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

[FR Doc. 98-24356 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-F

# Notices

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.

## CENSUS MONITORING BOARD

### Meeting

**AGENCY:** U.S. Census Monitoring Board.  
**ACTION:** Notice of public meeting.

**SUMMARY:** This notice, in compliance with P.L. 105-119, sets forth the meeting date, time and place for a public meeting of the full U.S. Census Monitoring Board. The meeting agenda will include a review of the U.S. Census Bureau's planning and preparation for the 2000 Census.

**DATE:** Friday, September 18, 1998.

**TIME:** 10:00 a.m. to 2:00 p.m.

**LOCATION:** Federal Building #3, Suitland Federal Center, Suitland, Maryland.

**FOR FURTHER INFORMATION CONTACT:**  
 Carrie Hyun, Communications Director (Presidential Members), U.S. Census Monitoring Board, Phone (301) 457-9903, or Michael Miguel, Communications Director (Congressionally Appointed Members), U.S. Census Monitoring Board, Phone (301) 457-5080.

**Mark R. Johnson,**  
*Executive Director, Presidential Members.*

[FR Doc. 98-24258 Filed 9-9-98; 8:45 am]

BILLING CODE 1179-00-M

## 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 provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35).

**Agency:** Office of the Secretary/Office of Civil Rights.

**Title:** United States Department of Commerce Complaint of Employment Discrimination and United States

Department of Commerce Complaint of Employment Discrimination for the Decennial Census.

**Agency Form Number(s):** CD-498 and CD-498A.

**OMB Approval Number:** 0690-0015.

**Type of Request:** Revision of a currently approved collection.

**Burden:** 350 hours.

**Number of Respondents:** 700 (300 per year for the Standard Complaint Form and 400 per year for the Decennial Complaint Form).

**Avg. Hours Per Response:** 30 minutes.

**Needs and Uses:** This collection covers two standard forms used by the Department of Commerce in collecting information regarding complaints of employment discrimination. Both forms are used to gather data to aid in determining whether the complaint meets all procedural and jurisdictional requirements for acceptance. One form is used for the filing of a formal written complaint of employment discrimination against the Bureau of the Census Decennial Program and the other for general positions at the Department of Commerce. Commerce uses the information to determine whether the complaint was timely filed, whether there is a factual basis for investigation of the complaint, and whether the allegations of the complaint are within the scope of Equal Employment Opportunity Commission Regulations at 29 CFR Part 1614.

**Affected Public:** Individuals.

**Frequency:** On occasion.

**Respondent's Obligation:** Required for benefit.

**OMB Desk Officer:** Victoria Baecher-Wassmer, (202) 395-5871.

Copies of the above information 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 to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

### Federal Register

Vol. 63, No. 175

Thursday, September 10, 1998

Dated: September 2, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24208 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-BP-U

## 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 Oceanic and Atmospheric Administration (NOAA).

**Title:** Alaska Region Gear Identification Requirements.

**Agency Form Number(s):** None.

**OMB Approval Number:** None (previously approved under 0648-0305).

**Type of Request:** New collection.

**Burden:** 3,450 hours.

**Number of Respondents:** 1,916 (multiple requirements).

**Avg. Hours Per Response:** 15 minutes.

**Needs and Uses:** Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, NOAA is responsible for management of the Nation's marine resources. In the Alaska Region participants in the groundfish fishery are required to identify all longline buoy marker buoys on board or used by the vessel with the vessel's name and either the vessel's Federal fishery permit number or the vessel's registration number. The ability to link gear to its owner or operator is essential for enforcement, and is also useful in actions concerning damage, loss, and civil proceedings.

**Affected Public:** Businesses or other for-profit organizations, individuals.

**Frequency:** Third party disclosure.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24260 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-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 U.S.C. Chapter 35).

**Agency:** National Oceanic and Atmospheric Administration (NOAA).

**Title:** Northwest Region Gear Identification Requirements.

**Agency Form Number(s):** None.

**OMB Approval Number:** None (formerly cleared under 0648-0305).

**Type of Request:** New collection.

**Burden:** 5,138 hours.

**Number of Respondents:** 1,835 (multiple responses).

**Avg. Hours Per Response:** 15 minutes.

**Needs and Uses:** Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, NOAA is responsible for management of the Nation's marine fisheries. In the Northwest Region "fixed-gear" must be marked with the owner's identifying number. The identifying marks on fishing gear is used by the National Marine Fisheries Service, United States Coast Guard, and other marine agencies in issuing violations, prosecutions and other enforcement actions.

**Affected Public:** Businesses or other for-profit organizations.

**Frequency:** Third party disclosure.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

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 David Rostker, OMB Desk Officer, Room 10202, New Executive

Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24261 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-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 U.S.C. Chapter 35).

**Agency:** National Oceanic and Atmospheric Administration (NOAA).

**Title:** Foreign Fishing Gear Identification Requirements.

**Agency Form Number(s):** None.

**OMB Approval Number:** None (previously cleared under 0648-0305).

**Type of Request:** New collection.

**Burden:** 1 hour.

**Number of Respondents:** 0.

**Avg. Hours Per Response:** 1 hour if in use.

**Needs and Uses:** Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized that deploy gear which is not physically and continuously attached to the vessel are required to mark such gear in a prescribed manner to allow enforcement personnel to monitor fishing activities and ensure that a vessel harvests only from its own gear and that its gear is not illegally placed. There are no foreign vessels currently fishing in U.S. waters.

**Affected Public:** Businesses or other for-profit organizations.

**Frequency:** Third party disclosure.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

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 David Rostker, OMB Desk Officer, Room 10202, New Executive

Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24262 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-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 Oceanic and Atmospheric Administration (NOAA).

**Title:** Foreign Fishing Vessel Identification Requirements.

**Agency Form Number(s):** None.

**OMB Approval Number:** None (formerly cleared under 0648-0306).

**Type of Request:** New collection.

**Burden:** 15 hours.

**Number of Respondents:** 20.

**Avg. Hours Per Response:** 15 minutes for each marking.

**Needs and Uses:** Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized are required to display vessel identification to make it possible for enforcement personnel to monitor fishing, at-sea processing, and other related activities, to ascertain whether a vessel's observed activities are in accordance with those authorized for that vessel.

**Affected Public:** Businesses or other for-profit organizations.

**Frequency:** Third party disclosure.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

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 David Rostker, OMB Desk Officer, Room 10202, New Executive

Dated: September 3, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24263 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-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 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Request for Restoration Ideas—New Bedford Harbor.

*Agency Form Number(s):* None.

*OMB Approval Number:* 0648-0302.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 100 hours.

*Number of Respondents:* 50 (generally 2 responses each).

*Avg. Hours Per Response:* 1 hour.

*Needs and Uses:* Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), state and federal natural resource trustees, are responsible for the restoration of natural resources injured by releases of hazardous substances at designated Superfund sites. The New Bedford Harbor Trustee Council was established by consent decree to plan, implement, and oversee natural resource restoration activities for the New Bedford Harbor. The information requirement provides an opportunity for the public to formally suggest restoration ideas which the Trustee Council could undertake. Each restoration idea is evaluated and ranked as to how well the project meets certain criteria. The form helps the public to organize their thoughts and provide answers in a consistent manner.

*Affected Public:* Individuals, businesses or other for-profit organizations, not-for-profit institutions, federal government, state, local or tribal government.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24264 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-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 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Northwest Region Vessel Identification Requirements.

*Agency Form Number(s):* None.

*OMB Approval Number:* None.

*Type of Request:* New collection (formerly cleared under 0648-0306).

*Burden:* 1,376 hours.

*Number of Respondents:* 1,835.

*Avg. Hours Per Response:* 15 minutes for each marking.

*Needs and Uses:* Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, NOAA is responsible for management of the Nation's marine fisheries. As part of its efforts to enforce fishery regulations, NOAA has included requirements that fishing vessels display the vessel's official number in a specific way. The display of the number assists law enforcement officials in monitoring fishing and other activities and to ascertain whether the vessel is participating in activities authorized for that vessel.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* Third party disclosure.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24265 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-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 Telecommunications and Information Administration (NTIA).

*Title:* Supplement on Internet—Current Population Survey.

*Agency Form Number(s):* None.

*OMB Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 6,400 hours.

*Number of Respondents:* 48,000.

*Avg. Hours Per Response:* 8 minutes.

*Needs and Uses:* The December 1998 Current Population Survey will include questions related to the "information age." The survey, which is sponsored by NTIA but will be conducted by Census, is designed to provide an up-to-date profile of American personal computer and Internet access and information usage patterns. The information will be used to develop statistical profiles of disadvantaged groups and specific geographic areas that will assist policymakers and public-private partnerships in targeting assistance to those that are most in need.

*Affected Public:* Individuals.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Tim Fain, (202) 395-3561.

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 Tim Fain, OMB Desk Officer,

Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98-24266 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-60-P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Docket 42-98]

**Foreign-Trade Zone 202—Los Angeles, California Area Application for Expansion**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to expand its zone in the Los Angeles, California area, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 28, 1998.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, 7/22/94) and expanded on August 26, 1996 (Board Order 842, 61 FR 46763, 9/5/96). The zone project currently consists of the following sites: *Site 1* (2,783 acres)—Port of Los Angeles Harbor complex, San Pedro; *Site 2* (3 acres)—within the Los Angeles International Airport (LAX) complex; *Site 3* (642 acres)—International Trade & Transportation Center, Santa Fe Highway at 7th Standard Road in Kern County, adjacent to the City of Bakersfield; *Site 4* (47 acres)—within the 438-acre Dominguez Technology Center south of the Artesia Freeway, between the Harbor Freeway and I-710 in Rancho Dominguez; *Site 5* (20 acres)—Alameda Import/Export Center, located at the northeast corner of Alameda and Bay Streets, Los Angeles; *Site 6* (9 acres)—Western Sunset Distribution Center, 2626 Vista Industria, Rancho Dominguez; *Site 7* (101 acres)—Pacific Gateway Center, at the southwest corner of the San Diego Freeway and Harbor Freeway Interchange, Los Angeles; and, *Site 8* (6 acres)—Kintetsu Intermodal Warehouse, 1035/1130 Watson Center Road, Carson.

The applicant is now requesting authority to expand existing *Site 4* and to include 3 new sites (554 acres) in Los

Angeles and Carson (proposed *Sites 9-11*) as follows: *Site 4*—include 357 acres (new total—404 acres) at the Dominguez Technology Center (owned by Carson Dominguez Properties, L.P.) in Rancho Dominguez; proposed *Site 9* (128 acres)—Harbor Gateway Center, 19901 South Normandie, Los Angeles, owned by Boeing Realty Corporation; proposed *Site 10* (319 acres)—Watson Industrial Center South, 22010 South Wilmington Avenue, Carson, owned by the Watson Land Company; and, proposed *Site 11* (107 acres)—Watson Corporate Center, 22010 South Wilmington Avenue, Carson, owned by the Watson Land Company. Proposed *Site 9* is located within the Los Angeles Enterprise Zone. All of the proposed sites are located in or near current redevelopment projects. The City and Port of Los Angeles are developing the FTZ 202 project as an integral part of their overall development activities. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 9, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 24, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 350 S. Figueroa Street, Los Angeles, CA 90071

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: September 2, 1998.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 98-24346 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Order No. 1000]

**Expansion of Foreign-Trade Zone 2: New Orleans, LA, Area**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Port of New Orleans, grantee of Foreign-Trade Zone 2, for authority to expand FTZ 2 to include two sites in St. Bernard Parish, Louisiana, within the New Orleans Customs port of entry area, was filed by the Board on November 18, 1997 (FTZ Docket 80-97, 62 FR 63314, 11/28/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 2 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of August, 1998.

**Joseph A. Spetrini,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 98-24345 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Order No. 999]

**Grant of Authority for Subzone Status; Amoco Chemical Company (Petrochemical Complex), Brazoria County, TX**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Brazos River Harbor Navigation District, grantee of Foreign-Trade Zone 149, for authority to establish special-purpose subzone status at the petrochemical complex of Amoco Chemical Company, located in Brazoria County, Texas, was filed by the Board on September 9, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 71-97, 62 FR 49469, 9/22/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 149E) at the petrochemical complex of Amoco Chemical Company, located in Brazoria County, Texas, (to be operated in conjunction with Subzone 199A-Amoco Oil Company, Texas City, Texas, refinery), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2710.00.0505—# 2710.00.1050, and # 2710.00.25 which are used in the production of:

- Petrochemical feedstocks (examiners report, Appendix C);
- Products for export; and,

—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 25th day of August, 1998.

**Joseph A. Spetrini,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 98-24344 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-802]

#### Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico

**AGENCY:** International Trade Administration/Import Administration/Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1996 through July 31, 1997 and one firm, CEMEX, S.A. de C.V. (CEMEX) and its affiliate Cementos de Chihuahua, S.A. de C.V. (CDC). See section below entitled "Collapsing." The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** September 10, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Steven Presing, Nithya Nagarajan or John Totaro, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-3793.

**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 at 19 CFR Part 351, published in the **Federal Register** on May 19, 1997. 62 FR 27296.

#### Background

On August 4, 1997, the Department published in the **Federal Register** a *Notice of Opportunity to Request Administrative Review* of the antidumping duty order on gray portland cement and clinker from Mexico. 61 FR 41925 (August 4, 1997). In accordance with 19 CFR 351.213, CEMEX, and the petitioner, the Southern Tier Cement Committee ("STCC"), requested a review of CEMEX and its affiliate, CDC. On September 25, 1997, the Department published a *Notice of Initiation of Antidumping Review*. 62 FR 50292 (September 25, 1997). The Department is now conducting a review of these companies pursuant to section 751 of the Act.

#### Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. Our written description remains dispositive as to the scope of the product coverage.

#### Verification

As provided in Section 782(i) of the Act, we verified information provided by the CEMEX and CDC using standard verification procedures, including on-site inspection of manufacturing facilities, the examination of relevant

sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

### **Collapsing**

Section 351.401(f) of the Department's new regulations, 62 FR at 27410, describes when the Department will treat two or more producers as a single entity (*i.e.*, "collapse" the firms) for purposes of calculating a dumping margin. See also *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12773 (March 16, 1998). The regulations provide that the Department will treat two or more producers as a single entity where (1) the producers are affiliated; (2) the producers have production facilities that are sufficiently similar so that a shift in production would not require substantial retooling; and (3) there is a significant potential for the manipulation of price or production. For this last criterion, the Department may consider (a) the level of common ownership; (b) whether managerial employees or board members of one of the affiliated producers sit on the board of the other affiliated producer; and (c) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers. In the current review, CEMEX's equity ownership in CDC exceeded 5 percent; therefore, we have preliminarily found that the two companies are affiliated. In addition, CDC and CEMEX have production processes and facilities sufficiently similar so that a shift in production would not require substantial retooling. Finally in regards to the last criterion, the Department reviewed levels of common ownership, shared board members, and intertwined business relations, and found a significant potential for the manipulation of price or production. As a result, the Department has preliminarily concluded that these affiliated producers should be treated as a single entity and that a single, weighted-average margin should be calculated for these companies. (A complete analysis of this issue is contained in the Memorandum from Roland L. MacDonald to Joseph A. Spetrini, (August 31, 1998), located in the official file of this case ("collapsing memorandum"). Therefore, throughout this notice, references to "respondent"

should be read to mean the collapsed entity.

### **Transactions Reviewed**

In accordance with section 751 of the Act, the Department is required to determine the normal value (NV) and export price (EP) or constructed export price (CEP) of each entry of subject merchandise. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine CEP sales during the period of review (POR). See *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 48826 (September 20, 1993) (Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade (CIT) has upheld the Department's practice in this regard. See *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement v. United States*, 914 F. Supp. 535 (CIT 1995.)

### **Fair Value Comparisons**

To determine whether sales of gray portland cement by respondent to the United States were made at less than fair value, we compared the EP or CEP to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions, during the same month and at the same level of trade.

### **Export Price and Constructed Export Price**

We used EP, in accordance with subsections 772(a) and (c) of the Act, where the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts in the record. In addition, we used CEP in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We calculated EP based on delivered prices to unaffiliated customers in the United States. Where appropriate, we made adjustments from the starting price for early payment discounts, foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP sales based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for early payment discounts, credit expenses, and direct selling expenses. We deducted those selling expenses, including inventory carrying costs, that were related to economic activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duty. We adjusted the starting price for billing adjustments to the invoice price. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

### **Further Manufacturing**

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*e.g.*, cement that was imported and further processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determined that the special rule for merchandise with value added after importation under section 772(e) of the Act was applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliated person. Based on this analysis, we estimate that the value added was at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we have preliminarily determined that the value added is likely to exceed substantially the value of the subject merchandise. Accordingly, for purposes of

determining dumping margins for these sales, we have used the weighted-average CEP calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to EP or CEP were claimed or allowed.

#### Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales.

In particular, we based NV on home market sales of Type I cement by CEMEX and CDC. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. However, in situations where identical product types cannot be matched, the statute expresses a preference for basing NV on sales of similar merchandise. See section 773(a)(1)(B) and 771(16) of the Act. The history of this order demonstrates that, of the various types of cement subject to the order on Mexican cement, Type I cement is most similar to Type II and Type V cement, and pozzolanic cement is the least similar.

During the POR, CDC only sold one type of cement in Mexico subject to the antidumping order—Type I cement. CEMEX, on the other hand, sold four basic types of cement in Mexico during the POR—Type I, Type II, Type V and pozzolanic. However, prior to the commencement of verification, CEMEX notified the Department that the merchandise produced at its Hidalgo plant was either Type V or Type I, although all data from this plant was reported as relating to sales or production of only Type I cement. See CEMEX's June 3, 1998, submission explaining the discovery of mis-reported sales at Hidalgo. In other words, a certain portion of the cement sold as Type I from this plant was actually Type V. CEMEX filed a submission on June 16, 1998, revising the home market sales database for sales of Type V cement from Hidalgo. The Department issued a letter on June 25, 1998, rejecting the filing as an untimely response to the Department's questionnaire under section 351.201(b)(2).

Section 776(a) of the Act requires that the Department use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. Section 776(b) of the Act authorizes the Department to use an adverse inference in determining the facts otherwise available whenever an interested party has failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information.

Since the Department was notified that the information on the record regarding sales of cement produced at Hidalgo is inaccurate, we determined that these sales do not provide an appropriate basis for calculating NV. In short, our sales and cost database for cement produced at Hidalgo is extremely flawed. Therefore, in accordance with section 776(b) of the statute, the Department, as facts available, is substituting the highest calculated NV in this review for all sales of cement produced at Hidalgo.

As for CEMEX's home market sales of Type II and Type V cement, and certain home market sales of Type I cement, during the POR, the Department has preliminarily determined that they are outside the ordinary course of trade. As more fully described in the "Ordinary Course of Trade" section of this notice, these sales are not representative of CEMEX's home market sales. See also Memorandum from Roland L. MacDonald to Joseph A. Speirini (August 31, 1998).

Where appropriate, we adjusted home market sales of Type I cement for discounts, credit expenses, inland freight, and inland insurance. We also adjusted the starting price for billing adjustments to the invoice price. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We made adjustments, where appropriate, for physical differences in merchandise (DIFMER) in accordance with section 773(a)(6)(C)(ii) of the Act. For CDC's sales, we calculated a DIFMER adjustment using plant-specific cost data reported by CDC. For sales made by CEMEX, we preliminarily determine, in accordance with section 776 of the Act, that the use of partial facts available for a DIFMER adjustment is appropriate. For the reasons discussed below we have preliminarily determined that the most appropriate basis for a facts available DIFMER is the actual cost differences in producing

Type I cement sold in the home market and Type V cement sold in the U.S. market. As facts available, and in order to minimize the effect of varying plant efficiencies, the Department has compared CEMEX's variable costs of manufacturing (VCOM) to produce cement at the Hermosillo plants (sold as Types I, II, and V) with the lowest VCOM reported by a CEMEX Type I facility. This calculation is based upon the same methodology used to calculate a DIFMER adjustment for CEMEX in the sixth review (see *Final Results of Administrative Review: Gray Portland Cement and Clinker from Mexico*, 63 FR 12764, 12778 (March 16, 1998)), and results in an upward adjustment to home market prices.

As stated above, section 776(a) of the Act authorizes the Department to use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. In the instant review, the Department first requested DIFMER information from CEMEX on September 25, 1997. CEMEX was asked to base its DIFMER calculations on differences in physical characteristics between Type I cement sold in Mexico and the type of cement being exported to the United States. CEMEX did not supply DIFMER information in response to this request. On February 17, 1998, in a supplemental questionnaire, the Department requested for the second time that CEMEX submit DIFMER information. On March 20, 1998, CEMEX reported the variable cost information for Type I cement at 11 plants, and information for Type V cement for the Campana and Yaqui facilities. On April 4, 1998, the Department requested interested parties to submit information to assist the Department in determining the most appropriate basis for a DIFMER adjustment in the instant review. In response, CEMEX stated that there were no physical differences between Types I and V cement produced in the home market; therefore, it withdrew its request for a DIFMER adjustment in the instant review. In addition, the Department did not receive any additional information from interested parties demonstrating the most appropriate basis for a DIFMER adjustment.

The Department has determined that the DIFMER information filed by CEMEX on April 20, 1998, and April 27, 1998, (withdrawing its request for a DIFMER adjustment) is contrary to the

data reported by CEMEX in its December 8, 1997, and March 20, 1998, submissions in the reported VCOMH and VCOMU fields. The existing data and product information on the record indicates that there are differences in the physical characteristics of Type I cement and Type V cement. These physical differences were originally made apparent in CEMEX's reported variable manufacturing costs of producing Type I and Type V cement in the home market. In addition, CEMEX's statement on April 20, 1998, is contrary to the facts placed on the record of prior reviews (currently on the record of the instant review), wherein CEMEX states that there are differences in the physical characteristics of Type I and V cement which contribute to a difference in the production costs of the two types of cement. Based on the fact that record evidence indicates that there are physical differences between Type I and Type V cement and the fact that interested parties did not submit viable bases for a DIFMER adjustment, the Department has calculated a DIFMER adjustment based upon facts otherwise available.

The Department preliminarily determines that CEMEX's reported DIFMER information, which is flawed and inconsistent with other facts on the record of this case, is unusable. Furthermore, it is not appropriate to use other information on the record as a basis for a DIFMER adjustment. We determined in the fifth administrative review that it is not appropriate to use the weighted-average VCOM of all plants producing Type I and the VCOM of the U.S. merchandise due to efficiency differences between plants. Thus, we relied in that review on the purported VCOM differences for merchandise produced at Yaqui, under the assumption that Yaqui produced both physically Type I and physically Type II cement. In the final results of the sixth administrative review, we determined that Yaqui and Campana only produced a physically Type V cement and not other types of cement. Therefore, we calculated a DIFMER utilizing the most efficient plant producing Type I cement as compared to the plants producing solely Type V. However, in the current review the evidence on the record indicates that any differences in the variable cost of manufacturing cement is attributable, at least in a large part, to differences in plant efficiencies. See Home Market Sales Verification Report dated August 21, 1998. In addition, the record evidence indicates, and CEMEX has argued in various submissions, that

differences in costs due to plant efficiencies cannot be isolated from other variable costs to calculate a DIFMER consistent with section 773(a)(6) of the statute. Because of different plant efficiencies, the Department is unable to compare the variable costs at the Yaqui and Campana facilities with the average variable costs at CEMEX's numerous facilities producing Type I cement. Therefore, as facts available, and in order to minimize the effect of varying plant efficiencies, the Department has compared CEMEX's VCOM to produce cement at the Hermosillo plants (sold as Types I, II, and V but are physically Type V) with the lowest variable costs reported by a CEMEX Type I facility. This calculation is based upon the same methodology used to calculate a DIFMER adjustment for CEMEX in the sixth review and results in an upward adjustment to home market prices. Additionally, consistent with our prior practice, we have applied to CDC's home market sales a calculated DIFMER based upon plant-specific reported data.

#### A. Arm's-Length Sales

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length.

#### B. Cost of Production Analysis

Petitioner alleged, on January 9, 1998, that CEMEX and its affiliate, CDC, sold gray portland cement and clinker in the home market at prices below their cost of production (COP.) Based on these allegations, the Department determined, on February 3, 1998, that it had reasonable grounds to believe or suspect that CEMEX had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether CEMEX and CDC made home market sales during the POR at prices below their COP.

In accordance with section 773(b)(3) of the Act, we calculated an average monthly COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all

costs and expenses incidental to placing the foreign like product in condition ready for shipment. In our COP analysis, we used the home market sales and COP information provided by the respondent in its questionnaire responses.

After calculating an average monthly COP, we tested whether home market sales of cement were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific average monthly COPs to the reported home market prices less any applicable movement charges, discounts and rebates. In determining whether to disregard home market sales made at prices below the average COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C) of the Act, because less than 20 percent of the respondent's sales of the foreign like product under consideration for the determination of NV were at prices less than COP, we did not disregard any below-cost sales of the product.

#### C. Inflation

Mexico experienced significant inflation during the POR, as measured by the consumer price index published in International Financial Statistics and the consumer price index from the Bank of Mexico. This data indicated that the annual inflation rate in Mexico during the POR exceeded 40 percent. In accordance with our practice, to avoid the distortions caused by the effects of this level of inflation in prices, we limited our comparisons to sales in the same month. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey* 62 FR 9738 (March 4, 1997). When the rate of home market inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated solely due to price inflation that occurred in the intervening time period between the U.S. and home market sales. We have also used monthly cost of production data for this reason.

#### D. Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York pursuant to section 773(a) of the Act.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, ignoring any "fluctuations." We determine that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent or more. The benchmark rate is defined as the rolling average of the rates for the past 40 business days as reported by the Federal Reserve Bank of New York. When we determine that a fluctuation existed, we substitute the benchmark rate for the daily rate. For a complete discussion of the Department's exchange rate methodology, see *Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996).

#### E. Produced As vs. Sold As

Section 771(16)(A) of the Act expresses a clear preference for matching sales in the United States with sales in the home market of merchandise that is "identical in physical characteristics." See *CEMEX, S.A. v. United States*, 133 F.3d 897 (Fed. Cir. 1998). When circumstances require the Department to compare non-identical merchandise, the statute, at section 773(a)(6)(C)(ii) of the Act, provides for an adjustment for price differences attributable to differences in physical characteristics.

Since the inception of this proceeding, we have seen that all cement generally conforms to the standards established by the ASTM. These standards tend to classify cement according to its physical characteristics, dimensional characteristics, and/or performance properties. Also from the outset, interested parties and the Department have used ASTM standards to identify merchandise subject to this antidumping order and to inform how, and on what basis, we match sales of identical or similar merchandise. Specifically, the Department has sought, wherever possible, to match sales of ASTM standard Type II to Type II, ASTM standard Type V to Type V, and so forth.

During the period covered by the original investigation, the Department discovered one or more instances where Mexican producers sold cement meeting

one ASTM standard as if it were cement meeting a lower (included) ASTM standard. However, in the final determination, the Department described these sales as a mistake and not "the ordinary practice in the industry." *Final Determination of Sales at Less Than Fair Value, Gray Portland Cement and Clinker from Mexico*, 55 FR 29244, 29248 (1990). Therefore, based on the fact that it was the normal industry practice to produce and sell on the same basis, the Department accepted that "matching by ASTM standard was the most reasonable basis for making equitable identical merchandise comparisons." *Id.* at 29248.

Devising a methodology for matching sales is often a difficult task and the courts have recognized that the Department has broad discretion "to choose the manner in which \* \* \* merchandise shall be selected." *Koyo Seiko Co. v. United States*, 66 F.3d 1204, 1209 (Fed. Cir. 1995). We have sought, throughout each of the past seven reviews, including the present one, to (i) match based on physical characteristics, (ii) rely on ASTM standards to distinguish one type of cement from another, and (iii) rely on sales documentation as a convenient surrogate for more direct evidence (e.g., mill test certificates) of cement type.

In the instant review, the Department requested CEMEX to report home market and U.S. sales data on both an "as produced" basis (*i.e.*, reporting the physical properties of each product sold), and on an "as sold" basis. CEMEX reported that it produced cement meeting the physical specifications of Type V cement, and sold this cement in the home market as Types I, II, and V cement. This Type V cement was produced by CEMEX's Yaqui and Campana plants, which are located in the Hermosillo region. CEMEX noted, and the record reflects, that Yaqui and Campana are the only two CEMEX plants which, on a consistent basis, produce cement meeting the physical requirements of one type of cement and sell that cement as another type of cement.

Under these circumstances, we believe it would be unreasonable to match merchandise on a "sold as" basis. First, it would make any cost of production or DIFMER calculations more difficult, if not impossible. Moreover, such an approach would not address any sales that were merely labeled "gray portland cement" or "cement." Finally, a "sold as" approach would lend itself to the type of product manipulation about which petitioner has so often expressed concern. Therefore, for purposes of the instant

review, the Department has matched based on the products as produced.

#### F. Ordinary Course of Trade

Section 773(a)(1)(B) of the Act requires the Department to base NV on "the price at which the foreign like product is first sold (or in the absence of sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade." Ordinary course of trade is defined as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."

The purpose of the ordinary course of trade provision "is to prevent dumping margins from being based on sales which are not representative" of the home market. *Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988). By basing the determination of NV upon representative sales, the provision helps to ensure that the comparison between NV and U.S. sales is done on an "apples to apples" basis.

Apart from identifying certain sales that are below cost (section 773(b)(1)) or between affiliated persons (section 773(f)(2)), Congress has not specified any criteria that the Department should use in determining the appropriate "conditions and practices" which are "normal in the trade under consideration." Therefore, "Commerce, in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade." *Thai Pineapple Public Co. v. United States*, 946 F. Supp. 11, 14-17 (CIT 1996).

The Department's ordinary course of trade inquiry is far-reaching. It evaluates not just "one factor taken in isolation but rather \* \* \* all the circumstances particular to the sales in question." *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 607 (CIT 1993). In short, we examine the totality of the facts in each case to determine if sales are being made for "unusual reasons" or under "unusual circumstances." *Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 28551, 28552 (1993).

In the second administrative review of this order, the Department determined that CEMEX's sales of Type II and Type V cement were outside the ordinary course of trade and, therefore, could not be used in the calculation of NV (then referred to as "foreign market value"). See *Gray Portland Cement and Clinker*

*from Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 27254 (Sept. 8, 1993). In making this determination, the Department considered, *inter alia*, shipping distances and costs, sales volume, profit levels, sales history, home market demand and the promotional aspect of sales. See Decision Memorandum to Joseph A. Spetrini, August 31, 1994; see also Memorandum from Holly A. Kuga to Joseph A. Spetrini, August 31, 1993 (public versions of these memoranda are on file in Room B-099 of the Department's main building). Based upon similar facts and using a similar analysis, the Department reached the same conclusion in the final results of the fifth and sixth administrative reviews for certain sales of Type II and Type V cement by CEMEX in Mexico. *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17151 (April 9 1997); *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review* 63 FR 12764, 12768 (March 16, 1998).

In the instant review, the petitioner alleged, as it did in the second, fifth, and sixth reviews, that CEMEX's sales of Type II and V (produced solely as Type V from the Hermosillo region) cement in Mexico were outside the ordinary course of trade. Pursuant to section 773(a)(1)(B) of the Act, the Department has examined the totality of the circumstances surrounding CEMEX's sales of cement in Mexico that are produced as Type V cement and marketed as Types I, II, and V (which are identical in physical characteristics to the cement that CEMEX sells in the United States). Therefore, based on petitioner's allegation and the relevant findings in the prior review, the Department determined that it had reasonable grounds to believe or suspect that CEMEX's home market sales of cement meeting the physical specifications of Type V cement were outside the ordinary course of trade.

A full discussion of our preliminary conclusions, requiring reference to proprietary information, is contained in a Departmental memorandum in the official file for this case (a public version of this memorandum is on file in room B-099 of the Department's main building). Generally, however, we have found: (i) the volume of Type V home market sales is extremely small compared to sales of other cement types, (ii) the number and type of customers purchasing Type V cement is substantially different from other cement types, (iii) shipping distances

and freight costs for Type V home market sales tends to be significantly greater than for sales of other cement types, and (iv) CEMEX's profit on Type V sales tends to be small in comparison to its profits on other cement types.

There are two other factors, historical sales trends and the "promotional quality" of Type V cement sales, which were considered by the Department in the second administrative review. On September 25, 1997, the Department issued a questionnaire requesting CEMEX to support its position that home market sales of Type V cement were in the ordinary course of trade by addressing, among other things, "historical sales trends" and "marketing reasons for sales other than profit." CEMEX's response (copies of its submission from the fifth and sixth administrative reviews) failed to address these two items. Thus, as facts available, the Department finds that the facts regarding these items have not changed since the second review and that: (i) CEMEX did not sell Type V cement until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such existed prior to that time; and (ii) sales of Type V cement continue to exhibit a promotional quality that is not evidenced in CEMEX's ordinary sales of cement (see memorandum from Holly A. Kuga to Joseph A. Spetrini, dated August 31, 1993). A public version of this memorandum is on file in room B-099 of the Department's main building.

For the reasons stated above, the Department has preliminarily determined that CEMEX's home market sales of Type V cement during the review period were outside the ordinary course of trade. We note that the facts established in the record of this review are very similar to the facts which led the Department to determine in the second, fifth and sixth reviews that home market sales of Type V cement were outside the ordinary course of trade. The determination involving the second review, as noted above, was affirmed by the CIT in the *CEMEX* case. Slip Op. 95-72 at 14.

In conclusion, the decision to exclude sales of Type V cement from the calculation of NV centers around the unusual nature and characteristics of these sales compared to the vast majority of CEMEX's other home market sales. Based upon these differences, the Department has preliminarily determined that they are not representative of CEMEX's home market sales. Stated differently, these sales were not within CEMEX's ordinary course of trade.

#### F. Fictitious Market

Petitioner has also claimed that CEMEX established a fictitious market in Mexico for its sales of "Type II" cement. Since the sales in question have preliminarily been found to be outside the ordinary course of trade and, accordingly, will not be used in the calculation of NV, it is not necessary for us to address this issue for these preliminary results.

#### G. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market, or, when NV is based on constructed value (CV), that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sales from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61971 (November 19, 1997).

First, based upon a review of the selling functions performed by CEMEX and CDC along the chain of distribution, we have determined that CEMEX's and CDC's Type I home market sales are at different levels of trade. Second, we determined that CEMEX's and CDC's Type I home market sales are also at different levels of trade from CEMEX's CEP sales and CDC's CEP and EP sales.

For a complete discussion of the Department's LOT analysis, see Memorandum to the File regarding Level of Trade, dated August 31, 1998. In summary, we found that: (1) there are quantitative and qualitative differences in the selling functions performed by CEMEX in the home market as compared to CEMEX's CEP sales, CDC's CEP sales, and CDC's EP sales; (2) there are also quantitative and qualitative differences in the selling functions performed by CDC in the home market as compared to CEMEX's CEP sales, CDC's CEP sales, and CDC's EP sales; (3) each of the above-mentioned levels of trade are separate and distinct levels; (4) we do not have information which would allow us to examine pricing patterns based on CEMEX's or CDC's sales of other products at the same level as the U.S. CEP sales (CEMEX and CDC) or U.S. EP sales (CDC) to make a level of trade adjustment; and (5) we have determined that CEMEX's NV and CDC's NV are at more advanced levels of trade than CEMEX's CEP and CDC's CEP level of trade. Therefore, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset for CEP sales made by CEMEX and CDC. As stated above in point (2) we determined that CDC's EP sales are at a different level of trade as compared to CEMEX's home market and CDC's home market sales, however we made no similar offset, since neither the Act nor the regulations envision this type of adjustment for EP sales. Finally, record evidence indicates that CEMEX and CDC sell physically different products in the U.S. market. In other words, CEMEX sells physically Type V cement in the U.S., whereas CDC sells physically Type II cement. Therefore, for purposes of this administrative review, we have determined that the most accurate means of comparison would be on a company-specific basis. For purposes of our margin calculation, we compared CEMEX's home market sales to CEMEX's CEP sales, and we compared CDC's home market sales to CDC's CEP and EP sales. This approach allows us to calculate the most accurate DIFMER adjustment. See DIFMER section of notice above.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1996, through July 31, 1997, to be 56.89 percent. Interested parties may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held

44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish its final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 180 days after the date of publication of this notice.

Upon completion of this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. We will base the assessment of antidumping duties on the entered value of the covered merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned 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, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 61.85 percent, the all others rate from 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 also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with

this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double dumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1998.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 98-24347 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Swordfish and Shark Fisheries Vessel Identification Requirements

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before November 9, 1998.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; (301) 713-2347.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

For vessels permitted in the swordfish or shark fisheries, the vessel's official number is required to be displayed on the port and starboard side of the deckhouse or hull, and on a weather deck, so as to be clearly visible from an enforcement vessel or aircraft. Certain regulations for these fisheries require enforcement while at-sea (e.g., closed areas or seasons, gear restrictions,

prohibited transfer of catch, etc.). This requirement is necessary to identify vessels at sea.

## II. Method of Collection

There is no form used or information collected under this requirement. Permits are issued to vessel operators (under a separate information collection) and the permitted vessel's official number is marked on the hull of the vessel.

## III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit, individuals (operators of vessels permitted in the swordfish and shark fisheries).

*Estimated Number of Respondents:* 800.

*Estimated Time Per Response:* 45 minutes (3 locations @ 15 minutes each).

*Estimated Total Annual Burden Hours:* 600.

*Estimated Total Annual Cost to Public:* \$24,000 (\$30 per vessel).

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 2, 1998.

**Linda Engelmeier,**

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98-24209 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 083198A]

### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Bluefish, Calico Scallop, Joint Executive & Finance, Snapper Grouper, and Habitat Committees; and a Council Session.

**DATES:** The meetings will be held from September 21-25, 1998. See

**SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571-1000; (800) 334-6660.

**Council address:** South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

#### FOR FURTHER INFORMATION CONTACT:

Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: susan.buchanan@noaa.gov

#### SUPPLEMENTARY INFORMATION:

#### Meeting Dates

*September 21, 1998, 1:30 p.m. to 3:30 p.m.*—Bluefish Committee;

The Bluefish Committee will review bluefish public hearing comments and develop committee recommendations for Bluefish Amendment 1. The committee will also review actions for 1999;

*September 21, 1998, 3:30 p.m. to 5:30 p.m.*—Calico Scallop Committee;

The committee will review the draft Calico Scallop Fishery Management Plan (FMP) and NMFS comments on the plan before making final committee recommendations for the plan;

*September 22, 1998, 8:30 a.m. to 12:00 p.m.*—Joint Executive and Finance Committees;

The committees will review and approve the proposed 1999 Council budget and schedule of activities;

*September 22, 1998, 1:30 p.m. to 5:00 p.m.*—Snapper Grouper Committee;

The committee will review current available data for greater amberjack, snowy grouper and golden tilefish and

develop management recommendations for greater amberjack. If changes are made for greater amberjack, the committee will approve a framework adjustment to the Snapper Grouper Plan.

The committee will also take additional action on the interim request for Amendment 9 to the Snapper Grouper FMP;

*September 23, 1998, 8:30 a.m. to 12:00 p.m.*—Habitat Committee;

The committee will finalize recommendations on the Habitat FMP, the Habitat Comprehensive Amendment and the Calico Scallop and Sargassum FMPs and develop committee recommendations on Gulf Council habitat actions;

*September 23, 1998, 1:30 p.m. to 6:00 p.m.*—Council Session;

The Council will hold elections for a new chairman and vice chairman and make presentations from 1:45 to 2:15;

Beginning at 2:15 p.m. the Council will take public comment on the South Atlantic Council's Habitat Plan, Calico Scallop FMP and Sargassum FMP, the Habitat Comprehensive Amendment, and the Comprehensive Sustainable Fisheries Act Amendment. Public comment will also be taken on Gulf Council actions on habitat and other SFA provisions relative to coastal pelagics and spiny lobster;

From 4:15 p.m. (or immediately after the end of public comment) to 6:00 p.m. the Council will hear the Habitat Committee report and approve the Habitat FMP for submission to the Secretary of Commerce;

*September 24, 1998, 8:30 a.m. to 7:00 p.m.*—Council Session;

From 8:30 a.m. to 12:00 noon the Habitat Committee report will resume, and the Council will approve the Habitat Comprehensive Amendment and the Sargassum FMP for submission to the Secretary of Commerce, as well as Gulf Council actions relative to habitat;

From 1:30 p.m. to 2:30 p.m. the Council will hear the Calico Scallop Committee report and approve the Calico Scallop FMP for submission to the Secretary of Commerce;

From 2:30 p.m. to 4:30 p.m. the Council will approve the Comprehensive Sustainable Fisheries Act Amendment for submission to the Secretary of Commerce;

From 4:30 p.m. to 6:00 p.m. the Council will hear the Snapper Grouper Committee report after taking public comment on the Amberjack framework action. The Council will take further action on greater amberjack management and the Snapper Grouper Amendment 9 interim request;

From 6:00 p.m. to 6:30 p.m. the Council will hear the Bluefish Committee report and approve recommendations for Bluefish Amendment 1;

From 6:30 p.m. to 7:00 p.m. the Council will hear the Executive and Finance Committee report and approve the Council's 1999 activities schedule and budget;

*September 25, 1998, 8:30 a.m. to 1:00 p.m.*—Council Session;

The Council will review the Mackerel Advisory Panel's request to allow retention of Spanish mackerel in the gill net fishery for spot, hear NMFS reports on the status of: implementation of Snapper Grouper Amendment 8; Snapper Grouper Amendment 9; Golden Crab Framework #1; 1998-1999 Mackerel Framework Action; quotas for Atlantic king mackerel, Eastern zone Gulf king mackerel, Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, and South Atlantic octocorals. The Council will also hear reports on the Billfish and Highly Migratory Species Advisory Panel meetings, cannonball jellyfish, the Council chairmen's meeting, and the Atlantic Coastal Cooperative Statistics Program before hearing agency and liaison reports and discussing other business and upcoming meetings.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 14, 1998.

Dated: September 4, 1998.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 98-24307 Filed 9-4-98; 3:38 pm]

BILLING CODE 3510-22-F

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 083198B]

##### Western Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Council (Council) will hold the 1st meeting of its Coral Reef Ecosystem Plan Team (CREPT) in Honolulu, HI.

**DATES:** The CREPT meeting will be held on September 30–October 1, 1998, from 8:30 a.m. to 5:00 p.m., each day.

**ADDRESSES:** The CREPT meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808-522-8220).

**Council address:** Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

**SUPPLEMENTARY INFORMATION:** The CREPT will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

*Wednesday, September 30, 1998, 8:30 a.m.*

1. Orientation to Council family and system

2. Overview of coral reef related Fishery Management Plans (FMPs) from other regions

3. Summary of recent coral reef assessments in the Western Pacific Region

4. Island updates on current coral reef related issues, including non-self-governing possessions and international issues

*Thursday, October 1, 1998, 8:30 a.m.*

5. Development of the Western Pacific Council's Coral Reef Ecosystem FMP, including goals and objectives, outline for draft FMP, section assignments, and timetable for completion

6. Coral reef funding needs for FMP development, assessment and monitoring, research and other

7. Administrative matters

8. Other Business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance

with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: September 4, 1998.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 98-24355 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-22-F

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

September 3, 1998.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** September 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the

**CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 62564, published on November 24, 1997.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 3, 1998.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 10, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit <sup>1</sup>
334 .....	155,563 dozen.
335 .....	212,320 dozen.
336/636 .....	404,767 dozen.
338/339 .....	1,482,333 dozen.
341 .....	2,554,228 dozen.
342/642 .....	495,671 dozen.
351/651 .....	762,780 dozen.
352/652 .....	10,956,665 dozen.
363 .....	27,111,104 numbers.
369-S <sup>2</sup> .....	1,781,780 kilograms.
634 .....	583,056 dozen.
638/639 .....	1,879,869 dozen.
641 .....	420,473 dozen.
647/648 .....	1,702,760 dozen.
847 .....	176,170 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1997.

<sup>2</sup> Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 98-24341 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-DR-F

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Egypt**

September 4, 1998.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** September 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 300/301 is being increased for swing, reducing the limit for Category 227 to account for the swing being applied. In addition, the limit for Categories 300/301 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67829, published on December 30, 1997.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 4, 1998.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 10, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit <sup>1</sup>
Fabric Group 218-220, 224-227, 313-O <sup>2</sup> , 314-O <sup>3</sup> , 315-O <sup>4</sup> , 317-O <sup>5</sup> , and 326-O <sup>6</sup> , as a group.	101,932,811 square meters equivalent.
Sublevel within Fabric Group 227 .....	19,288,772 square meters.
Level not in a group 300/301 .....	11,721,127 kilograms of which not more than 3,330,536 kilograms shall be in Category 301.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1997.

<sup>2</sup> Category 313-O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

<sup>3</sup> Category 314-O: all HTS numbers except 5209.51.6015.

<sup>4</sup> Category 315-O: all HTS numbers except 5208.52.4055.

<sup>5</sup> Category 317-O: all HTS numbers except 5208.59.2085.

<sup>6</sup> Category 326-O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 98-24342 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-DR-F

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Poland**

September 3, 1998.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** September 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce,

(202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for swing and carryover, reducing the limit for Category 410 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63525, published on December 1, 1997.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 3, 1998.

Commissioner of Customs,  
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 24, 1997 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 10, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit <sup>1</sup>
410 .....	2,629,654 square meters.
443 .....	266,544 numbers.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 98-24340 Filed 9-9-98; 8:45 am]

BILLING CODE 3510-DR-F

**CONSUMER PRODUCT SAFETY COMMISSION**

**Sunshine Act Meeting**

**TIME AND DATE:** Thursday, September 17, 1998, 2:00 p.m.

**LOCATION:** Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:** *Compliance Status Report.* The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

**CONTACT PERSON FOR ADDITIONAL**

**INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: September 8, 1998.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 98-24492 Filed 9-8-98; 3:25 pm]

**BILLING CODE 6355-01-M**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Draft Environmental Impact Statement for Schofield Barracks Wastewater Treatment Plant Effluent Treatment and Disposal, Oahu, HI**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** This Notice of Availability is for a Draft Environmental Impact Statement (DEIS) to assess the effects of implementing a system to dispose of wastewater effluent from Schofield Barracks, Wheeler Army Airfield, and adjacent military lands.

**DATES:** Written public comments received within 45 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be addressed in the Final Environmental Impact Statement.

**ADDRESSES:** Written comments should be forwarded to: U.S. Army Engineer District, Honolulu, ATTN: CEPOH-ED-E (Mr. Edward Yamada), Fort Shafter, HI 96858-5440.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Yamada at (808) 438-5421 or fax: (808) 438-7801.

**SUPPLEMENTARY INFORMATION:** Under the lead alternative, the Army would improve its Schofield Barracks Wastewater Treatment Plant to provide a higher quality effluent that would

meet new State of Hawaii guidelines for effluent reuse. Part of the effluent would be used to irrigate two Army golf courses. The balance would then be provided to Dole Foods Corporation and possibly other agricultural interests for irrigation reuse in Central Oahu. Wet weather discharge would be into Lake Wilson, an agricultural reservoir owned by Dole Foods Corporation. The lead alternative would preclude the construction of a long pipeline to the coastline and avoid disposal into the ocean.

Other alternatives considered by the DEIS include the no action alternative, which would limit the use of the Army effluent under the State of Hawaii guidelines for effluent reuse, and a joint project with the City and County of Honolulu (CCH) that would require construction of a new 14-mile pipeline from Central Oahu to the CCH's Honouliuli Wastewater Treatment Plant at the Ewa area.

None of the alternatives considered, with the possible exception of the no action alternative, are anticipated to have significant environmental impact. The Army's lead alternative provides the most potential for effluent reuse in Central Oahu.

Public scoping meetings have been held and public meetings will be held after distribution of the DEIS. All interested individuals, private organizations, and government agencies are encouraged to provide input into the EIS review process.

Coordination will be undertaken with adjoining land owners; the U.S. Environmental Protection Agency; other Federal agencies; State of Hawaii agencies such as the Department of Health, Department of Land and Natural Resources, Department of Transportation, Department of Business and Economic Development, Office of State Planning, and Office of Environmental Quality Control; City and County of Honolulu agencies such as Board of Water Supply, Department of Public Works, Department of Land Utilization, and Department of General Planning; and organizations such as the Mililani and Wahiawa Neighborhood Boards.

The U.S. Army Corps of Engineers will act as an agent and point of contact for the proponent 25th Infantry Division (Light) and U.S. Army Hawaii.

Dated: September 4, 1998.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational  
Health), OASA (I,L&E).*

[FR Doc. 98-24271 Filed 9-9-98; 8:45 am]

BILLING CODE 3710-08-M

**DEPARTMENT OF EDUCATION**

**Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 15, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before November 9, 1998.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address Pat\_Sherrill@ed.gov, or should be faxed to 202-708-8196.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the

public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 3, 1998.

**Sally Budd,**

*Acting Deputy Chief Information Officer,  
Office of the Chief Information Officer.*

**Office of Postsecondary Education**

**Type of Review:** Revision.

**Title:** Federal Direct Consolidation Loan Program Application Documents.

**Abstract:** These forms are the means by which a borrower applies for promises to repay a Federal Direct Consolidation Loan and a lender verifies an eligible loan to be consolidated.

**Additional Information:** This information collection includes an application and promissory note, a promissory note endorser addendum, a verification certificate, and a request form to add loans to an existing Federal Direct Consolidation Loan.

**Frequency:** On occasion.

**Affected Public:** Individuals or households; Businesses or other for-profits.

**Reporting and Recordkeeping Hour Burden:**

Responses: 747,000.

Burden Hours: 528,250.

[FR Doc. 98-24253 Filed 9-9-98; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF EDUCATION**

**Submission for OMB Review;  
Comment Request**

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB Review; Comment Request.

**SUMMARY:** The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 13, 1998.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651.

**FOR FURTHER INFORMATION CONTACT:**

Patrick J. Sherrill (202) 708-8196.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 3, 1998.

**Sally Budd,**

*Acting Deputy Chief Information Officer,  
Office of the Chief Information Officer.*

*Office of Special Education and  
Rehabilitative Services*

*Type of Review:* Reinstatement.

*Title:* Section 704 Annual

*Performance Report (Parts I and II).*

*Frequency:* Annually.

*Affected Public:* Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 325.

Burden Hours: 13,000.

*Abstract:* Section 752 (I) (2) (A) of the Rehabilitation Act Amendments of 1992 require each grantee under this program to submit an annual report to the Commissioner of the Rehabilitation Services Administration (RSA) on essential demographic, service and outcome information. The information collected by RSA will be used to evaluate the program, including the new Government Performance Results Act (GPRA) requirements, and make recommendations to Congress. It provides RSA with a uniform and efficient method of monitoring the program for compliance with statutory and regulatory requirements and to determine substantial progress required for funding of all non-competing continuation discretionary grants. The respondents are Centers for Independent Living and Designated State Units.

*Office of Intergovernmental and Interagency Affairs*

*Type of Review:* Existing.

*Title:* Sign-on Forms for Partnership for Family Involvement in Education and America Goes Back to School.

*Frequency:* One time.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 1,000.

Burden Hours: 300.

*Abstract:* The Partnership for Family Involvement in Education (PFIE) offers a vehicle for schools, community organizations, employers, and faith organizations to commit to promoting children's learning through development of family-school-community partnerships. America Goes Back to School (AGBTS) is an annual PFIE initiative to focus attention on improving education across America through sponsorship of AGBTS events during the back-to-school period. PFIE utilizes four specially-tailored sign-on forms, each developed by members of the respective sector, to add to a database of member organizations. AGBTS utilizes an event sign-on form to acquire information on planned back-to-school events.

[FR Doc. 98-24252 Filed 9-9-98; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

**Office of Postsecondary Education;  
Deadline of Submission of Institutional  
Agreement in the Federal Perkins  
Program Expanded Leading Option**

**AGENCY:** Department of Education.

**ACTION:** Notice of deadline of submission of institutional agreement for participation in the Federal Perkins Program Expanded Lending Option.

**SUMMARY:** This notice establishes the deadline for submission of the "Institutional Agreement For Participation In the Federal Perkins Loan Program Expanded Lending Option (ELO)" (ELO Participation Agreement) by those eligible institutions that elect to participate in the Federal Perkins Loan Program ELO in the 1998-99 award year (the period from July 1, 1998 through June 30, 1999).

**CLOSING DATE FOR TRANSMITTAL OF ELO PARTICIPATION AGREEMENT:** To ensure participation in the Federal Perkins Loan Program ELO in the 1998-99 award year, an eligible institution that elects to participate must submit its ELO Participation Agreement by October 1, 1998.

**SUPPLEMENTARY INFORMATION:** The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher

education to help them pay their educational costs. The ELO is available for the 1998-99 award year for institutions of higher education that participate in the Federal Perkins Loan Program.

To be eligible to participate in the Federal Perkins Loan Program ELO for 1998-99, an institution must have had a Federal Perkins Loan cohort rate of 15 percent or less as of June 30, 1997, and must have participated in the Federal Perkins Loan Program for the two previous award years (1996-97 and 1997-98). In addition, an institution must enter into a special ELO Participation Agreement with the Secretary. An institution that elects to participate in the ELO must request participation in the Expanded Lending Option by selecting the "Yes" box in Part II of Section C of its Fiscal Operations Report for 1997-98 and Application to Participate for 1999-2000 (FISAP), print the ELO Institutional Agreement from the Electronic FISAP software, and complete, sign, date, and submit the ELO Participation Agreement by the deadline date to obtain approval.

Institutions that become Federal Perkins Loan Program ELO participants will be required to increase the Institutional Capital Contribution (ICC) to at least a dollar-for-dollar match with any portion of the 1998-99 award year Federal Capital Contribution (FCC) received. Only new FCC received on or after July 1, 1998, would be matched at the increased rate. Institutions would not match funds received prior to July 1, 1998, at the higher rate.

Institutions that become Federal Perkins Loan Program ELO participants may make loans to eligible students at higher maximum annual and aggregate limits than is the case with nonparticipating institutions. ELO participating institutions that do not ultimately make any loans at the higher ELO levels for the 1998-99 award year must still honor the ELO Participation Agreement to deposit in the Federal Perkins Loan Program Fund an ICC at least equal to the 1998-99 award year FCC deposited into the Fund. All other administrative procedures would remain the same as for institutions not participating in the Federal Perkins Loan Program ELO.

*ELO Participation Agreement*

*Delivered by Mail:* An ELO Participation Agreement delivered by mail must be addressed to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial management Division, Campus-Based Programs—Expanded Lending Option,

P.O. Box 23781, Washington, DC 20202-0781.

An institution must show proof of mailing its ELO Participation Agreement by the closing date. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an ELO Participation Agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

*ELO Participation Agreement Delivered by Hand and Commercial Delivery Services:* An ELO Participation Agreement delivered by hand must be delivered to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial Management Division, Campus-Based Financial Operations Branch, 7th and D Streets, SW., Room 4714, Regional Office Building 3, Washington, DC. Hand-delivered ELO Participation Agreements will be accepted between 8 a.m. and 4:30 p.m. daily (eastern Daylight Time), except Saturdays, Sundays, and Federal holidays. An ELO Participation Agreement that is hand-delivered will not be accepted after 4:30 p.m. on October 1, 1998.

*Applicable Regulations:* The following regulations apply to this program:

Student Assistance General Provisions, 34 CFR part 668.

Federal Perkins Loan Program, 34 CFR part 674.

Federal Work-Study Program, 34 CFR part 675.

Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

Federal Family Educational Loan Program, 34 CFR part 682.

New Restrictions on Lobbying, 34 CFR part 82.

Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for

Drug-Free Workplace (Grants), 34 CFR part 85.

**FOR FURTHER INFORMATION CONTACT:** For information concerning ELO Participation Agreement submissions, contact Sandra Donelson, Financial Management Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Office of Postsecondary Education, 600 Independence Avenue SW. (Room 4714, R&B-3), Washington, DC 20202-5452. Telephone: 202-708-9751.

For technical assistance concerning the Federal Perkins Loan Program ELO, contact Gail McLarnon or Sylvia R. Ross, Program Specialists, Policy Development Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, Telephone: 202-708-8242. 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 persons listed in the preceding paragraph.

(Catalog of Federal Domestic Assistance Numbers: 84.038, Federal Perkins Loan Program)

Dated: September 3, 1998.

**David A. Longanecker,**  
Assistant Secretary for Postsecondary Education.

[FR Doc. 98-24348 Filed 9-9-98; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### Agency Information Publication Activities

**AGENCY:** Energy Information Administration, DOE

**ACTION:** Solicitation of comments on proposed revision of publication.

**SUMMARY:** The Energy Information Administration (EIA) is soliciting comments from the public on its proposal to revise the *Petroleum Marketing Monthly* (PMM) publication. This revision includes the deletion of some data and the addition of other data.

**DATES:** Comments may be submitted on or before November 9, 1998.

**ADDRESSES:** Send comments to Jacob Bournazian, EI-42, Energy Information

Administration, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington DC 20585-0650, (202) 586-1256, e-mail Jacob.Bournazian@eia.doe.gov, and fax (202) 586-4913.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Jacob Bournazian at the address listed above.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

#### I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy Organization Act (Pub. L. 95-91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

#### II. Current Actions

The EIA proposes to discontinue the hard copy publication of the following data contained in the *Petroleum Marketing Monthly*: (1) Historical summaries of refiner only gasoline volume and price data by grade (Tables 6 and 7) and formulation (Tables 8 through 13). The price data tables will be replaced with more comprehensive refiners'/resellers' price data; (2) detailed refiner only prices of distillate fuel oil by State (Table 37); and (3) State level No. 2 distillate price data for all sellers for the States of Idaho, Washington, Oregon, and Alaska, contained in Tables 39 and 40. EIA will begin publishing No. 2 distillate price data for Texas and California in those same tables.

Also, Table 38 will be revised to include propane price data for select States, in addition to the PADD level prices currently published. The more comprehensive refiner/reseller prices for gasoline, distillate, residual fuel oil and propane will continue to be provided in the detailed tables. Gasoline sales volume data collected by the EIA-782C survey, "Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption" will also continue to be published. The May 1999

issue of the *Petroleum Marketing Monthly* with preliminary data for February 1999 will be the first issue which contains the revised data.

### III. Request for Comments

Subscribers to the *Petroleum Marketing Monthly* are currently being surveyed to solicit their comments on these changes. Prospective users of these data and other interested parties are also invited to comment on the actions discussed in item II. EIA will carefully consider all comments regarding hard copy publication of any data series. Notification of the finalized revisions will be published in the **Federal Register**.

Issued in Washington, D.C. September 3, 1998.

**Jay H. Casselberry,**

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98-24278 Filed 9-9-98; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[IC98-73-001 FERC Form No. 73]

### Proposed Information Collection and Request for Comments

September 3, 1998.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of submission for review by the Office of Management and Budget and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13). Any interested person may file comments on the information collection 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 June 19, 1998 and published in the **Federal Register** on June 25, 1998 (63 FR 34638).

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received on or before October 13, 1998.

**ADDRESSES:** Address comments to the Office of Management and Budget,

Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

#### FOR FURTHER INFORMATION CONTACT:

Michael Miller may be reached by telephone at (202) 208-1415, by fax at (202) 273-0873, and by e-mail at michael.miller@ferc.fed.us.

#### SUPPLEMENTARY INFORMATION:

##### Description

1. *Collection of Information:* FERC Form No. 73 "Oil Pipelines Service Life Data"

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* OMB No. 1902-0019. 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 used by the Commission to implement the statutory provisions of Sections 306 and 402 of the Department of Energy Organization Act 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46277 (September 13, 1977). From these statutory sections the Commission assumed jurisdictional responsibility for oil pipelines from the Interstate Commerce Act, 49 U.S.C. 6501, et al. As part of the information necessary for the subsequent investigation and review of the oil pipeline company's proposed depreciation rates, the pipeline companies are required to provide service life data as part of their data submission if the proposed depreciation rates are based on remaining physical life calculations. This service life data is collected and submitted on FERC Form No. 73.

Data submitted by an oil pipeline company during an investigation may be either initial data or it may be an update to existing data already on file. These data are then used by the Commission as input to several computer programs known collectively as the Depreciation Life Analysis System (DLAS) to assist in the selection of appropriate service lives and book depreciation rates.

Book depreciation rates are used by oil pipeline companies to compute the depreciation portion of their operating

expense which is a component of their cost of service which in turn is used to determine the transportation rate to assess customers. Staff's recommended book depreciation rates become legally binding when issued in an order by the Commission. These rates remain in effect until a subsequent review is requested and the outcome indicates that a modification is justified. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 347 and 357.

5. *Respondent Description:* The respondent universe currently comprises on average, 5 respondents subject to the Commission's jurisdiction.

6. *Estimated Burden:* 200 total burden hours, 5 respondents, 1 response annually, 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 200 hours ÷ 2,088 hours per year times \$109,889 per year equals \$10,525. The cost per respondent is equal to \$2,105.

**Statutory Authority:** 49 U.S.C. 6501.

**Linwood A. Watson, Jr.,**

Acting Secretary.

[FR Doc. 98-24211 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-377-000]

### ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1998.

Take notice that on August 31, 1998, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective September 1, 1998:

Thirty-Third Revised Sheet No. 8

Thirty-Third Revised Sheet No. 9

Thirty-Second Revised Sheet No. 13

Thirty-Ninth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately \$2.6 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates

applicable to Rate Schedule FTS-2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from \$2.8 million to \$2.6 million.

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. 98-24219 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP98-754-000]

### CNG Transmission Corporation; Notice of Application To Abandon

September 3, 1998.

Take notice that on August 31, 1998, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 filed in Docket No. CP98-754-000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for authority to abandon storage services under CNG's Rate Schedule GSS-II, over a five-year period commencing as of November 1, 1998. CNG states that its application has been filed to implement the provisions of Article VII of the Stipulation and Agreement (the Stipulation) that was also filed on August 31, 1998, in Docket No. RP97-406-000, *et al.* In the Stipulation, CNG seeks authorization to convert GSS-II services to corresponding levels of

service under the terms and conditions of CNG's Rate Schedules GSS and FT. CNG also requests that the Commission consolidate its review of the instant application with its consideration of the offer of settlement in Docket No. RP97-406-000, *et al.* CNG's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or making any protest with reference to said application should on or before September 21, 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. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. 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 NGA 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 permission and approval of 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 CNG to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98-24213 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TM99-1-32-000]

### Colorado Interstate Gas Company; Notice of Tariff Filing

September 3, 1998.

Take notice that, on August 31, 1998, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 11A, with an effective date of October 1, 1998.

CIG states that Ninth Revised Sheet No. 11A, reflects an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.70% to 0.98% reflecting a decrease in the fuel reimbursement percentage for Transportation Fuel Gas from 2.48% to 2.38%, and reflecting an increase in the fuel reimbursement percentage for Storage Fuel Gas from 1.25% to 1.29% effective October 1, 1998.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

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. 98-24234 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP98-389-000]

**Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff**

September 3, 1998.

Take notice that on August 31, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheets, bearing a proposed effective date of October 1, 1998:

Twenty-eighth Revised Sheet No. 25  
 Twenty-eighth Revised Sheet No. 26  
 Twenty-eighth Revised Sheet No. 27  
 Twenty-eighth Revised Sheet No. 28  
 Thirteenth Revised Sheet No. 29  
 Sixteenth Revised Sheet No. 30  
 Twelfth Revised Sheet No. 31  
 Second Revised Sheet No. 46  
 Second Revised Sheet No. 55  
 Second Revised Sheet No. 58  
 Third Revised Sheet No. 60  
 Second Revised Sheet No. 61  
 Second Revised Sheet No. 64  
 Third Revised Sheet No. 66  
 Second Revised Sheet No. 70  
 Second Revised Sheet No. 75  
 Second Revised Sheet No. 78  
 Second Revised Sheet No. 82  
 Second Revised Sheet No. 84  
 Third Revised Sheet No. 86  
 Second Revised Sheet No. 88  
 Second Revised Sheet No. 90  
 Second Revised Sheet No. 92  
 Third Revised Sheet No. 94  
 First Revised Sheet No. 95A  
 Second Revised Sheet No. 98  
 Second Revised Sheet No. 99A  
 First Revised Sheet No. 99C  
 First Revised Sheet No. 99E  
 First Revised Sheet No. 99G  
 First Revised Sheet No. 99I  
 First Revised Sheet No. 99K  
 First Revised Sheet No. 99M  
 First Revised Sheet No. 99O

Columbia states that it is tendering the administrative filing to cancel certain sheets relating to the allocation and collection of various charges billed to its customers over various amortization periods. These amounts reflect the allocation and collection of (i) Order Nos. 500/528 Take-or-Pay flow through amounts; (ii) Account No. 191 direct billings, and; (iii) Accrued-But-Not-Paid Gas Costs pursuant to Docket Nos. GP94-2, et. al. In addition, Columbia is removing the footnote on its rate sheets which informed shippers that acceptance and payment of invoices based on settlement rates in Docket RP95-408 constituted their agreement to pay the surcharge if the settlement was not implemented.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

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, N.E., Washington, D.C. 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. 98-24231 Filed 9-9-98; 8:45 am]  
 BILLING CODE 6717-01-M

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. 98-24226 Filed 9-9-98; 8:45 am]  
 BILLING CODE 6717-01-M**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP98-380-000]

**East Tennessee Natural Gas Company; Notice of Tariff Filing**

September 3, 1998.

Take notice that on August 31, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets for inclusion in East Tennessee's, with an effective date of October 1, 1998:

Fifth Revised Sheet No. 52A  
 Original Sheet No. 52B  
 Original Sheet No. 52C  
 Original Sheet No. 213A  
 Original Sheet No. 213B

East Tennessee states that the purpose of this filing is to implement additional service flexibility, the Storage Delivery Option (SDO). SDO enables a Balancing Party under East Tennessee's LMS-MA Rate Schedule to mitigate Unauthorized Overrun Charges resulting from quantities taken in excess of a Balancing Party's Maximum Allowed Deliveries Transportation Quantity ("MAD TQ") by having East Tennessee schedule withdrawals from the Balancing Party's storage account. East Tennessee further states that this flexibility is being provided in response to requests from several of East Tennessee's customers for a mechanism that allows them to mitigate Unauthorized Overrun Charges by providing gas from their storage accounts attached to East Tennessee's system to make-up for excess takes.

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, N.E., Washington, D.C. 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

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP98-384-000]

**Destin Pipeline Company, L.L.C.; Notice of Tariff Filing**

September 3, 1998.

Take notice that on August 31, 1998, Destin Pipeline Company, L.L.C. (Destin) tendered for filing certain modifications to its FERC Gas Tariff, Original Volume No. 1 to become effective on October 1, 1998.

Destin states that the purpose of this filing is to incorporate modifications resulting from discussions with its shippers, as more particularly described in Destin's August 31, 1998 filing.

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, N.E., Washington, D.C. 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

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. 98-24222 Filed 9-09-98; 8:45 am]  
BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TM99-1-34-000]

### Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1998.

Take notice that on August 31, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective October 1, 1998, the following tariff sheets:

Twenty-Ninth Revised Sheet No. 8A

Twentieth Revised Sheet No. 8A.01

Twenty-First Revised Sheet No. 8A.02

Twenty-Fifth Revised Sheet No. 8B

Eighteenth Revised Sheet No. 8B.01

FGT states that Section 27 of the General Terms and Conditions (GTC) of its Tariff providers for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is proposing to establish an FRCP of 2.84% to become effective October 1, 1998. Pursuant to the terms of Section 27.B of the GTC, FGT may file for adjustments to actual fuel usage and lost and unaccounted for gas or deliveries when computing its FRCP. FGT believes that the percentage of deliveries of 2.38% experienced from

October, 1997 through March, 1998, the period which is the basis for the calculation of the FRCP to become effective October 1, 1998, should be adjusted to recognize that this is the lowest percentage of deliveries FGT has experienced for the past five Winter Periods. Only one other Winter Period percentage was below 3.00% for the previous five Winter Periods.

Accordingly, FGT has adjusted the actual percentage of deliveries of 2.38% to reflect FGT's historical weighted average percentage of deliveries for the previous five Winter Periods of 2.84%.

FGT further states that it is filing to establish a Winter Period UFS of <\$0.0118> per MMBtu to become effective October 1, 1998.

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, N.E., Washington, D.C. 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. 98-24235 Filed 9-9-98; 8:45 am]  
BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TM99-1-4-000]

### Granite State Gas Transmission, Inc.; Notice of Changes in FERC Gas Tariff

September 3, 1998.

Take notice that on August 31, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on October 1, 1998:

Fifteenth Revised Sheet No. 21, and Sixteenth Revised Sheet No. 22.

According to Granite State, the revised tariff sheets state the Power Cost Adjustment (PCA) surcharge applicable to its firm transportation services during the fourth quarter of 1998. Granite State further states that the PCA is a tariff tracking mechanism to pass through to its firm transportation customers certain incremental electric power costs which Granite State is obligated to reimburse Portland Pipe Line Corporation pursuant to the terms of a lease of a pipeline facility from Portland Pipe Line.

According to Granite State, the fourth quarter PCA has been calculated consistent with revisions in the tariff provision approved by the Commission in letter orders issued June 25, 1998 and August 18, 1998 in Docket Nos. RP98-155-003 and TM98-4-4-001.

Accordingly, Granite State says that the surcharge consists of two components: a Quarterly Forecast PCA factor of \$0.2360 based on projected incremental electric power to be billed to Granite State during the fourth quarter of 1998, as estimated by Portland Pipe Line and the Reconcilable PCA factor of \$0.5765 which reconciles the past accumulated over/under collections in the Deferred Account.

Granite State further states that its filing has been served upon its firm transportation customers, and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

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. 98-24232 Filed 9-9-98; 8:45 am]  
BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. TM99-1-134-000]

**Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff**

September 3, 1998.

Take notice that on August 28, 1998, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, Original volume No. 1, Second Revised Sheet No. 4, with an effective date of October 1, 1998.

Mississippi Canyon states that the filing is being made to comply with the Commission's directives in Order 472 and Order 472-B, to be effective October 1, 1998.

Mississippi Canyon states that the purpose of this filing is to implement the tracking of the ACA Unit Surcharge authorized by the Commission to be applied to rates for the fiscal year 1999 for recovery of the Annual Charge for fiscal year 1998. The ACA Unit Surcharge authorized by the Commission for fiscal year 1999 is \$0.0021.

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, N.E., Washington, D.C. 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. 98-24238 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RP98-356-001]

**Mississippi River Transmission Corporation; Notice of Compliance Filing**

September 3, 1998.

Take notice that on August 28, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing in compliance with the Commission's order issued on August 14, 1998, filed data required by Commission order in its order in Docket No. RP98-356-000.

Specifically, MRT filed under seal, marked "Privileged and Confidential—Do Not Release" additional data to support the allocation methodology used in calculating the Account 191 jurisdictional and non-jurisdictional amounts allocated to its customers in the July 17, 1998 filing. MRT states the data submitted supporting its allocation methods is privileged and is subject to the execution of a Confidentiality and Non-Disclosure Agreement.

MRT states that a copy of the filing, excluding the sensitive information marked privileged, is being mailed to each of MRT's former jurisdictional and non-jurisdictional sales customers, parties to this proceeding and to the state commissions of Arkansas, Illinois and Missouri.

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. 98-24217 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RP98-382-000]

**National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff**

September 3, 1998.

Take notice that on August 31, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixth Revised Sheet No. 8, to become effective October 1, 1998.

National states that this filing reflects the quarterly adjustment to the reservation component of the EFT rate pursuant to the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

In addition, National states that the filing includes a final reservation charge from Tennessee Gas Pipeline Company (Tennessee) for the month of October 1998. This completes the buyout agreement with Tennessee under Contract No. 7394.

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, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 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. 98-24224 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RP98-379-000]

**Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff**

September 3, 1998.

Take notice that on August 31, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, proposed tariff sheets to be effective October 1, 1998.

Natural states that the purpose of this filing is to establish a new charge for the collection of gas supply realignment costs. The new charge would be a very small assessment on transportation to pooling points in the zone of receipt under Rate Schedule ITS. In conjunction with instituting this new charge, Natural proposes to recalculate and substantially reduce the presently effective GSR charges.

Natural requested any waiver which may be required to permit the tendered tariff sheets to become effective October 1, 1998.

Natural states that copies of the filing have been mailed to Natural's customers and interested state regulatory commissions.

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 § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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. 98-24221 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RP98-388-000]

**Natural Gas Pipeline Company of America; Notice of Filing of Reconciliation Report**

September 3, 1998.

Take notice that on August 31, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing a request for privileged treatment, pursuant to 18 CFR Sections 385.112((b)(1), for the document submitted with the Commission in the above docketed proceeding.

Natural states that the document is the Reconciliation Report pertaining to Natural's gas supply realignment (GSR) cost recovery program for the period from December 1, 1993 through November 30, 1997, which has been prepared and is being submitted pursuant to Section 38.10 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Volume No. 1 (GT&C). Natural claims that the information provided is confidential, proprietary and commercially sensitive and therefore exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. Section 552.

Natural states that public disclosure of this data could be used to the disadvantage of Natural and of Shippers on its system.

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 on or before September 10, 1998. 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. 98-24230 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RP96-200-033]

**NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff**

September 3, 1998.

Take notice that on August 31, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective September 1, 1998:

Fifth Revised Sheet No. 7E.02

NGT states that the purpose of this filing is to reflect the expiration of negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 98-24215 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RP98-341-001]

**Northern Natural Gas Company; Notice of Compliance Filing**

September 3, 1998.

Take notice that on August 31, 1998, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective January 2, 1999. Substitute First Revised Sheet No. 304

Northern states that the above-referenced tariff sheet amends the General Terms and Conditions of Northern's Tariff in compliance with the Commission's Order issued July 31,

1998 in Docket No. RP98-341-000, to allow Northern to acquire and hold interruptible contractual rights on other pipelines for transportation and storage capacity for operational support.

Northern further states that copies of the filing have been mailed to each of its 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, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 98-24216 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-385-000]

#### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1998.

Take notice that on August 31, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revises Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 Surcharge which is designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 3 Revised Substitute 43 Sheet Nos. 50 and 51 and the 2 Revised Substitute 40 Revised Sheet No. 53 to be effective October 1, 1998.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

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, N.E., Washington, D.C. 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

Rules and Regulation. All such motions or protects 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. 98-24227 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-386-000]

#### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1998.

Take notice that on August 31, 1998, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 1998:

Second Revised Substitute 43 Revised Sheet No. 50

Second Revised Substitute 43 Revised Sheet No. 51

Northern states that the filing revises the current GSR surcharge which is designed to recover Northern's gas supply realignment costs and applicable carrying charges. Therefore, Northern has filed the Second Revised Substitute 43 Revised Sheet No. 50 and 51 to revise the GSR surcharge effective October 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. 98-24228 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-376-000]

#### Panhandle Eastern Pipe Line Company; Notice of Filing of Reconciliation Report

September 3, 1998.

Take notice that on August 28, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its final reconciliation report in accordance with Commission's order issued October 29, 1997 in Docket No. RP97-536-000, 81 FERC 61,105 (1997). The Commission's October 29, 1997 order required the filing of a reconciliation report as soon as practicable following the suspension of the Stranded Transportation Cost Reservation Surcharge.

Panhandle states that its filing of July 1, 1998, in Docket No. RP98-299-000 reduced the Stranded Transportation Cost Reservation Surcharge applicable to firm transportation services provided under Rate Schedules FT, EFT and LFT and the Stranded Transportation Cost Volumetric Surcharge applicable to service provided under Rate Schedule SCT for the Reconciliation Recovery Period effective August 1, 1998.

Panhandle's July 1, 1998 filing was approved by Commission letter order issued July 20, 1998.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies on all parties to the proceedings in Docket Nos. RP97-536-000 and RP98-299-000.

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, N.E., Washington, D.C. 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 on or before September 10, 1998. 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. 98-24218 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP98-751-000]

#### Southern Natural Gas Company; Notice of Application

September 3, 1998.

Take notice that on August 26, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP98-751-000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon by sale to Whiskey Bay Pipeline Company, Ltd (Whiskey Bay), a Louisiana intrastate pipeline company, various pipeline, measurement and appurtenant facilities located in Iberville and St. Martin Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Southern states that it proposes to abandon, by sale to Whiskey Bay, the Bayou Boullion Line consisting of 6.45 miles of 10-inch pipeline, and related facilities, located in St. Martin Parish, Louisiana; the East Happytown Line consisting of 11.13 miles of 8-inch pipeline, and related facilities, located in St. Martin Parish, Louisiana; the Wilbert Well Line consisting of 0.65 mile of 4-inch pipeline, and related facilities, located in St. Martin Parish, Louisiana; the Bayou Boullion Lateral Line consisting of 1.2 miles of 4-inch pipeline, and related facilities, located in St. Martin Parish, Louisiana; the East Happytown Exchange Station consisting of dual 4-inch orifice meter runs, and related facilities, excluding any electronic gas measurement equipment, located in St. Martin Parish, Louisiana; the Cone Mills Receiving Station consisting of a single 3-inch orifice meter run, and related facilities, excluding any electronic gas measurement equipment, located in Iberville Parish, Louisiana; the Wilbert Well Receiving Station consisting of a

single 4-inch orifice meter run, and related facilities, excluding any electronic gas measurement equipment, located in St. Martin Parish, Louisiana; and the Bayou Boullion Receiving Station consisting of a single 4-inch orifice meter run, and related facilities, excluding any electronic gas measurement equipment, located in St. Martin Parish, Louisiana. Southern maintains that it is no longer economical to maintain the above facilities in view of the minimal gas production that is received by the facilities.

Southern states that it has no firm transportation services on the facilities to be abandoned; however, some producers have gas production on the facilities. Southern states that upon abandonment these producers may elect to deliver gas volumes to Whiskey Bay's pipeline system. In addition, Southern states that the producers may access Southern's pipeline system or another interstate system through existing interconnections in the area.

Southern states that it will sell the above facilities to Whiskey Bay for \$30,000. Southern further states that Whiskey Bay has agreed to purchase the above facilities so that Whiskey Bay can connect the purchased facilities to pipeline facilities that Whiskey Bay purchased from the Gas Gathering Company (Gas Gathering) located in St. Martin Parish, Louisiana. It is stated that according to terms of the purchase and sales agreement, Whiskey Bay has the option to connect the facilities to Southern's pipeline system through a meter station to be constructed at the terminus of the facilities if Southern and Whiskey Bay enter into a mutually acceptable construction, installation, operation and maintenance agreement for such a meter station. Otherwise, Whiskey Bay will disconnect the facilities from Southern's pipeline system and Whiskey Bay may continue to flow gas through Southern's pipeline or another interstate pipeline company's system through the facilities that Whiskey Bay purchased from Gas Gathering in St. Martin Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 24, 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 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 Southern to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98-24212 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-383-000]

#### Southern Natural Gas Company; Notice of Cost Recovery Filing

September 3, 1998.

Take notice that on August 31, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of October 1, 1998:

Fortieth Revised Sheet No. 14  
Twenty-Fifth Revised Sheet No. 14a  
Sixty-First Revised Sheet No. 15  
Thirty-First Revised Sheet No. 15a  
Fortieth Revised Sheet No. 16  
Twenty-Fifth Revised Sheet No. 16a  
Sixty-First Revised Sheet No. 17  
Thirty-First Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc.

from the period May 1, 1998 through July 1, 1998. These costs have arisen as a direct result of restructuring under Order No. 636. Copies of the filing were served upon Southern's customers and interested state commissions.

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, N.E., Washington, D.C. 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. 98-24225 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-378-000]

### Tennessee Gas Pipeline Company; Notice of Tariff Filing

September 3, 1998.

Take notice that on August 31, 1998, Tennessee Gas Pipeline Company (Tennessee), filed the revised tariff sheets listed on Appendix A to the filing, to be included in its FERC Gas Tariff.

Tennessee states that this filing proposes new tariff provisions that would enable Tennessee and a shipper under certain limited circumstances to enter into different types of discount agreements without such agreements receiving prior approval from the Federal Energy Regulatory Commission as material deviation agreements. Tennessee further states that the proposed tariff provisions would allow Tennessee and a shipper to enter into agreements for specific discounts on specified volumes, during specified periods of time, and at designated points, storage points, zones or geographical areas. Tennessee requests an effective date of October 1, 1998.

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, N.E., Washington, D.C. 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. 98-24220 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TM99-1-18-000]

### Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1998.

Take notice that on August 28, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with an effective date of November 1, 1998:

Sixth Revised Sheet No. 14

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 Fuel Retention as found in the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1. The revised EFRP will be in effect for the annual period November 1, 1998, through October 31, 1999. The instant filing generally results in net reductions of fuel retention percentages versus the percentages for the annual period beginning November 1, 1997.

Texas Gas states that copies of the tariff sheet are being mailed to Texas Gas's affected customers and interested state commission.

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. 98-24233 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-381-000]

### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1998.

Take notice that on August 31, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets. Transco states that Appendix B attached to the filing contains the enumeration of the revised tariff sheets. Such tariff sheets are proposed to be effective October 1, 1998.

Transco states that the purpose of the instant filing is to implement the offering of firm transportation service on Transco's production area supply laterals as permitted by the Commission's Opinion Nos. 405, et seq., issued in Transco's Docket Nos. RP92-137 and RP93-136 (Phase I). Opinion No. 405 expressly authorizes Transco to make a limited Section 4 filing to implement that service.

As is detailed in the Statement of Nature, Reasons and Basis, included as Appendix A thereto, Transco is proposing to offer firm transportation service on Transco's production area supply laterals upstream of Station 30, 45, 50 and 62 and on Transco's mainline upstream of Stations 30 (collectively referred to as "production area supply laterals"), pursuant to a sixty day open season which is to commence following Commission approval of the instant filing. Firm transportation service on those production area supply laterals

will replace Transco's "IT feeder" service structure and will be made available pursuant to three new firm transportation rate schedules, which are included in Appendix B thereto. These new rate schedules have been developed to address the needs of production area shippers, and in particular Outer Continental Shelf (OCS) shippers, for flexible firm transportation service and to allow Transco to better compete with pipelines currently offering comparable services for the attachment of new production area supplies.

The three new firm transportation rate schedules are: Rate Schedule FTSL1, a receipt-point based traditional firm transportation service; Rate Schedule FTSL2, a receipt-point based firm transportation service requiring a reserve commitment and providing for varying contract quantities over time; and Rate Schedule FTSL3, a receipt-point based firm transportation service providing for varying contract quantities over time.

Transco states that copies of the filing are being mailed to its customers, state commissions, and other interested parties.

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. 98-24223 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. TM99-1-126-000]

**Tuscarora Gas Transmission Company; Notice of Tariff Filing**

September 3, 1998.

Take notice that on August 31, 1998, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective October 1, 1998.

Second Revised Sheet No. 4

Second Revised Sheet No. 5

Tuscarora asserts that the purpose of this filing is to reflect an increase in the Annual Charge Adjustment (ACA) for jurisdictional transportation customers in accordance with the Commission's Statement of Annual Charges. Tuscarora states that copies of this filing were mailed to customers of Tuscarora and interested state regulatory agencies.

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. 98-24237 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RP98-387-000]

**Williston Basin Interstate Pipeline Company; Notice of Tariff Filing**

September 3, 1998.

Take notice that on August 31, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff,

Second Revised Volume No. 1, the following revised tariff sheets to become effective October 1, 1998:

Fifth Revised Sheet No. 91

Original Sheet No. 91A

Fifth Revised Sheet No. 123

Original Sheet No. 123A

Sixth Revised Sheet No. 206

Third Revised Sheet No. 608A

Third Revised Sheet No. 658

Williston Basin states that it is proposing to add language to its interruptible transportation and storage Rate Schedules and Form of Service Agreements to specify the types of volume-related or other specified discount terms which may be granted by Williston Basin to reduce the need to file individual Service Agreements under Rate Schedules IT-1 and IS-1 which contain such deviations.

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, N.E., Washington, D.C. 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. 98-24229 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. TM99-1-119-000]

**Young Gas Storage Company, Ltd.; Notice of Filing**

September 3, 1998.

Take notice that on August 28, 1998, Young Gas Storage Company, Ltd. (Young) submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 4, with an effective date of October 1, 1998.

Young states that the Tariff sheets reflect an increase in the ACA adjustment charge, resulting in a new ACA rate of \$0.0022 per Dth based on Young's 1988 ACA billing.

Young requests that the new \$0.0022 cent per Dth ACA charge be effective October 1, 1998.

Young states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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. 98-24236 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER96-1410-010, et al.]

### Cook Inlet Energy Supply, L.P., et al.; Electric Rate and Corporate Regulation Filings

September 1, 1998.

Take notice that the following filings have been made with the Commission:

#### 1. Cook Inlet Energy Supply, L.P.

[Docket No. ER96-1410-010]

Take notice that on August 26, 1998, Cook Inlet Energy Supply, L.P. (Cook Inlet), tendered for filing notification of changed facts informing the Commission that its affiliate Portland General Electric intends to offer certain non-jurisdictional brokering services to all participants in the Western Systems Coordinating Council (WSCC), including Cook Inlet and other PGE affiliates.

*Comment date:* September 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 2. Enron Wind Development Corp., and Storm Lake Power Partners I, LLC

[Docket Nos. EC98-56-000 and ER98-4229-000]

Take notice that on August 28, 1998, Enron Wind Development Corp., and Storm Lake Power Partners I, LLC (collectively, Applicant), filed with the Federal Energy Regulatory Commission an Application for Approval of Transaction Under Section 203 of the Federal Power Act. On August 28, 1998, Applicant submitted an Exhibit to that Application.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 3. Abacus Group Ltd.

[Docket No. ER98-4240-000]

Take notice that on August 24, 1998, Abacus Group, Ltd., tendered for filing an amendment to its petition for acceptance of initial rate schedule, waivers, and blanket authority, including Abacus Group, Ltd., Rate Schedule FERC No. 1, under which AGL will engage in wholesale electric power and energy transactions as a marketer.

*Comment date:* September 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Niagara Mohawk Power Corporation

[Docket No. ER98-4364-000]

Take notice that on August 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system west of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA 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.

NMPC requests an effective date of August 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 5. Niagara Mohawk Power Corporation

[Docket No. ER98-4365-000]

Take notice that on August 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and H.Q. Energy Services (U.S.), Inc. This Transmission Service Agreement specifies that H.Q. Energy Services (U.S.), Inc., 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 H.Q. Energy Services (U.S.), Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for H.Q. Energy Services (U.S.), Inc., as the parties may mutually agree.

NMPC requests an effective date of August 21, 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 H.Q. Energy Services (U.S.), Inc.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 6. Niagara Mohawk Power Corporation

[Docket No. ER98-4366-000]

Take notice that on August 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Transmission Service Agreement between NMPC and H.Q. Energy Services (U.S.), Inc. This Transmission Service Agreement specifies that H.Q. Energy Services (U.S.), Inc. 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 H.Q. Energy Services (U.S.), Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for H.Q. Energy Services (U.S.), Inc., as the parties may mutually agree.

NMPC requests an effective date of August 21, 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 H.Q. Energy Services (U.S.), Inc.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**7. Niagara Mohawk Power Corporation**

[Docket No. ER98-4367-000]

Take notice that on August 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Advantage Energy, Inc. This Transmission Service Agreement specifies that Advantage Energy, Inc. 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 Advantage Energy, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Advantage Energy, Inc. as the parties may mutually agree.

NMPC requests an effective date of August 14, 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 Advantage Energy, Inc.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**8. Ohio Edison Company and Pennsylvania Power Company**

[Docket No. ER98-4370-000]

Take notice that on August 27, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with El Paso Energy Marketing under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. Carolina Power & Light Company**

[Docket No. ER98-4371-000]

Take notice that on August 27, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of August 20, 1998, for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission

and the South Carolina Public Service Commission.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)**

[Docket No. ER98-4372-000]

Take notice that on August 27, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Marshfield Electric and Water Department (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on August 10, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)**

[Docket No. ER98-4373-000]

Take notice that on August 27, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and PacifiCorp (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on August 10, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)**

[Docket No. ER98-4374-000]

Take notice that on August 27, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an executed Short-Term Market-Based Electric Service Agreement between NSP and PacifiCorp (Customer).

NSP requests that this Short-Term Market-Based Electric Service

Agreement be made effective on August 10, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. Puget Sound Energy, Inc.**

[Docket No. ER98-4375-000]

Take notice that on August 27, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with New Energy Ventures, L.L.C. (NEV), as Transmission Customer.

A copy of the filing was served upon NEV.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. New Energy Holdings, Inc.**

[Docket No. ER98-4376-000]

On August 27, 1998, New Energy Holdings, Inc. (NEV Holdings), tendered for filing a notice of succession in operations pursuant to 18 CFR 35.16 in order to reflect its name change from New Energy, Inc.

NEV Holdings requests waiver of the 60 day prior notice requirement to allow its name change to become effective immediately for the purposes of the Commission's filing requirements. NEV Holdings' request is consistent with the provisions of 18 CFR 3516.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Washington Water Power**

[Docket No. ER98-4377-000]

Take notice that on August 27, 1998, Washington Water Power tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with TransAlta Energy Marketing (U.S.) Inc.

WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. Arizona Public Service Company**

[Docket No. ER98-4378-000]

Take notice that on August 27, 1998, Arizona Public Service Company (APS), tendered for filing revised tariff sheets under APS' Open Access Transmission

Service Tariff (APS' OATT). APS seeks authority to waive, under certain circumstances and on a non-discriminatory basis, the deposit required to accompany applications for both Point-To-Point Transmission Service and Network Integration Transmission Service.

APS requests an effective date of August 28, 1998, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing has been served on the Arizona Corporation Commission and all customers served under the APS OATT.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 17. Energy West Power Co., LLC

[Docket No. ER98-4380-000]

Take notice that on August 27, 1998, Energy West Power Co., LLC, tendered for filing notice that effective August 27, 1998, Rate Schedule FERC No. 1, effective date December 28, 1995, filed by Energy West Power Company, LLC is proposed to be canceled.

Energy West Power Company, LLC states that there are no parties on whom to serve this notice of the proposed cancellation.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 18. Energy Atlantic, LLC

[Docket No. ER98-4381-000]

Take notice that on August 27, 1998, Energy Atlantic, LLC (Energy Atlantic), a wholly-owned subsidiary of Maine Public Service Company, submitted for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Tariff FERC No. 1, a market-based rate schedule.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 19. NGE Generation, Inc.

[Docket No. ER98-4382-000]

Take notice that on August 27, 1998, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements (the Service Agreements) under which NGE Gen may provide capacity and/or energy to SCANA Energy Marketing, Inc. (SCANA), Total Gas & Electric, Inc. (Total G&E), and

National Fuel Resources, Inc. (National Fuel) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreements with SCANA, Total G&E, and National Fuel become effective as of August 28, 1998.

NGE Gen has served copies of the filing upon the New York State Public Service Commission, SCANA, Total G&E, and National Fuel.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 20. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER98-4383-000]

Take notice that on August 27, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to Pasadena Cogeneration, L.P. (Pasadena), the City of Robstown, Texas (Robstown) and the City of Hearne, Texas (Hearne) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of the filing has been served on Pasadena, Robstown and Hearne.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

#### 21. Long Island Power Authority

[Docket No. ER98-4405-000]

Take notice that on August 27, 1998, Long Island Power Authority (Authority), tendered for filing notice of succession and request for clarification in the above-referenced docket.

*Comment date:* September 16, 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. 98-24300 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Docket No. EG98-108-000, et al.]

#### Tenaska Frontier Partners, Ltd., et al.; Electric Rate and Corporate Regulation Filings

September 2, 1998.

Take notice that the following filings have been made with the Commission:

#### 1. Tenaska Frontier Partners, Ltd.

[Docket No. EG98-108-000]

Take notice that on August 26, 1998, Tenaska Frontier Partners, Ltd., a Texas limited partnership, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is proposing to construct and own an independent power production facility in Grimes County, Texas. Major plant equipment will consist of three combustion turbine-generators, three heat recovery steam generators and one steam turbine generator with a nominal net plant output of 830 MW. The primary fuel supply for the facility will be natural gas. Fuel oil will be used as a back-up fuel supply. Net capacity and electric energy will be sold to PECO Energy Company for resale and, under certain conditions, to others for resale. Under certain conditions, natural gas may be sold to PECO in lieu of electric power. Waste water will be transported to spray field and used to irrigate crops.

Applicant states that it is engaged directly and exclusively in the business of owning the facility and selling electric energy at wholesale. No rate or charge for, or in connection with, the construction of the Facility or for electric energy produced by the Facility was in effect under the laws of any state as of the date of enactment of Section 32 of the Public Utility Holding Company Act.

*Comment date:* September 21, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

## 2. New York State Electric & Gas Corporation, NGE Generation, Inc., AES NY, L.L.C.

[Docket Nos. EC98-57-000 and ER98-4406-000]

Take notice that on August 28, 1998, New York State Electric & Gas Corporation, NGE Generation, Inc. and AES NY, L.L.C. (collectively, the Applicants) tendered for filing an application for approval to transfer jurisdictional facilities, as more fully set forth in the application, to the extent that Section 203 of the Federal Power Act requires this approval. The Applicants also tendered for filing certain agreements pursuant to Section 205 of the Federal Power Act, providing for services related to the transfer of facilities.

The Applicants have served a copy of this filing on the New York Public Service Commission.

*Comment date:* September 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 3. Sonat Power Marketing Inc.

[Docket No. ER95-1050-014]

Take notice that on August 31, 1998, Sonat Power Marketing Inc. (SPM), tendered for filing a Market Power Analysis in compliance with the Commission's Order Approving SPMI's Market-based Rates issued August 18, 1995 in Docket No. ER95-1050-000.

*Comment date:* September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 4. Wisconsin Public Service Corp.

[Docket Nos. ER95-1528-005, ER95-1528-003, ER96-1088-000, ER96-1088-002, and OA96-79-000]

Take notice that on August 31, 1998, Wisconsin Public Service Corporation (WPSC) tendered for filing a supplemental compliance report for refunds required due to settlement of transmission tariffs.

*Comment date:* September 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 5. Atlantic City Electric Co.

[Docket No. ER96-1361-006]

Take notice that on August 28, 1998, Atlantic City Electric Company (Atlantic City) filed a letter agreement providing for revised refunds to Vineland Municipal Electric Utility (Vineland) of \$3,565.29. The revised figure is the

result of negotiations between Atlantic City and Vineland and has been approved by a resolution of the Vineland City Council.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 6. Idaho Power Co.

[Docket No. ER98-1283-000]

Take notice that on August 27, 1998, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a revised Exhibit 1, Rate Schedule, to the Agreement for the Supply of Power and Energy between the City of Weiser, Idaho and Idaho Power Company dated December 30, 1997.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 7. Washington Water Power Co.

[Docket No. ER98-4233-000]

Take notice that on August 28, 1998, The Washington Water Power Company (WWP) tendered for filing two revised tariff pages implementing the revision to its FERC Electric Tariff, Original Volume No. 9 (Tariff) proposed in the August 14, 1998 filing. The filing of these replacement pages does not affect the substantive discussion in WWP's August 14, 1998 filing, but merely incorporates the proposed change on the relevant service schedules.

Copies of the filing were served upon all of WWP's Tariff customers.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 8. Niagara Mohawk Power Corp.

[Docket No. ER98-4368-000]

Take notice that on August 27, 1998, Niagara Mohawk Power Corporation (ANMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Advantage Energy, Inc. This Transmission Service Agreement specifies that Advantage Energy, Inc. 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 Advantage Energy, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Advantage Energy, Inc. as the parties may mutually agree.

NMPC requests an effective date of August 14, 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 Advantage Energy, Inc.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 9. Niagara Mohawk Power Corp.

[Docket No. ER98-4369-000]

Take notice that on August 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system East of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA 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.

NMPC requests an effective date of August 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 10. New England Power Co.

[Docket No. ER98-4379-000]

Take notice that on August 27, 1998, New England Power Company (NEP) tendered for filing with the Federal Energy Regulatory Commission, Service Agreements between itself and the following companies under its tariff for capacity and capacity related products, FERC Electric Tariff Original Volume No. 11:

Washington Electric Cooperative, dated June 15, 1998; Central Vermont Public Service Corporation, dated July 29, 1998; and

Connecticut Municipal Electric Cooperative, dated July 31, 1998.

Copies of this filing were served on the parties to the Service Agreement and the following Commission offices: Connecticut Department of Public Utility Control, Vermont Department of Public Service, and Commonwealth of Massachusetts, Department of Telecommunications and Energy.

*Comment date:* September 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. New York State Electric & Gas Corp.**

[Docket No. ER98-4384-000]

Take notice that on August 28, 1998, New York State Electric & Gas Corporation (NYSEG), filed executed Network Service and Network Operating Agreements between NYSEG and Advantage Energy, Inc. These Agreements specify that the Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date of August 1, 1998, for the Service Agreements.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. MidAmerican Energy Co.**

[Docket No. ER98-4385-000]

Take notice that on August 28, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing with the Commission an amendment (Amendment) to its Service Agreement with the Resale Power Group of Iowa (RPGI). The said Service Agreement, entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5, was effective August 1, 1997; execution of the Amendment was completed on August 18, 1998.

MidAmerican requests an effective date of August 18, 1998, for this Amendment, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the RPGI, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. New England Power Co.**

[Docket No. ER98-4386-000]

Take notice that on August 28, 1998, New England Power Company (NEP), tendered for filing (i) An Amended Network Integration Transmission Service Agreement between NEP and Massachusetts Bay Transportation Authority (MBTA), under NEP's FERC Electric Tariff, Original Volume No. 9;

and (ii) A First Amendment to Amended and Restated Distribution Agreement between NEP's affiliate, Massachusetts Electric Company, and the MBTA.

NEP requests an effective date of September 1, 1998, for the filings.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Washington Water Power Co.**

[Docket No. ER98-4387-000]

Take notice that on August 28, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, a executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Western Area Power Administration, Folsom, California, which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER97-1252-000, Service Agreement No. 60, effective December 15, 1996.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. New York State Electric Gas Corp.**

[Docket No. ER98-4388-000]

Take notice that on August 26, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and DTE Energy Trading (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms, and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97-2353-000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of August 29, 1998, for the Service Agreements. NYSEG has served copies of the filing on the New York State Public Service Commission and on the Customer.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. New England Power Co.**

[Docket No. ER98-4389-000]

Take notice that on August 28, 1998, New England Power Company (NEP) tendered for filing an Amended and Restated Installation and Facilities Support Agreement between NEP and Vermont Electric Power Company.

NEP respectfully requests waiver of the Commission's 60-day advance notice requirements for the Amended

Support Agreement and requests that it be made effective September 1, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. American Electric Power Service Corp.**

[Docket No. ER98-4390-000]

Take notice that on August 28, 1998, the American Electric Power Service Corporation (AEPSC) tendered for filing Firm Point-to-Point Transmission Executed Service Agreements under AEP Companies' Open Access Transmission Service Tariff (OATT) for Allegheny Energy and Enserch Energy Services, Inc. and Non-firm Point-to-Point Transmission Service for Allegheny Energy, Enserch Energy Services, Inc. and PG&E Energy Trading-Power, L.P.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after August 1, 1998.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. South Carolina Electric & Gas Co.**

[Docket No. ER98-4391-000]

Take notice that on August 28, 1998, South Carolina Electric & Gas Company (SCE&G), tendered a service agreement establishing Aquilla Power Corporation (APC), as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of August 25, 1997. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon SCEM, and the South Carolina Public Service Commission.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. South Carolina Electric & Gas Co.**

[Docket No. ER98-4392-000]

Take notice that on August 28, 1998, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreements establishing Southern Company Energy Marketing, L.P. (SCEM), as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon SCEM, and the South Carolina Public Service Commission.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 20. South Carolina Electric & Gas Co.

[Docket No. ER98-4393-000]

Take notice that on August 28, 1998, South Carolina Electric & Gas Company (SCE&G), tendered for filing service agreements establishing Columbia Energy Power Marketing Corporation (CEPMC), Merchant Energy Group of the Americas, Inc. (MEGA), and Tractebel Energy Marketing, Inc. (TEM), as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon CEPMC, MEGA, TEM, and the South Carolina Public Service Commission.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 21. South Carolina Electric & Gas Company

[Docket No. ER98-4394-000]

Take notice that on August 28, 1998, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Columbia Energy Power Marketing Corporation (CEPMC), Merchant Energy Group of the Americas, Inc. (MEGA), as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon CEPMC, MEGA, and the South Carolina Public Service Commission.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 22. Northern States Power Company (Minnesota Company), Northern States Power Company (Wisconsin Company)

[Docket No. ER98-4395-000]

Take notice that on August 28, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing an Electric Service Agreement between NSP and NorAm Energy Services, Inc. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff Original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on August 10, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 23. Northern States Power Company (Minnesota Company), Northern States Power Company (Wisconsin Company)

[Docket No. ER98-4396-000]

Take notice that on August 28, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and NorAm Energy Services, Inc. (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on August 10, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 24. Northern States Power Company (Minnesota Company), Northern States Power Company (Wisconsin Company)

[Docket No. ER98-4397-000]

Take notice that on August 28, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and WPS Energy Services, Inc. (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on August 10, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 25. Northern States Power Company (Minnesota Company), Northern States Power Company (Wisconsin Company)

[Docket No. ER98-4398-000]

Take notice that on August 28, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and MidAmerican Energy Company (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on August 10, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 26. Washington Water Power Company

[Docket No. ER98-4399-000]

Take notice that on August 28, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an Executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with PUD #1 of Clark County, WA, which replaces an unexecuted Service Agreement previously filed with the Commission under Docket No. ER97-1252-000, Service Agreement No. 47, effective December 15, 1996.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 27. Pittsfield Generating Company, L.P.

[Docket No. ER98-4400-000]

Take notice that on August 28, 1998, Pittsfield Generating Company, L.P. (Pittsfield), owner of a natural gas-fired electric generating facility in Pittsfield, Massachusetts, tendered for filing, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

## 28. Western Resources, Inc.

[Docket No. ER98-4401-000]

Take notice that on August 28, 1998, Western Resources, Inc. (Western Resources), tendered for filing amendments to Electric Power Supply Agreements (Agreements) between Western Resources, Inc. d.b.a. KPL and Doniphan Electric Cooperative Association, Inc., Kaw Valley Electric Cooperative, Inc., and Nemaha-Marshall Electric Cooperative Association, Inc. (collectively "Co-operatives"). Western Resources states that these amendments extend the Agreements, put limitations on rate changes, incorporate provisions concerning retail electric competition, and modify the ratchet provisions of the Agreements.

Western Resources proposes that these amendments become effective on August 1, 1998. Western Resources also requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Cooperatives and the Kansas Corporation Commission.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**29. Western Resources, Inc.**

[Docket No. ER98-4402-000]

Take notice that on August 28, 1998, Western Resources, Inc. tendered for filing an agreement between Western Resources and Kansas Municipal Energy Agency. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

Western Resources proposes that the agreement become effective August 3, 1998.

Copies of the filing were served upon Kansas Municipal Energy Agency and the Kansas Corporation Commission.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**30. Bridgeport Energy L.L.C.**

[Docket No. ER98-4403-000]

Take notice that on August 28, 1998, Bridgeport Energy L.L.C. (Bridgeport), 10 Atlantic Street, Bridgeport, CT 06604, filed with the Federal Energy Regulatory Commission (the Commission) an "Installed Capability Purchase and Sale Agreement" for the sale of installed capability by Bridgeport to Northeast Utilities Service Company. Bridgeport has filed this Agreement in compliance with the Commission's Order issued June 24, 1998 in Docket No. ER98-2783-000, where the Commission granted Bridgeport's request for authority to sell electric power at market rates.

Service under this Agreement commenced on August 1, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**31. Bridgeport Energy L.L.C.**

[Docket No. ER98-4404-000]

Take notice that on August 26, 1998, Bridgeport Energy L.L.C. (Bridgeport), 10 Atlantic Street, Bridgeport, CT 06604, filed with the Federal Energy Regulatory Commission (the Commission) the "Agreement Between Bridgeport Energy LLC and Duke Energy Trading and Marketing, LLC" (the Agreement) under which Bridgeport will supply electric power to Duke Energy Trading and Marketing Services, L.L.C. Bridgeport has filed this Agreement in compliance with the Commission's Order issued June 24, 1998 in Docket No. ER98-2783-000, where the Commission granted Bridgeport's request for authority to sell electric power at market rates.

Service under this Agreement commenced on August 1, 1998.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**32. Connexus Energy**

[Docket No. ER98-4407-000]

Take notice that on August 28, 1998, Connexus Energy submitted for filing an amendment to its Rate Schedule. Connexus Energy states that the purpose of the amendment is to change the purchase obligation of Elk River Municipal Utilities.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**33. Connexus Energy**

[Docket No. ER98-4428-000]

Take notice that on August 28, 1998, Anoka Electric Cooperative submitted for filing a notice stating that, effective August 20, 1998, Anoka Electric Cooperative changed its name to Connexus Energy.

*Comment date:* September 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

**34. Two Elk Power Company Two Elk Generation Partners, Limited Partnership**

[Docket No. QF95-197-001]

On August 31, 1998, Two Elk Power Company, on behalf of Two Elk Generation Partners, Limited Partnership, c/o North American Power Group, Ltd., 8480 East Orchard Road, Suite 4000, Greenwood Village, Colorado 80111, submitted for filing a supplement to its May 12, 1998, application for Commission recertification of a small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the proposed power production facility will be located in Campbell County, Wyoming. The facility will produce a net electrical output of approximately 250 MW, and will utilize waste coal as its primary energy source. Commercial operations are scheduled to commence in 2001, whereupon the applicant proposes to sell a majority of the facility's electric energy output into the public power grid at market based rates with the remainder of its output to be sold to the Black Thunder Mine. The initial application for Commission recertification was submitted on May 12, 1998, in Docket No. QF95-197-001. The instant supplemental filing is made in response to a July 31, 1998, Commission letter requesting additional

information regarding the May 12, 1998, application.

*Comment date:* October 13, 1998.

**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. 98-24299 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application for Conduit Exemption**

September 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11610-000.

c. *Date filed:* November 7, 1997.

d. *Applicant:* Gary R. Hubbs.

e. *Name of Project:* Cherry Grove Project.

f. *Location:* At the Crab Creek Canyon, in Utah County, Utah.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)-825(r).

h. *Applicant Contact:* Gary R. Hubbs, H.C. 13 Box 520, Fairview, UT 84629, (801) 873-3343.

i. *FERC Contact:* Robert W. Bell (202) 219-2806.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D-4.

k. *Comment Date:* November 12, 1998.

l. *Description of Project:* The proposed project consists of (1) a powerhouse that would be built on the City of Spanish Fork's 14-inch-diameter ductile iron

pipeline with one generating unit having an installed capacity of 224-kW. The applicant would use all the power generated for a proposed housing development. The average annual generation would be 1,726,000 kWh.

*m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.*

*n. Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the address shown in item h above.

**A2. Development Application**—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

**A9. Notice of intent**—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

**B. Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

**D4. Filing and Service of Responsive Documents**—The application is ready for environmental analysis at this time, and the Commission is requesting

comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98-24214 Filed 9-9-98; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6158-8]

### Proposed Stipulation of Settlement; Minor Amendments to Clean Air Act Conformity Regulations

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

**ACTION:** Notice of proposed stipulation; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act (Act), notice is hereby given of a proposed stipulation of partial settlement in litigation instituted against the Environmental Protection Agency (EPA) challenging EPA's third set of amendments to rules on determining conformity of federal actions to State Implementation Plans (SIPs). The Environmental Defense Fund (EDF) challenged several aspects of EPA's amendments to the transportation conformity rules issued under section 176(c) of the Act (62 FR 43780, Aug. 15, 1997). *EDF v. EPA, et al.*, D.C. Cir. No. 97-1637.

EPA has agreed to reconsider certain provisions of these amendments. These include a provision relating to grace periods for newly designated nonattainment areas which was overturned by the court in *Sierra Club v. EPA*, 129 F.3d 137 (D.C. Cir 1996), as well as several issues included in EDF's 1994 Petition for Reconsideration of the original conformity rule relating to time horizons for hot spot air quality analysis, growth assumptions to be used in regional conformity analyses, and credit for transportation control measures where implementation has been delayed. Therefore, EPA proposes to enter into a stipulation with EDF in which EPA will commit to take final action completing the reconsideration of the conformity regulations with respect to these issues by no later than January 1, 2000.

For a period of thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed stipulation of settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed stipulation if the comments

disclosed facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the proposed stipulation are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260-7606. Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before October 13, 1998.

Dated: September 2, 1998.

**Scott C. Fulton,**

*Acting General Counsel.*

[FR Doc. 98-24331 Filed 9-9-98; 8:45 am]

BILLING CODE 6560-50-M

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6158-5]

#### Notice of Public Meeting: Workshop on Sulfate in Drinking Water

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), in coordination with the U.S. Environmental Protection Agency (EPA), will be holding a workshop on sulfate in drinking water to review and discuss the relevant scientific studies and literature as a basis for evaluating the dose-response relationship for sulfate, in particular for sensitive groups within the general population (e.g., infants, travelers). Information provided from the workshop will supplement the dose-response studies being conducted by CDC, in collaboration with EPA, on the health effects from exposure to high levels of sulfate in drinking water.

**DATES:** The workshop will be held at the Wyndham Garden Hotel in Atlanta, Georgia on Monday, September 28, 1998, 8:30 a.m. to 5 p.m. EDT, and Tuesday, September 29, 1998, 8 a.m. to 12 p.m. EDT. Members of the public may attend as observers at the workshop and provide comments during 30-minute periods on Monday and Tuesday. Individual comments should be limited to 3 to 5 minutes.

**ADDRESSES:** The workshop will be held at the Wyndham Garden Hotel, which is located at 3340 Peachtree Road, NE, Atlanta, GA 30326. To attend this workshop as an observer, please contact the Safe Drinking Water Hotline at 1-800-426-4791 or 703-285-1093

between 9 a.m. and 5:30 p.m. EDT. There is no charge for attending this workshop as an observer, but seats are limited, so register as soon as possible. Each registrant will receive a preliminary agenda and logistical fact sheet. The Wyndham Garden Hotel is holding a block of rooms until Friday, September 11 at the special rate of \$97 per day. Attendees should make their own room reservations by calling (404) 231-1234 and mention the "Sulfate Workshop" to get the special rate.

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact the Safe Drinking Water Hotline at 1-800-426-4791 or 703-285-1093 between 9 a.m. and 5:30 p.m. EDT.

**SUPPLEMENTARY INFORMATION:** The purpose of the workshop is to review and discuss the scientific data on adverse health effects of exposure to sulfate and the dose-response relationship of sulfate. The panel will consist of scientists with expertise in sulfate biochemistry, intestinal physiology, dose-response studies, and animal studies. The panel will discuss the following questions: (1) Do the studies suggest that a certain contaminant level would not be likely to cause adverse effects?; (2) Does the literature support acclimatization or resistance to sulfate?; and (3) Can an infant study be done for dose-response anywhere in the United States or Canada?. The product of this workshop will be a summary report of the discussion of each of the issues.

The Safe Drinking Water Act, as amended in 1996, requires EPA and CDC to jointly conduct an additional study to establish a reliable dose-response relationship for sulfate, including sensitive sub-populations (e.g., infants, travelers). The study must be based on the best available peer-reviewed science and supporting studies, be conducted in consultation with interested States, and be completed by February 1999. The workshop report will supplement results from this dose-response study.

Dated: September 3, 1998.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 98-24333 Filed 9-9-98; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6159-3]

#### Science Advisory Board; Notification of Public Advisory Committee Meeting

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Integrated Human Exposure Committee (IHEC) of the Science Advisory Board (SAB) will meet on Tuesday, September 29 and Wednesday, September 30, 1998, beginning no earlier than 9 am and ending no later than 6 pm on each day. All times noted are Eastern Time. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis. The meeting will be held at the Hawthorne Suites—Research Triangle Park, 300 Meredith Drive, Durham, North Carolina, 27713. For directions, please call the hotel at 919-361-1234 (1-800-527-1133). For further information concerning the meeting, please contact the individuals listed below.

#### Purpose

The purpose of the meeting is to conduct an advisory on the National Human Exposure Assessment Survey (NHEXAS) and to receive a briefing on the National Health and Human Nutrition Examination Survey (NHANES). There will be a series of panel discussions and presentations.

#### Charge

The IHEC has been asked to respond to the following Charge questions:

*Charge Question #1:* What are the strengths and weaknesses of multimedia, multipathway measurements of exposure as represented by the NHEXAS program, insofar as it can be defined at this point?

*Charge Question #2:* Are the ongoing and planned analyses appropriate and likely to further the goals of NHEXAS? At the level of each consortia? At the level of NHEXAS?

*Charge Question #3:* What actions would be likely to increase the utility of the information from NHEXAS? In the near-term? In the longer term?

*Charge Question #4:* What follow-up studies would be most useful in the near term, considering that key NHEXAS analyses will not be completed for a year? What is the appropriate balance between large population surveys and more targeted follow-up studies?

**Charge Question #5:** What additional IHEC advice is offered for strengthening the immediate and long-term utility of NHEXAS and studies like it?

#### Background

At its November Strategic Planning Retreat, the Executive Committee of the Science Advisory Board concluded that new directions taken by EPA demand new directions for the SAB if the Board is going to continue to make a positive difference in the way that science is developed and used in environmental decision-making. In particular, the Executive Committee decided that the SAB needs to spend much more of its energy providing strategic, forward-looking advice. Consequently, the IHEC identified NHEXAS as the topic for its strategic activity for Fiscal Year 1998 and 1999. The Committee plans to have a followup meeting on NHEXAS within the next 12 months following this advisory meeting.

Three field studies are being conducted under the National Human Exposure Assessment Survey. In these studies, exposures in three study regions are being measured using data on pollutant concentrations in environmental and biological media and estimates of the frequency and durations of exposure-related human activities. In these studies, (1) pollutant concentrations in air, water, soil, dust, food, blood, and urine as well as on surfaces and human skin are being measured using various sampling and analytical techniques; (2) direct exposure is being determined using personal exposure monitors; and (3) human activity patterns are being estimated using a series of questionnaires and diaries. These data are being used to estimate human exposures among the sampled populations and to test a series of hypotheses related to these exposures. The target chemicals include: volatile organic compounds (VOCs), pesticides, metals and polyaromatic hydrocarbons (PAHs).

The EPA Office of Research and Development has entered into three Cooperative Agreements with three different Consortia to conduct a series of field studies including: (1) A consortium made up of the University of Arizona, Battelle Memorial Institute and the Illinois Institute of Technology; (2) A consortium from the Research Triangle Institute (RTI) and the Environmental and Occupational Health Sciences Institute (EOHSI); and (3) A consortium of Harvard University, Johns Hopkins University, Emory University, and Westat. The Office of Research and Development has entered in Inter-

agency Agreements with (1) the Centers for Disease Control (CDC) to analyze blood and urine samples; (2) the Food and Drug Administration (FDA) to analyze food and beverage samples; (3) the National Institute for Standards and Technology (NIST) to provide quality assurance support; and (4) the General Services Administration (GSA) to provide data management support. During the meeting, the IHEC will be briefed by the CDC on the National Health and Nutrition Evaluation Survey (NHANES) and its value to improving understanding of human exposure.

**For Further Information—**Single copies of the relevant background documents and the agenda may be obtained from Ms. Wanda Fields by telephone (202) 260-5510, by fax (202) 260-7118 or via E-mail at: fields.wanda@epa.gov Technical questions on these materials should be directed to Mr. Dale Pahl by telephone at (919) 541-1851 or via E-mail at pahl.dale@epamail.epa.gov

#### Public Comments

Anyone wishing to make an oral presentation at the meeting must contact Ms. Roslyn Edson, Designated Federal Officer for the IHEC, *in writing*, no later than 5 p.m. Eastern Time on September 22, by fax (202) 260-7118, or via E-mail: edson.roslyn@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Ms. Edson no later than the time of the presentation for distribution to the Committee and the interested public.

#### Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not repeat previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. This time may be reduced at the discretion of the SAB, depending on meeting circumstances. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments, which may be of any length, may be provided to the relevant committee or subcommittee up until the time of the meeting.

#### The Science Advisory Board

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1997 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260-1889. Additional information concerning the SAB can be found on the SAB Home Page at: <http://www.epa.gov/sab>.

Copies of SAB prepared final reports mentioned in this **Federal Register** Notice may be obtained immediately from the SAB Home Page or by mail/fax from the SAB's Committee Evaluation and Support Staff at (202) 260-4126, or via fax at (202) 260-1889. Please provide the SAB report number when making a request.

#### Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Ms. Roslyn Edson at 202-260-3823, via fax at 202-260-7118 or via E-mail at edson.roslyn@epa.gov at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 2, 1998.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 98-24336 Filed 9-9-98; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-6158-3]

#### Notice of Proposed Withdrawal of CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed withdrawal of CERCLA Section 122(h)(1) administrative cost recovery settlement for the Automatic Die Casting Site.

**SUMMARY:** U.S. EPA proposes to withdraw its proposed settlement of the potential liability of Rauckis Investment Company and Construction Management, Inc. ("Settling Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, for past costs

incurred in response to the release or threatened release of hazardous substances at or from the Automatic Die Casting Site ("the Site") located in St. Clair Shores, Michigan. U.S. EPA proposed to address the potential liability of the Settling Parties by execution of a CERCLA Section 122(h)(1) Administrative Order on Consent ("AOC") prepared pursuant to 42 U.S.C. 9622(h)(1). The Site is not on the NPL, and no further response activities at the Site are anticipated at this time.

**FOR FURTHER INFORMATION CONTACT:** Ms. Hedi Bogda-Cleveland of the Office of Regional Counsel, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 or contact Ms. Bogda at (312) 886-5825.

**William E. Muno,**

*Director, Superfund Division, U.S. Environmental Protection Agency Region 5.*  
[FR Doc. 98-24145 Filed 9-9-98; 8:45 am]

BILLING CODE 6560-50-P

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6158-2]

**Proposed 42 U.S.C. Section 9622(h) Settlement Dixie Auto Salvage Site, Danville, IL**

**ACTION:** Proposed section 122(h) settlement.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Dixie Auto Salvage Superfund Site near Danville, Illinois, which was signed by the Director of the Superfund Division, EPA, Region V. The settlement resolves an EPA claim under section 107(a) of CERCLA against the General Electric Company. The settlement requires the General Electric Company to complete the required removal action at the Site and to pay the United States Environmental Protection Agency's (U.S. EPA's) past and future oversight costs that exceed \$900,000.00.

**DATES:** Comments must be submitted to U.S. EPA, Region V, on or before October 13, 1998.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at the Region V Records Center identified below. A copy of the proposed settlement may be

obtained from Gloria Carvajal, U.S. EPA, Region V, (312)886-5312. Comments should reference the Dixie Auto Salvage Superfund Site and should be addressed to Richard J. Clarizio, U.S. EPA, Region V, Office of Regional Counsel, 77 West Jackson, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Clarizio, EPA, Region V, Office of Regional Counsel, 77 West Jackson, Chicago, Illinois 60604, (312) 886-0559.

**SUPPLEMENTARY INFORMATION:** The site is located on a semi-rural, partially-wooded lot adjacent to the North Fork of the Vermilion River. During the 1960's and 1970's ravine portions of the site were filled with waste by the former owner. The hazardous constituents of concern found at the site consist of lead and polychlorinated biphenyls. The site was identified as a removal site and has not been listed on the National Priorities List (NPL). The General Electric Company (GE) removed approximately 800 tons of contaminated soil, capacitors and other debris in 1995 under an Administrative Order on Consent with U.S. EPA. In June of 1998 EPA issued a proposed plan for completion of removal activities at this Site. Consistent with that proposed plan, GE in the settlement agreement will, among other things, excavate and consolidate on-site certain areas of contamination, construct a cap over the on-site consolidation area, perform leachate monitoring and collection, monitor groundwater and restrict the use of the property. It is estimated that these activities will cost approximately \$4,000,000.00. As part of the settlement U.S. EPA agrees to not seek reimbursement for up to \$900,000.00 in oversight costs it has or will incur at this Site. GE agrees to pay oversight costs that exceed \$900,000.00.

Pursuant to section 122(i) of CERCLA, the 30-day period for comments on the proposed settlement with this Respondent begins on the date of publication of today's notice.

**James Mayka,**

*Acting Director, Superfund Division, U.S. Environmental Protection Agency, Region V.*  
[FR Doc. 98-24146 Filed 9-9-98; 8:45 am]

BILLING CODE 6560-50-P

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6158-7]

**Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act**

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Sauget Area 2, Site Q site in Sauget and Cahokia, Illinois which was signed by the EPA Regional Administrator, Region 5, on August 20, 1998. The settlement resolves an EPA claim under section 107(a) of CERCLA against Eagle Marine Industries, Inc., Monsanto Company, and Solutia Inc. The settlement requires the settling parties to pay \$180,000 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at Cahokia Public Library, 140 Cahokis Park Dr., Cahokia, Illinois, 62206 and U.S. EPA's Region 5, Record Center, 77 W. Jackson Ave., 7th floor, Chicago, Illinois.

**DATES:** Comments must be submitted on or before October 13, 1998.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at U.S. EPA's Region 5, Record Center, 77 W. Jackson Ave., 7th floor, Chicago, Illinois. A copy of the proposed settlement may be obtained from Leslie A. Kirby, Assistant Regional Counsel, U.S. EPA, 77 W. Jackson Ave., C-14J, Chicago, Illinois or by telephone at (312) 886-7166. Comments should reference Sauget Area 2, Site Q and EPA Docket No. V-W-'98-C-494 and should be addressed to Leslie A. Kirby, Assistant Regional Counsel, 77 W. Jackson Blvd., C-14J, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:**  
 Leslie A. Kirby, Assistant Regional Counsel, 77 W. Jackson Blvd., C-14J, Chicago, Illinois 60604.

Dated: August 20, 1998.

**William E Muno,**  
*Director, Superfund Division, Region 5.*  
 [FR Doc. 98-24332 Filed 9-9-98; 8:45 am]  
**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

August 28, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13. 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. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

#### Federal Communications Commission

*OMB Control No.: 3060-0842.*

*Expiration Date: 02/28/99.*

**Title:** Revenue Benchmark Data Request.

*Form No.: N/A.*

**Respondents:** Business or other for-profit.

**Estimated Annual Burden:** 16 respondents; 250 hours per response (avg.); 4000 total annual burden hours for all collections.

**Estimated Annual Reporting and Recordkeeping Cost Burden:** \$0.

**Frequency of Response:** One-time requirement.

**Description:** Pursuant to Congress's directive in the Telecommunications Act of 1996 that the Commission establish support mechanisms to ensure the delivery of affordable telecommunication service to all Americans, the Commission determined on May 8, 1997 that universal service support for rural, insular, and high cost areas should be based on forward-looking economic costs. As part of the forward-looking economic cost methodology, the Commission determined that it would select two revenue benchmarks to calculate the amount of federal universal service support that eligible non-rural carriers should receive. The data request solicits

information from non-rural local exchange carriers to calculate the revenue benchmarks that will determine the level of universal service support. The data request solicits information on annual data for 1996 through first Quarter 1998; interstate switched access revenues for July 1998; Intrastate Switched Access Revenues for July 1998; Residential, single-Line business, and Multi-Line Business Local Service Revenues for July 1998; and Residential, Single-Line Business, and Multi-Line Business Local Service and IntraLATA Toll Revenues for July 1998. The data request was issued in CC Dockets 96-45 and 97-160; DA 98-1576. The data request will be used to assist the Commission in implementing the forward-looking economic cost methodology used to estimate the amount of universal service support that will be provided to eligible non-rural carriers beginning July 1, 1999. Obligation to respond: Mandatory.

*OMB Control No.: 3060-0843.*

*Expiration Date: 2/28/99.*

**Title:** Carrier Identification Codes Blocking Data Request.

*Form No.: N/A.*

**Respondents:** Business or other for-profit.

**Estimated Annual Burden:** 6 respondents; 8 hours per response (avg.); 48 total annual burden hours.

**Estimated Annual Reporting and Recordkeeping Cost Burden:** \$0.

**Frequency of Response:** One-time requirement.

**Description:** The five regional Bell Operating Companies and GTE are required to submit reports to the Common Carrier Bureau describing their progress in phasing out three-digit Carrier Identification Codes (CICs). This data is critical to the general and specific implementation and oversight responsibilities that the Commission bears under the Communications Act to evaluate the status and development of competition in the provision of local exchange telecommunications services. The data request will be used to evaluate the status of developing competition in the long distance telecommunications markets. The information will be used by the Commission to determine whether the phase-out of three-digit CICs is being implemented. Statutory authority for information collection from carriers and other entities is set out in the following sections of the Communications Act: Sections 4(i), 215, and 218. Obligation to respond: Mandatory.

*OMB Control No.: 3060-0816.*

*Expiration Date: 02/28/99.*

**Title:** Local Competition in the Local Exchange Telecommunications Services Report.

*Form No.: N/A.*

**Respondents:** Business or other for-profit.

**Estimated Annual Burden:** 20

respondents; 900 hours per response (avg.); 18,000 total annual burden hours for all collections.

**Estimated Annual Reporting and Recordkeeping Cost Burden:** \$0.

**Frequency of Response:** On occasion; quarterly.

**Description:** The Telecommunications Act of 1996 (1996 Act) directed the Commission to undertake various initiatives to implement new statutory directives concerning the development of local exchange competition. Central to these directives are new Section 251, governing incumbent local exchange carrier (LEC) provision of interconnection to competitors, and new Section 271 which provides a means whereby Bell Operating Companies (BOCs)—long prohibited from entering various telecommunications market—may now do so upon submission of qualifying applications. Pursuant to its new statutory obligations and in its general capacity as chief federal regulatory agency tasked with implementing the 1996

Communications Act amendments, the Commission must evaluate the status and development—nationwide—of local competition, i.e., competition in the provision of local exchange telecommunications services.

Approximately twenty telecommunications companies including Bell Operating Companies are asked to voluntarily submit information to the Commission to evaluate the status and development of developing competition in the local exchange telecommunications markets. The request is limited to technical queries about the nature and extent of carrier-provided access facilities; switch ports and non-switched service lines; number of customers purchasing specific services; state operations data; total carrier-handled switched local, intrastate toll, and interstate toll minutes; and number of local telephone numbers ported as of end-of-year 1997. The information will be used by Commission economists and carrier analysts to advise the Commission about the efficacy of Commission rules and policies adopted to implement the Telecommunications Act of 1996. Obligation to respond: Voluntary.

*OMB Control No.: 3060-0774.*

*Expiration Date: 11/30/98.*

**Title:** Federal-State Joint Board on Universal Service—CC Docket No. 96-

45, 47 CFR 36.611–36.612 and 47 CFR Part 54.

*Form No.:* N/A.

**Respondents:** Business or other for-profit, individuals or households; not-for-profit institutions; state, local or tribal government.

**Estimated Annual Burden:** 5,565,451 respondents; .32 hours per response (avg.); 1,801,570 total annual burden hours for all collections.

**Estimated Annual Reporting and Recordkeeping Cost Burden:** \$0.

**Frequency of Response:** On occasion, annually, one-time requirements.

**Description:** Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles

enumerated in Section 254 of the Telecommunications Act of 1996 and such other principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. In the various Orders issued in CC Docket No. 96–45, the Commission adopted rules that are designed to implement the universal service provisions of section 254. Specifically, the Orders address: (1) universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high cost areas; (6) support for low-income consumers; (7) support for schools, libraries, and health care

providers; (8) interstate subscriber for schools, libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. The reporting and recordkeeping requirements contained in CC Docket No. 96–45 are designed to implement Section 254. The requirements are necessary to ensure the integrity of the program. All the collections are necessary to implement the congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support. OMB extended approval for the collections. Obligation to respond: Mandatory.

Rule section/title (47 CFR)	Hours per response	Total annual burden
a. 36.611(a) & 36.612—Submission and Updating information to NECA .....	20 .....	26,800
b. 54.101(c)—Demonstration of exceptional circumstances for toll-limitation grace period .....	50 .....	100
c. 54.201(a)(2)—Submission of eligibility criteria .....	4 .....	400
d. 54.201(b)(c)—Submission of eligibility criteria .....	1 .....	3,400
e. 54.201(d)(2)—Advertisement of services & charges .....	50 .....	65,000
f. 54.205(a)—Advance notice of relinquishment of universal service .....	.5 .....	50
g. 54.207(c)(1)—Submission of proposal for redefining a rural service area .....	125 .....	6,250
h. 54.307(b)—Reporting of expenses & number of lines served .....	2.5 (avg.) .....	4,100
i. 54.401(b)(1)–(2)—Submission of disconnection waiver request .....	2 .....	100
j. 54.401(d)—Lifeline certification to the Administrator .....	1 .....	1,300
k. 54.407(c)—Lifeline recordkeeping .....	80 .....	104,000
l. 54.409(a)–(b)—Consumer qualification for Lifeline .....	5 min .....	440,000
m. 54.409(b)—Consumer notification of Lifeline discontinuance .....	5 min .....	44,000
n. 54.418(b)—Link Up recordkeeping .....	80 .....	104,000
o. 54.501(d)(4) & 54.516—Schools & Libraries recordkeeping .....	41 (avg.) .....	372,000
p. 54.504(b)–(c), 54.507(d) & 54.509(a)—Description of services requested & certification .....	2 .....	100,000
q. 54.519—State telecommunications networks .....	4 .....	200
r. 54.601(b)(4) & 54.609(b)—Calculating support for health care providers .....	100 .....	340,000
s. 54.601(b)(3) & 54.619—Shared facility record-keeping .....	21 (avg.) .....	160,000
t. 54.607(b)(1)–(2)—Submission of proposed rural rate .....	3 .....	150
u. 54.603—Streamlined application process for schools and libraries and for rural health care providers .....	1 .....	16,000
v. 54.603(b)(1), 54.615(c)–(d) & 54.623(d)—Description of services requested and certification .....	1 .....	11,000
w. 54.619(d)—Submission of rural health care report .....	40 .....	40
x. 54.701(f)(1) & (f)(2)—Submission of annual report & CAM .....	40 .....	40
y. 54.701(g)—Submission of quarterly report .....	10 .....	40
z. 54.707—Submission of state commission designation .....	.25 .....	850
aa. Obligation to notify underlying carrier .....	1 .....	1,700
bb. Demonstration of reasonable steps .....	4 .....	200
<b>Total Annual Burden Hours .....</b>		<b>1,801,570</b>

Total Annual Burden Hours .....

All the collections are necessary to implement the congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98-24195 Filed 9-9-98; 8:45 am]

BILLING CODE 6712-01-P

#### 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 24, 1998.

**A. Federal Reserve Bank of Dallas**  
 (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *William Troy Byler*, Chappell Hill, Texas, and W.T.B. II, Ltd., Houston, Texas, (William Troy Byler and Merlene Byler, General Partners); to acquire voting shares of Community Bancorporation, Inc., Bellville, Texas, and thereby indirectly acquire First National Bank, Bellville, Texas.

Board of Governors of the Federal Reserve System, September 4, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98-24351 Filed 9-9-98; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Formations, 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 October 2, 1998.

**A. Federal Reserve Bank of Cleveland**  
 (Paul Kaboth, Banking Supervisor) 1455

East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Seed Money Limited Partnership*, Allison Park, Pennsylvania; to become a bank holding company by acquiring 32 percent of Class A common stock and 100.00 percent of Class B common stock, and thereby indirectly acquire Enterprise Bank, Allison Park, Pennsylvania, a *de novo* bank.

2. *Western Reserve Bancorp, Inc.*, Medina, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Western Reserve Bank, Medina, Ohio.

**B. Federal Reserve Bank of Richmond**  
 (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Pleasants County Bankshares, Inc.*, St. Marys, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Pleasants County Bank, St. Marys, West Virginia.

**C. Federal Reserve Bank of Chicago**

(Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Michigan Community Bancorp Limited*, Sterling Heights, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Lakeside Community Bank, Sterling Heights, Michigan (in organization), and thereby indirectly acquire North Oakland Community Bank, Rochester Hills, Michigan (in organization).

Board of Governors of the Federal Reserve System, September 3, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98-24255 Filed 9-9-98; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Formations, 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 October 5, 1998.

**A. Federal Reserve Bank of Boston**  
 (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Machias Bancorp, MHC, and Machias Bancorp, Inc.*, both of Machias, Maine; to become bank holding companies by acquiring 100 percent of the voting shares of Machias Savings Bank, Machias, Maine.

**B. Federal Reserve Bank of Chicago**  
 (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *High Point Financial Services, Inc.*, Forreston, Illinois; to acquire 100 percent of the voting shares of Kent Bancshares, Inc., Kent, Illinois, and thereby indirectly acquire Kent Bank, Kent, Illinois.

**C. Federal Reserve Bank of St. Louis**  
 (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Old National Bancorp*, Evansville, Indiana; to merge with Southern Bancshares, Ltd., Carbondale, Illinois, and thereby indirectly acquire First National Bank and Trust Company, Carbondale, Illinois.

**D. Federal Reserve Bank of San Francisco** (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Marin National Bancorp*, San Rafael, California; to cause First National Interim Bank of Marin, Las Vegas, Nevada (in organization), to become a subsidiary.

Board of Governors of the Federal Reserve System, September 4, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98-24352 Filed 9-9-98; 8:45 am]

BILLING CODE 6210-01-F

**FEDERAL RESERVE SYSTEM****Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1998.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

**1. Westdeutsche Landesbank Girozentrale**, Duesseldorf, Federal Republic of Germany; to engage *de novo* through its subsidiary, WestLB Securities Americas Inc., New York, New York, in securities brokerage services, pursuant to § 225.28(b)(7)(i) of Regulation Y; riskless principal transactions, pursuant to § 225.28(b)(7)(ii) of Regulation Y; and private placement services, pursuant to § 225.28(b)(7)(iii) of Regulation Y.

**B. Federal Reserve Bank of Cleveland** (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

**1. Keycorp**, Cleveland, Ohio; to acquire McDonald and Company Investments, Inc., Cleveland, Ohio; and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; providing certain agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; underwriting and

dealing in, to a limited extent, all types of debt and equity securities *See, KeyCorp*, 83 Fed. Res. Bull. 921 (1997); extending and servicing loans pursuant to § 225.28(b)(1) of Regulation Y; engaging in activities related to extending credit, pursuant to §§ 225.28(B)(2)(ii), (vi), and (vii) of Regulation Y; leasing personal or real property or acting as agent, broker, or advisor in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y; engaging in investment transactions as principal, pursuant to § 225.28 (b)(8) of Regulation Y; providing certain transfer agent and dividend disbursing agent services to mutual funds *See, Bankers Trust New York Corporation*, 83 Fed. Res. Bull. 780, 782 (1997) (*the BT/Alex Brown Order*); engaging in the provision of management consulting and employee benefits counseling services, pursuant to §§ 225.28(b)(9)(i) and (ii) of Regulation Y; providing certain administrative services to mutual funds (*See, Fleet Financial Group, Inc.*, 84 Fed. Bull. 227 (1998); *J.P. Morgan & Co.*, 84 Fed. Res. Bull. 113 (1998); and *Commerzbank AG*, 83 Fed. Res. Bull. 678, 679-80 (1997); and establishing and serving as a general partner of limited partnerships that are excluded from the definition of an investment company and that are exempt from the registration and prospectus requirements of the Securities Act of 1933, *See, Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994) and *Norwest Corporation*, 81 Fed. Res. Bull. 1128 (1995).

Board of Governors of the Federal Reserve System, September 3, 1998.

**Robert deV. Frierson**,  
Associate Secretary of the Board.

[FR Doc. 98-24254 Filed 9-9-98; 8:45 am]

BILLING CODE 6210-01-F

Government Auditing Standards, AIMD, 202-512-9321.

Dated: September 4, 1998.

**Marcia B. Buchanan**,  
Assistant Director.

[FR Doc. 98-24350 Filed 9-9-98; 8:45 am]

BILLING CODE 1610-02-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Office of the Secretary****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

**1. Study of Frail Elders in Medicare Managed Care—NEW**—The Office of the Assistant Secretary for Planning and Evaluation is proposing to conduct a study of how managed care delivery systems can meet the needs of elderly beneficiaries with disabilities and chronic illnesses. A survey of Medicare beneficiaries will be conducted to identify ways in which managed care can add value and barriers to realizing added value. Respondents: Individuals or households; Number of Responses: 2,518; Average Burden per Response: 29.2 minutes; Total Burden: 1,226 hours.

*OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690-6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC, 20020. Written comments should be received within 30 days of this notice.

**GENERAL ACCOUNTING OFFICE****Advisory Council on Government Auditing Standards; Notice of Meeting**

The Advisory Council on Government Auditing Standards will meet Monday, September 21, 1998, from 9:00 a.m. to 4:45 p.m. in room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact Government Auditing Standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

*For further information contact:*  
Marcia Buchanan, Assistant Director,

Dated: August 27, 1998.

**Dennis P. Williams,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 98-24200 Filed 9-9-98; 8:45 am]

BILLING CODE 4150-04-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)**

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320 and is essential to the mission of the Department. Section 502 of the Agriculture Research and Reform Act of 1998 (Pub. L. 105-185) requires the Secretary of DHHS, within 180 days of the enactment date of June 23, 1998, to make determinations regarding administrative costs, under Section 403(a)(3) of the Social Security Act, common to determining eligibility for the AFDC, Food Stamp and Medicaid programs. Following the normal clearance procedures would cause this statutory deadline to be missed.

Without emergency approval of the proposed information collections described below, the Department could not comply with the Congressional mandate in section 502 of the Pub. L. 105-185.

DHHS is requesting the OMB grant emergency approval as soon as possible for 180-days.

*Title and Description of Information Collection:* Cost Allocation Determination Under the Agriculture Research Act—NEW—Section 502 of the Agriculture research, Extension, and Education Reform Act of 1998 (Public Law 105-185) requires the Secretary of Health and Human Services to determine, for each state, the annualized amount the state received under section 403(a)(3) of the Social Security Act for administrative costs common to determining the eligibility of individuals, families, or households that could be allocated to the Food Stamp and Medicaid programs, that were allocated to the AFDC program. The

purpose of this information collection is to enable the Secretary to make this determination. The States will be requested to provide cost information. *Respondents:* States; *Number of Respondents:* 51; *Number of Responses per Respondent:* one; *Average Burden per Response:* 132 hours; *Total Burden on Respondents:* 6,732 hours.

To request more information please contact Joe Cook on 202-401-2804. The proposed information collection is posted on the internet at <http://www.gov/progorg/grantsnet>.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations for the proposed information collections should be sent immediately directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt or Laura Oliven, New Executive Office Building, Room 10235, Washington, DC 20503.

Comments may be faxed to Ms. Eydt or Ms. Oliven at 202-395-5167.

Please send a copy of your comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington DC, 20201.

Dated: September 2, 1998.

**Dennis P. Williams,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 98-24201 Filed 9-9-98; 8:45 am]

BILLING CODE 4150-04-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Toxic Substances and Disease Registry**

**Community/Tribal Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry

(ATSDR) announces the following subcommittee meeting.

*Name:* Community/Tribal Subcommittee.  
*Times and dates:* 8:30 a.m.-4:30 p.m., September 28, 1998; 8:30 a.m.-4:45 p.m., September 29, 1998.

*Place:* ATSDR, 35 Executive Park Drive, Training Room, Atlanta, Georgia 30329.

*Status:* Open to the public, limited by the space available. The meeting room accommodates approximately 60 people.

*Purpose:* This subcommittee will bring to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee will report directly to the Board of Scientific Counselors.

*Matters To Be Discussed:* Agenda items include a group discussion of the role of the Subcommittee; presentation and discussion of ATSDR community involvement mission, roles, and activities (including the role, mission, activities of the Office of Urban Affairs, and the Office of the Ombudsman).

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:*

Stephen D. Von Allmen, Science Policy Analyst, BSC, ATSDR, M/S E-28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639-0708.

Dated: September 3, 1998.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98-24259 Filed 9-9-98; 8:45 am]

BILLING CODE 4163-70-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[Program Announcement 99013]**

**Notice of Availability of Funds; Economic and Outcome Analysis of Antimicrobial Resistance in Hospital-Acquired Infections Among Intensive Care Unit Patients**

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for economic and outcome analysis of antimicrobial resistance in hospital-acquired infections among intensive care unit (ICU) patients. This program addresses the "Healthy People 2000" priority area(s) of Immunization and Infectious Diseases.

The purpose of the program is to provide assistance to the National Nosocomial Infections Surveillance

(NNIS) system hospitals to quantify the impact of antimicrobial resistance on their institution and their patients. Understanding the economic costs and patient outcomes associated with such resistant infections will aid the infection control community in their efforts to justify the allocation of resources to improve efforts at preventing the emergence and spread of antimicrobial resistant pathogens. This data will originate from several institutions and allow generalizable estimates of the economic impact and patient outcomes associated with antimicrobial resistance at U.S. hospitals.

The specific objectives of this cooperative agreement are:

1. Assess the impact of antimicrobial resistance, specifically methicillin resistant *S. aureus* and vancomycin-resistant enterococci, causing nosocomial infections, specifically primary bloodstream infections, both in terms of poor patient outcomes (e.g., morbidity and mortality) and economic cost, at participating hospitals.

2. Disseminate information regarding economic costs incurred from antimicrobial resistant organisms.

## B. Eligible Applicants

### Limited Competition

Assistance will be provided only to U.S. hospitals actively participating in the Intensive Care Unit (ICU) component of CDC's NNIS System, and have used NNIS definitions and methodology for surveillance of nosocomial infections to identify ≥60 ICU patients with nosocomial primary bloodstream infection, ≥20 of which were associated with methicillin resistant *Staphylococcus aureus*, and 15 of which were associated with vancomycin resistant enterococci over the past 5 years.

Competition is limited to hospitals actively participating in the NNIS System, currently the only source of national data on risk-adjusted, nosocomial infection rates in the United States using standardized methodology.

**Note:** Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

## C. Availability of Funds

Approximately \$130,000 is available in FY 1999 to fund approximately 5 awards. It is expected that the average award will be \$25,000, ranging from \$15,000 to \$30,000 depending on the number of case- and control-patients included in the applicant's proposal. It

is expected that the awards will begin on or about December 15, 1998 and will be made for a 12-month budget period within a 12-month project period. Funding estimates may change.

## D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC shall be responsible for conducting activities under B. below.

### A. Recipient Activities

1. Design a matched case-control study, where case-patients (i.e., those infected with the antimicrobial resistant pathogen) will be compared to matched control-patients (i.e., those infected with the respective antimicrobial susceptible pathogen). Factors that may influence patient outcome, costs of hospitalization, and adaptability of criteria to other recipients should be considered. Examples of matching criteria may include location of patient, month or year of infection, APACHE II score (+/- 5 points), comorbid conditions, or a combination of these characteristics. A published example includes that performed by D. Pittet, et al. when determining extra costs of nosocomial bloodstream infection in critically ill patients (JAMA. 1994;271:1598-1601).

2. Collect limited existing data from medical records of all potential case- and control-patients eligible for matching algorithm.

3. Collect detailed data on case- and control-patients of two types: financial and clinical (i.e., descriptive and patient outcome). Determining excess costs may require recording total costs of hospitalization per study patient and costs by each day of hospitalization. In addition, it would be desirable to record costs by category (i.e., laboratory or diagnostic tests, pharmaceuticals, bed occupancy, physician, extra nursing, materials). Patient outcome data must include, but not limited to, mortality, length of stay, response to therapy, and relapse or recurrent infection.

4. Publish results through collaboration with other recipients of this cooperative agreement and CDC.

### B. CDC Activities

1. Provide technical assistance in the design and conduct of a pair wise-matched case-control study which may include data collection forms and designing innovative approaches to matching controls to cases.

2. Provide assistance to recipients regarding development of study

protocols, data collection methods, and analyses, as necessary.

3. Assist in the development of data management processes, materials, and protocols.

4. Coordinate pooling data from each site and participate in the analysis of study information and dissemination of study findings.

5. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

## E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double-spaced pages (excluding budget and appendixes), printed on one side, with one inch margins, and unreduced font. Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendixes. The application narrative must contain the following sections in the order presented below:

1. Abstract: Provide a brief (two pages maximum) abstract of the project. State the length of the project period (maximum is 1 year) for which assistance is being requested (see "Availability of Funds" for additional information).

2. Background and Need: Discuss the background and need for the proposed project. Illustrate and justify the need for the proposed project that is consistent with the purpose and objectives of this cooperative agreement program.

3. Capacity and Personnel:

- a. Describe past experience in conducting projects/studies similar to that being proposed.

- b. Describe resources, facilities, and professional personnel that will be involved in conducting the project. Include in an appendix, curriculum vitae for all professional personnel directly involved with the project.

- c. Because award size should reflect the number of patients on which data will be collected, provide in an appendix a list of all patients, void of personal identifiers, identified by infection control staff using standard NNIS definitions as having a nosocomial primary bloodstream infection while in an intensive care unit for at least the past 5 years. This list

must include, but not be limited to, infections associated with *S. aureus* (both methicillin-susceptible and methicillin-resistant), and *enterococcus spp.* (both vancomycin-susceptible and vancomycin-resistant). Other organisms of interest, and highly desirable to study if present in sufficient quantity, include *Klebsiella pneumoniae* not-susceptible to ceftazidime or aztreonam, *Candida albicans*, and *C. krusei*. For each patient, the list must document the organism(s) associated with the nosocomial bloodstream infection, susceptibility status to the antimicrobial of interest (e.g., pathogens stated above), date of admission to hospital, date of infection, and location of patient at time of infection.

d. Provide in an appendix letters of support from all key participating non-applicant Departments (i.e., medical informatics, medical records), individuals, etc., which clearly indicate their commitment to participate as described in the operational plan. Do not include letters of support from CDC personnel.

4. Objectives and Technical Approach: a. Describe specific objectives for the proposed project which are measurable and time-phased and are consistent with the purpose and goals of this cooperative agreement.

b. Present a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all Recipient Activities, including the approach to collecting financial data.

c. Clearly identify specific assigned responsibilities for all key professional personnel.

d. Describe the nature and extent of collaboration with CDC and/or others during various phases of the study.

e. Describe in detail a plan for evaluating progress toward achieving project objectives.

5. Budget: Provide in an appendix, a budget and accompanying detailed justification for the project that is consistent with the purpose and objectives of this program. If requesting funds for contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

6. Human Subjects: Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, document in an appendix that

the principal investigator has obtained human subjects clearance.

## F. Submission and Deadline

### Application

Submit the original and five copies of PHS-398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before November 1, 1998 submit the application to: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #99013, Centers for Disease Control and Prevention, Room 300, 255 East Paces Ferry Road, NE, MS E-18, Atlanta, Georgia 30305-2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

## G. Evaluation Criteria

Applications will be reviewed and evaluated based on the following weighted criteria.

### 1. Background and Need (10 Points)

Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this cooperative agreement program. Extent to which applicant illustrates and justifies the need for the proposed project that is consistent with the purpose and objectives of this cooperative agreement.

### 2. Capacity (50 Points Total)

A. The extent to which applicant has the appropriate organizational structure, administrative support, and ability to access the defined target population, and that this access will ensure an adequate sample size and representation so that epidemiologic analysis of patient outcomes and excess costs will be appropriate and statistically valid. Considerable attention will be given to the quantity of patients having had nosocomial bloodstream infections caused by the targeted antimicrobial resistant pathogens (i.e., potential cases) and those caused by the corresponding susceptible pathogen (i.e., potential controls) documented by the recipient. Considerable attention will be given to the recipient's capacity to access cost data for potential cases and matched controls, and the ability to link cost data to specific categories of costs and/or

date of costs during patient's hospitalization. (40 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified, by training and experience (i.e., NNIS hospital personnel must have the essential understanding of definitions of nosocomial infections used in the NNIS system); and have an appropriate projected level of effort directed toward accomplishment of the proposed objectives. (10 points)

### 3. Objectives and Technical Approach (i.e., Plan) (40 Points Total)

a. Extent to which applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this cooperative agreement program and which are measurable and time-phased. (10 points)

b. Extent to which applicant presents a detailed operational plan for performing the matching process to pick controls for the case-control study. (10 points)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

c. Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the plan is adequate to accomplish the objectives. (20 points)

### 4. Budget (Not Scored)

The extent to which the budget is reasonable (i.e., in proportion to the number of patients for which data will be collected), clearly justified, and consistent with the intended use of cooperative agreement funds.

5. Does the application adequately address the requirements of 45 CFR Part 46 for the protection of human subjects?

\_\_\_\_\_ YES \_\_\_\_\_ No

Comments: \_\_\_\_\_

## H. Other Requirements

### Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports. Narrative progress reports are required every 6 months. An original and two copies of reports are due within 30 days after first 6 months and 90 days following end of project period. Progress reports should address progress toward overall objectives as represented in the Purpose and Recipient Activities sections of this announcement including status report of case and control selection, enrollment, and progress of data abstraction.

2. Financial status report, no more than 90 days after the end of the budget period. Send all reports to: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 300, 255 East Paces Ferry Road, NE, M/S E-18, Atlanta, GA 30305-2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 (included in the application kit).

- AR-1 Human Subjects Requirements
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR-10 Smoke-Free Workplace Requirements
- AR-7 Executive Order 12372 Review
- AR-11 Healthy People 2000
- AR-12 Lobbying Restrictions

## I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act Section(s) 301(a)[42 U.S.C. 241(a)], 317(k)(2)[42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

## J. Where to Obtain Additional Information

### Please refer to Program

Announcement 99013 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement [99013], Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, N.E., [E-18], Atlanta, GA 30305-2209, telephone (404) 842-6872, Email address vxm7@cdc.gov.

See also the CDC homepage on the Internet: <http://www.cdc.gov>

For program technical assistance, contact Scott K. Fridkin, Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., Mailstop E-55, Atlanta, Georgia 30333. Facsimile: (404) 639-6436. E-mail address: skf0@CDC.GOV

### John L. Williams,

*Director, Procurement and Grants, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98-24257 Filed 9-9-98; 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:* Early Head Start Evaluation Father Study.

*OMB No.:* 0970-0169.

*Description:* The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response the Administration on Children, Youth and Families

(ACYF) designed the Early Head Start (EHS) program. In September 1995, ACYF awarded grants to 68 local programs to serve families with infants and toddlers. ACYF has awarded grants to additional programs, totaling more than 290.

EHS programs are designed to produce outcomes in four domains: (1) child development, (2) family development, (3) staff development, and (4) community development. The Reauthorization required that this new initiative be evaluated. To study the effect of the initiative, ACYF awarded a contract through a competitive procurement to Mathematica Policy Research, Inc. (MPR) with a subcontract to Columbia University's Center for Young Children and Families. The evaluation will be carried out from October 1, 1995 through March 30, 2002. Data collection activities that are the subject of this **Federal Register** notice are intended for the fourth phase of the EHS evaluation. The sample for the assessments will be approximately 1,144 fathers from the 3,000 EHS sample families, whose mothers and infants/toddlers are participating in the study (see OMB #0970-0143) in 13 of the EHS study sites. Each family will be randomly assigned to a treatment group or a control group. The 36-month father assessments will be conducted through personal interviewing, structured observations and videotaping. All data collection instruments have been designed to minimize the burden on respondents by minimizing interviewing and assessment time. Participation in the study is voluntary and confidential.

The information will be used by government managers, Congress and others to better understand the roles of fathers and father-figures with their children and in the EHS program.

*Respondents:* Fathers or father-figures of children whose families are in the EHS national evaluation sample (both program and control group families).

### ANNUAL BURDEN ESTIMATES

Instrument	Estimated number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
36-month father interview .....	89	1	1.0	89
36-month interview and videotaping protocol .....	74	1	1.3	96
36-month abbreviated interview and videotaping protocol .....	30	1	1.05	32

*Estimated Total Annual Burden:* 217.

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 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: September 9, 1993.  
**Bob Sargis,**  
*Acting Reports Clearance Officer.*  
[FR Doc. 98-24197 Filed 9-9-98; 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:* National Survey of Child and Adolescent Well-Being.

*OMB No.:* New.

*Description:* Title V, Section 429A, in the amendments to Title IV-B of the Social Security Act authorizes the Secretary of Health and Human Services to conduct a "national random sample study of child welfare". The NSCAW fulfills the intent of that legislation, and responds to a growing need for better understanding of the child welfare system and the children and families

who come into contact with it. The survey will collect date through interview and assessment with a national sample of 6700 children along with their parents, caregivers (such as foster parents), teachers, and caseworkers and other agency personnel to assess the characteristics of children and families who come into contact with the child welfare system, the services they need and receive, and the outcomes for those children and families. Information will be collected from all respondents at the time the child enters the child welfare system, with three subsequent annual followups. In addition, some information will be collected from parents or caregivers and caseworkers midway between the annual collections. The information will provide national estimates on characteristics of children and families in the child welfare system, and will be used to guide child welfare policy and practice, as well as to provide new insights into the antecedents and consequences of child maltreatment.

*Respondents:* Individuals or Households.

#### ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child, Waver 1 .....	6,700	1	1.29	8,666
Caregiver, Wave 1 .....	4,430	2	1.46	12,934
Foster Parent, Wave 1 .....	2,270	2	1.20	5,441
Non-Custodial parent, Wave 1 .....	1,900	2	1.0	3,826
CPS Caseworker, Wave 1 .....	8,375	10	.28	2,373
Caseworker, Wave 1 .....	5,740	1	1.03	5,931
Teacher, Wave 1 .....	5,099	1	.75	3,824
Local Agency Wave, 1 .....	97	1	1.08	105
State Agency, Wave 1 .....	40	1	1.08	55
Child, Wave 2 .....	5,832	1	1.01	5,876
Caregiver, Wave 2 .....	4532	2	1.44	13,048
Foster parent, Wave 2 .....	1,300	2	1.12	2,911
Non-Custodial parent .....	1,600	2	.83	2,687
Caseworker .....	3,460	2	.91	6,285
Teacher, Wave 2 .....	4,590	1	.75	3,443
Local Agency, Wave 2 .....	97	1	1.08	105
State Agency, Wave 2 .....	51	1	1.08	55
Child, Wave 3 .....	5,677	1	1.11	6,308
Caregiver, Wave 3 .....	4,650	2	1.43	13,279
Foster Parent, Wave 3 .....	1,027	2	1.21	2,483
Non-Custodial parent, Wave 3 .....	1,600	2	.81	2,587
Caseworker, Wave 3 .....	2,595	20	.78	4,066
Teacher, Wave 3 .....	4,361	1	.75	3,443
Local Agency, Wave 3 .....	97	1	1.08	105
State Agency, Wave 3 .....	51	1	1.08	55

#### Estimated Total Annual Burden Hours: 36,630.

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,

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 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: September 3, 1998.

**Bob Sargis,**

*Acting Reports Clearance Officer.*

[FR Doc. 98-24199 Filed 9-9-98; 8:45 am]

BILLING CODE 4184-01-M

OMB No.: 0970-0037.

*Description:* The report is used by States to report their estimated funding requirements on a percentage bases, by quarter. The information is used to develop apportionment requests and to provide funding to States when their program requirements are most acute. Certain States need the bulk of their funds during the winter months while others require theirs during the summer months.

*Respondents:* State, Local or Tribal Government.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Low Income Home Energy Assistance Program (LIHEAP) Quarterly Allocation Estimates.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF-535 .....	51	1	.25	13

*Estimated Total Annual Burden:* 13.

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Service, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: September 3, 1998.

**Bob Sargis,**

*Acting Reports Clearance Officer.*

[FR Doc. 98-24198 Filed 9-9-98; 8:45 am]

BILLING CODE 4184-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**Antiviral Drugs Advisory Committee; Notice of Meeting**

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Antiviral Drugs Advisory Committee.

*General Function of the Committee:*

To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on October 6, 1998, from 8:30 a.m. to 5 p.m.

*Location:* Holiday Inn—Silver Spring, Kennedy Grand Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Contact Person:* Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7001, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss new drug applications (NDA) N21-003 (100-milligram (mg) tablets) and NDA N21-004 (5 mg/milliliter oral solution) for lamivudine (Epivir HBV, Glaxo Wellcome, Inc.) for the treatment of chronic hepatitis B.

*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 28, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 28, 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: September 1, 1998.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 98-24241 Filed 9-9-98; 8:45 am]

BILLING CODE 4160-01-F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. 97N-0513]

**Agency Information Collection Activities; Announcement of OMB Approval; Orphan Drugs—21 CFR Part 316****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Orphan Drugs—21 CFR Part 316" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 18, 1998 (63 FR 27299), 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 0910-0167. The approval expires on July 31, 2001.

Dated: September 2, 1998.

**William K. Hubbard,***Associate Commissioner for Policy Coordination.*

[FR Doc. 98-24240 Filed 9-9-98; 8:45 am]

BILLING CODE 4160-01-F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. 98D-0670]

**Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k); Draft; Availability****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the

availability of the draft guidance entitled "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)." This draft guidance is neither final nor is it in effect at this time. This draft guidance outlines the information to be submitted in a premarket notification submission (510(k)) for medical devices that are intended to be used for in vitro fertilization (IVF), gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), intracytoplasmic sperm injection (ICSI), embryo transfer (ET), and related assisted reproduction technology (ART) procedures.

**DATES:** Written comments concerning this draft guidance must be submitted by December 9, 1998.

**ADDRESSES:** Submit written requests for single copies of the draft guidance entitled "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)" to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. Written comments concerning this draft guidance must be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in the brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FURTHER INFORMATION CONTACT:** Elisa D. Harvey, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180.

**SUPPLEMENTARY INFORMATION:****I. Background**

This draft guidance outlines the information to be submitted in a 510(k) for medical devices that are intended for use in IVF, GIFT, ZIFT, ICSI, ET, and ART procedures. On January 29, 1988, and October 21, 1995, FDA consulted with the Obstetrics and Gynecology Devices Panel (the Panel) regarding its regulatory strategy and the classification of these devices. Both times the Panel agreed that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the devices used for IVF and ART.

Therefore, in the **Federal Register** of September 4, 1997 (62 FR 46686), FDA published a proposed rule to reclassify instrumentation intended for use in IVF and related ART procedures from class III to class II. FDA also proposed to reclassify assisted reproduction microscopes and microscope accessories from class III to class I and to exempt them from the requirement of premarket notification (510(k)).

**II. Significance of Guidance**

This draft guidance represents the agency's current thinking on the information needed in a 510(k) intended to be used for ART procedures. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has developed good guidance practices (GGP's) to set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is a level 1 document consistent with the GGP's.

**III. Electronic Access**

In order to receive "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 620 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic

submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>. The draft guidance entitled "Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures: Submission Guidance for a 510(k)" will be available at <http://www.fda.gov/cdrh/ode/ed-rp.html>.

#### **IV. Comments**

Interested persons may, on or before December 9, 1998, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1998.

#### **D.B. Burlington,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 98-24243 Filed 9-9-98; 8:45 am]

BILLING CODE 4160-01-F

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Health Care Financing Administration**

[HCFA-3432-N]

#### **Medicare Program; September 25, 1998, Open Town Hall Meeting To Discuss the Medicare Coverage Process**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting to solicit comments from the public on proposed revisions to the process we use to make administrative coverage decisions in the Medicare program. Advance registration is required due to space limitations.

**DATES:** The meeting is scheduled for September 25, 1998 from 8:30 a.m. until 5:30 p.m., e.s.t.

**ADDRESSES:** The meeting will be held in the HCFA headquarters auditorium, 7500 Security Boulevard, Baltimore, Maryland, 21244.

**FOR FURTHER INFORMATION CONTACT:** Ron Milhorn (410) 786-5663

**SUPPLEMENTARY INFORMATION:** At present, in accordance with section 1862(a)(1)(A) of the Social Security Act,

we use a variety of mechanisms to make coverage decisions, including internal staff review, meetings and discussions with medical experts, and technology assessments. Until last year, we also used a Technology Advisory Committee, comprised of both HCFA and non-HCFA personnel, to discuss and receive advice about coverage issues. We disbanded the Technology Advisory Committee last year following concerns raised by the General Accounting Office about whether the Committee complies with the Federal Advisory Committee Act. We have developed a plan for establishing a new committee that fully complies with the Federal Advisory Committee Act. This committee will be more open and responsive to public participation. We are also taking other steps to make the coverage review process more open and to offer a more accessible and systematic means for advising the public about ongoing actions regarding coverage issues.

The meeting will consist of short HCFA presentations on several major topics central to the development of revisions to the coverage process followed by public discussion. The meeting will conclude with a question and answer session during which the public may raise any issues related to the topics discussed. While the meeting is open to the public, attendance is limited to space available. Therefore, individuals must register in advance, as described below.

#### **Registration**

Casals and Associates in Arlington, Virginia will handle registration for the meeting. Individuals may register by contacting Stacey Young at Casals and Associates by mail, fax, or Internet electronic mail. Please provide your name, title, firm name, address, telephone, fax, and Internet electronic mail address (if applicable).

- For mail registration, the address is: Casals and Associates, 2231 Crystal Drive, Suite 814, Arlington, Virginia, 22202, Attention: Stacey Young.
- For fax registration, the number is 703-920-5750.
- For registration by Internet electronic mail, the address is SYoung@Casals.com.

Casals and Associates will provide all registrants with a confirmation packet and background papers prior to the meeting.

We will accept written questions, comments, or other materials, either prior to, or within 14 days after the meeting. Address comments to: Ron Milhorn (S3-02-01), HCFA, 7500 Security Blvd., Baltimore, Md. 21244,

Telephone: 410-786-5663, FAX: 410-786-6857, E-Mail: Rmilhorn@hcfa.gov

There is no special format for the materials; however, we request that commenters be clear about the issue or aspect of the proposed process on which they have a question, comment, or suggestion.

After reviewing and analyzing the comments and suggestions we receive, we intend to prepare a notice for publication in the **Federal Register** setting forth the process for making administrative coverage decisions. Although our plans are to publish this notice in final form, we anticipate that we will provide a comment period and make any necessary revisions in the notice based on the comments we receive.

**Authority:** Federal Advisory Committee Act (5 U.S.C. App.2)  
(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 26, 1998.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 98-24291 Filed 9-9-98; 8:45 am]

BILLING CODE 4120-01-P

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Health Resources and Services Administration**

#### **Advisory Council Notice of Re-establishment**

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. Appendix 2), the Secretary, Department of Health and Human Services, announces the re-establishment of the following advisory committee.

**Designation:** HRSA AIDS Advisory Committee.

**Purpose:** Advises the Secretary and the Health Resources and Services Administration (HRSA) on its activities related to the support of health care services to persons living with HIV/AIDS and education of health professionals about HIV/AIDS. The Committee will support the Agency's process of identifying and responding to the health service delivery needs of affected communities and to the needs of individuals living with this disease.

**Structure:** The Committee shall consist of the Administrator, HRSA as Chair; ex-officio members: Director, Centers for Disease Control and

Prevention; Director, National Institutes of Health; Administrator, Health Care Financing Administration; Administrator, Substance Abuse and Mental Health Services Administration; Administrator, Agency for Health Care Policy and Research (or their AIDS Coordinators or designees) and such additional officers of the U.S. Government as deemed necessary for the Committee to effectively carry out its functions; and 14 members selected by the Secretary.

Members shall be invited to serve as follows: nine shall be authorities knowledgeable in the fields of health care delivery, State health programs, clinical care, preventive and public health, medical education, health services and clinical research, and health care financing; five shall be members of the general public, and at least three shall be persons living with HIV/AIDS. Members shall be invited to serve for overlapping four-year terms; terms of more than two years are contingent upon the renewal of the Committee by appropriate action prior to its termination.

Dated: September 3, 1998.

**James J. Corrigan,**  
Associate Administrator for Management and Program Support.  
[FR Doc. 98-24244 Filed 9-9-98; 8:45 am]  
BILLING CODE 4160-15-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a Teleconference Meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in September 1998.

The meeting will include the review, discussion and evaluation of grants and cooperative agreement applications. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and roster of council members may be obtained from: Mrs. Marjorie Cashion, CSAT, National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-8923.

Substantive program information may be obtained from the contact below

whose name and telephone number are listed.

**Committee name:**—Center for Substance Abuse Treatment, National Advisory Council.

**Meeting date:**—September 22, 1998.

**Place:**—Center for Substance Abuse Treatment, 5515 Security Lane, 6th Floor Conference Room, Suite 617, Rockville, MD 20852.

**Type:**—Closed: September 22, 1998—2:30-3:30 p.m.

**Contact:**—Marjorie M. Cashion, Executive Secretary, Telephone: (301) 443-8923, and FAX: (301) 480-6077.

This notice is being published less than fifteen days prior to meeting date due to urgent needs to meet timing limitation imposed by review and funding cycle.

Dated: September 3, 1998.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 98-24273 Filed 9-9-98; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Extension of Comment Period for Technical/Agency Draft Multi-Species Recovery Plan for the Threatened and Endangered Species of South Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The Fish and Wildlife Service (Service) announces the extension of the public comment period for Volume II of the draft multi-species recovery plan for the threatened and endangered species of South Florida. A notice announcing the availability of Volume II was published in the **Federal Register** on July 13, 1998 (63 FR 37584).

**DATES:** The comment period, which originally closed on September 30, 1998, is now extended until October 31, 1998 for Volume II only. The comment period for Volume I (63 FR 11304) still closes on September 30, 1998.

Comments on the draft recovery plan must be received on or before these dates to ensure consideration by the Service.

**ADDRESSES:** Copies of the draft recovery plan can be obtained by contacting the U.S. Fish and Wildlife Service Publications Unit, National Conservation Training Center, c/o Aramark, Rt. 1 Box 166, Shepherd Grade Rd., Shepherdstown, West Virginia 25443. The Service is encouraging that

requests for copies be for the CD-ROM version as the hard copy of Volume II encompasses approximately 900 pages. Additionally, the entire document may be viewed or downloaded from the Service's South Florida Ecological Service's Field Office website at: <http://www.fws.gov/r4eao/wildlife/esvb.html>.

Written comments and materials regarding the plan should be addressed to Dawn Jennings, South Florida Field Office, 1360 U.S. Highway 1, Suite 5, Vero Beach, Florida 32960. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the South Florida Field Office.

#### FOR FURTHER INFORMATION CONTACT:

Dawn Jennings at the South Florida Field Office (561) 562-3909 for information on the recovery plan; the U.S. Fish and Wildlife Service Publications Unit (304) 876-7203 for additional copies of the draft recovery plan.

#### SUPPLEMENTARY INFORMATION:

##### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Fish and Wildlife Service's threatened and endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions that may be necessary for conservation of these species, establish criteria for the recovery levels for reclassification from endangered to threatened status or removal from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The Multi-Species Recovery Plan identifies the recovery and restoration needs of 68 threatened and endangered

species and their habitats in the South Florida Ecosystem, an area encompassing 67,346 square kilometers covering the 19 southernmost counties in Florida, using an ecosystem-wide approach. This plan is a two-volume effort to identify recovery needs of the species of South Florida and the ecosystems upon which they depend. The focus of Volume I is the individual species, while Volume II integrates the species needs with those of the ecological communities in which they reside.

Paper copies of both volumes of the draft recovery plan are available for public inspection at the following locations:

U.S. Fish and Wildlife Service, South Florida Field Office, U.S. Highway 1, Suite 5, Vero Beach, Florida 32960, 561-562-3909

U.S. Fish and Wildlife Service, Merritt Island National Wildlife Refuge, 4 miles east of Titusville, State Road 402, Titusville, Florida 32782, 407-861-0667

U.S. Fish and Wildlife Service, J.N. "Ding" Darling National Wildlife Refuge, 1 Wildlife Drive, Sanibel, Florida 33957, 813-472-1100

U.S. Fish and Wildlife Service, Florida Panther National Wildlife Refuge, 3860 Tollgate Boulevard, Suite 300, Naples, Florida 34114, 941-353-8442

U.S. Fish and Wildlife Service, National Key Deer Refuge, Winn Dixie Shopping Plaza, Big Pine Key, Florida 33043-1510, 305-872-2239

U.S. Fish and Wildlife Service, Loxahatchee National Wildlife Refuge, 10216 Lee Road, Boynton Beach, Florida 33437-4796, 561-732-3684

University of Florida, Smathers Library West, Gainesville, Florida 32611, University of Miami Library, 4600 Rickenbacker Causeway, Miami, Florida 33149

University of Central Florida Library, 4000 Central Florida Blvd., Orlando, Florida 32816

Florida Atlantic University Library, 777 Glades Rd, Boca Raton, Florida 33431

Florida International University Library, FIU University Park, 11200 SW A St., Miami, Florida 33199

University of South Florida Library, 4202 E. Fowler Ave., Tampa, Florida 33620

Florida Gulf Coast University Library, 19501 Ben Hill Griffin Parkway, Ft. Myers, Florida 33965-6565

Archbold Biological Station Library, P.O. Box 2057, Old State Road 8, Lake Placid, Florida 33852

Fairchild Tropical Garden Library, 11935 Old Cutler Road, Miami, Florida 33156

Big Pine Key Branch Library, 213 Key Deer Boulevard, Big Pine Key, Florida 33043

#### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date identified above will be considered prior to approval of the plan.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 3, 1998.

**James J. Slack,**

*Project Leader.*

[FR Doc. 98-24325 Filed 9-9-98; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-160-1110-00]

#### Closure and Supplementary Rule for the Traver Ranch Area, Carrizo Plain Natural Area, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice, closure and supplementary rule, California.

**SUMMARY:** The Bakersfield Field Office hereby gives notice and establishes the following closure and supplementary rule for the Traver Ranch area of the Carrizo Plain Natural Area, effective as of the date of this publication, as provided for under Title 43, Code of Federal Regulations, Subparts 8364.1 and 8365.1-6:

A. The L.E. Traver house, Phillips structures and 100 feet from these structures, are closed to occupancy or entry. The purpose of this closure is to protect roosting bats and their habitat from human disturbance; protect these structures from vandalism; provide for public safety; and to protect interpretive features.

This closure affects approximately 2 acres in the Carrizo Plain Natural Area, San Luis Obispo County, California within the S½ of the NW¼ of Section 12, T. 11.N., R. 26 W., Mount Diablo Base and Meridian. This area is located along Soda Lake Road, approximately 11 miles northwest of the intersection of State Highway 166 and Soda Lake Road.

B. The old farm equipment located adjacent to the L.E. Traver house are not to be tampered with, disturbed or moved. This equipment is located in a fenced field, immediately southeast of the L.E. Traver house and adjacent to

Soda Lake Road. The purpose of this restriction is to protect interpretive features and cultural resources.

Exemptions to this closure and supplementary rule will apply to administrative personnel for monitoring and maintenance purposes; other exemptions to this restriction may be made on a case-by-case basis by the authorized officer. Exemptions could include approved research, essential search and rescue, and other emergency actions or administrative operations for the protection of wildlife habitat, cultural resources or interpretive resources.

**DATES:** This closure and supplementary rule are effective as of September 10, 1998 and will remain in effect until revised, revoked or amended by the Authorized Officer.

#### FOR FURTHER INFORMATION CONTACT:

Amy R. Kuritsubo, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, Phone (805) 391-6000.

**SUPPLEMENTARY INFORMATION:** A copy of this **Federal Register** notice and a map showing the affected area is available for review in the Bakersfield Office of the Bureau of Land Management.

The authorities for this closure and supplementary rule are 43 CFR 8364.1 and 8365.1-6. Violations of this closure and supplementary rule are punishable by fines of up to \$1,000 and/or imprisonment not to exceed 12 months as well as the penalties provided under State law.

Dated: August 28, 1998.

**Ron Fellows,**

*Field Office Manager.*

[FR Doc. 98-24322 Filed 9-9-98; 8:45 am]

BILLING CODE 4310-40-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES-960-9820-02-ES02] ES-50149, Group 98, Arkansas]

#### Notice of Filing of Plat of Survey, Arkansas

The plat of the dependent resurvey of a portion of the east, west and north (base line) boundaries, and a portion of the subdivisional lines of Township 1 South, Range 25 West, 5th Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 20, 1998.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must

be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 20, 1998.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: September 2, 1998.

**Stephen G. Kopach,**

*Chief Cadastral Surveyor.*

[FR Doc. 98-24323 Filed 9-9-98; 8:45 am]

BILLING CODE 4910-GJ-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 28, 1998.

The Commission was established pursuant to Pub. L. 99-420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 29, 1998
2. Committee reports
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda and date of next Commission meeting

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288-3338.

**Paul F. Haertel,**

*Superintendent, Acadia National Park.*

[FR Doc. 98-24203 Filed 9-9-98; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Meeting of the New Orleans Jazz Commission

**AGENCY:** National Park Service, DOI.

**ACTION:** Meeting of the New Orleans Jazz Commission.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the New Orleans Jazz Commission will be held at the following place and time.

**DATES:** Wednesday, September 9, 1998 at 4 p.m.

**ADDRESSES:** The meeting will be held in the U.S. Mint Conference Room on 400 Esplanade Avenue, New Orleans, Louisiana 70116.

#### FOR FURTHER INFORMATION CONTACT:

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Jackie Harris, Chairperson, New Orleans Jazz Commission, 1515 Poydras Street, Suite 1200, New Orleans, Louisiana 70112, telephone (504) 565-8104.

#### SUPPLEMENTARY INFORMATION:

1. The official designation of the Commission is the New Orleans Jazz Commission.

2. The Commission has been established to assist the National Park Service in implementing the purposes of Pub. L. 103-433. The purposes of Pub. L. 103-433 are to:

a. Establish a New Orleans Jazz National Historical park to preserve the origins, early history, development and progression of jazz;

b. Provide visitors with opportunities to experience the sights, sounds, and places where jazz evolved; and

c. Implement innovative ways of establishing jazz educational partnerships that will help to ensure that jazz continue as a vital element of the culture of New Orleans and our Nation.

3. In accordance with Pub. L. 103-433, Title XII, the duties of the Commission are to:

(1) Advise the Secretary in the preparation of the General Management Plan; assist in public discussions of planning proposals; and assist the National Park Service in working with individuals, groups, and organizations including economic and business interests in determining programs in which the Secretary should participate through cooperative agreement;

(2) In consultation and cooperation with the Secretary, develop partnerships with educational groups, schools, universities, and other groups in

furtherance of the purposes of the act establishing the New Orleans Jazz National Historical Park;

(3) In consultation and cooperation with the Secretary, develop partnerships with city-wide organizations, and raise and disperse funds for programs that assist mutual aid and benevolent societies, social and pleasure clubs and other traditional groups in encouraging the continuation of and enhancement of jazz cultural traditions;

(4) Acquire or lease property for jazz education, and advise on hiring brass bands and musical groups to participate in education programs and help train young musicians;

(5) In consultation and cooperation with the Secretary, provide recommendations for the location of the visitor center and other interpretive sites;

(6) Assist the Secretary in providing funds to support research on the origins and early history of jazz in New Orleans; and

(7) Notwithstanding any other provision of law, seek and accept donations of funds, property, or services from individuals, foundations, corporations, or other public or private entities and expand and use the same for the purposes of providing services, programs, and facilities for jazz education, or assisting in the rehabilitation and restoration of structures identified in the national historic landmark study as having outstanding significant to the history of jazz in New Orleans.

The matters to be discussed at this meeting include:

1—Old Business (Commission Projects)

2—New Business

3—General Management Plan Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning matters to be discussed with the Chairperson, New Orleans Jazz Commission.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the headquarters office of New Orleans Jazz National Historical Park.

Dated: August 13, 1998.

**Charlie Powell,**

*Regional Director, Southeast Region.*

[FR Doc. 98-24202 Filed 9-9-98; 8:45 am]

BILLING CODE 4310-70-M

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****Contra Costa Water District Multi-Purpose Pipeline Project, Contra Costa County, California**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of the draft environmental impact report/draft environmental impact statement (DEIR/DEIS) DES 98-39.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD) have prepared a joint DEIR/DEIS for CCWD's Multi-Purpose Pipeline Project (MPP). The proposed action is for CCWD to construct and operate two water pipelines and supporting pumping facilities. These facilities are required to supplement the Contra Costa Canal and to provide improved water transmission reliability to meet needs following an emergency (such as an earthquake or fire) and to provide adequate capacity to meet projected demand through the year 2020. The DEIR/DEIS describes and presents the environmental effects of three alternatives, including no action. A public hearing will be held to receive comments from interested parties, organizations, and individuals on the environmental impacts of the proposal.

**DATES:** Submit written comments on the DEIR/DEIS on or before November 9, 1998. Comments may be submitted to Reclamation or CCWD at the addresses provided below. The public hearing on the DEIR/DEIS will be held on October 13, 1998, at 7:00 p.m.

**ADDRESSES:** The public hearing will be held at the Bay Point/Ambrose Community Center, 3105 Willow Pass Road, Bay Point, California.

Written comments on the DEIR/DEIS should be addressed to Ms. Christina Ko Hartinger, Contra Costa Water District, 2300 Stanwell Drive, Concord CA 94524 or to Mr. Bob Eckart, Bureau of Reclamation, MP-152, 2800 Cottage Way, Sacramento CA 95825.

Copies of the DEIR/DEIS may be requested from Ms. Hartinger at the above address or by calling (925) 688-8335.

Copies of the DEIR/DEIS are available for public inspection and review at the following locations:

- Contra Costa Water District, 2300 Stanwell Drive, Concord CA 94524; telephone: (925) 688-8335

- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW, Washington DC 20240; telephone: (202) 208-4662

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 445-2064

- Bureau of Reclamation, Regional Director, Attention: MP-140, 2800 Cottage Way, Sacramento CA 95825-1898; telephone: (916) 978-5100

- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240-0001

Copies will also be available for inspection at the following public libraries:

- Antioch Branch Library, 501 W-18th Street, Antioch CA 94509

- Bay Point Branch Library, 205 Pacifica Avenue, Pittsburg CA 94565

- Pittsburg Branch Library, 80 Power Avenue, Pittsburg CA 94565

- Oakley Branch Library, 118 East Ruby, Oakley CA 94561

- Concord Branch Library, 2900 Salvio, Concord CA 94519

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Eckart, Bureau of Reclamation, at (916) 978-5051 or Ms. Christina Ko Hartinger, Contra Costa Water District, at (925) 688-8335.

**SUPPLEMENTARY INFORMATION:** The MPP involves construction and operation of two new pipelines and pump stations along with other improvements to the existing Contra Costa Canal (Canal). The project would increase the reliability and capacity of the District's raw-water delivery system to meet existing and new customer needs. The proposed 20-mile, 36-inch diameter, welded steel, multipurpose pipeline would extend from Oakley to Clyde. The DEIR/DEIS evaluates two alternatives (Canal Alignment and Street Alignment) and two sub-alternatives (Bay Point Pipeline Alignment and Mallard Pipeline Alignment) and a no-action alternative. The MPP would be designed with emergency connections to the Canal and with connection points to allow future inter-ties with the treated-water systems in Antioch, Pittsburg, and Bay Point. A 25 million-gallon-per-day (mgd) MPP pump station would be constructed and is proposed to pump water from the Randall-Bold Water Treatment Plant clearwell through the MPP to the Treated Water Service Area. A proposed 36-inch diameter, 36-mgd raw-water pipeline would be constructed to bypass an existing bottleneck along the Canal. A raw-water pump station would be constructed to pump water from the

Canal into the raw-water pipeline. A third motorized canal gate would be installed at six of the seven check structures to increase flow rates of the Canal. The existing Neroly Blending Facility would be improved by installing mixing structures and widening the Canal up to 7 feet along a section measuring a maximum of 250 feet.

**Hearing Process Information**

CCWD staff will make a brief presentation to describe the proposed project, its purpose and need, alternative pipeline alignments, and scenarios for construction and operation. The public may comment on environmental issues addressed in the DEIR/DEIS. If necessary due to large attendance, comments will be limited to 5 minutes per speaker. Written comments will also be accepted.

Dated: September 1, 1998.

**John F. Davis,**

*Acting Regional Director.*

[FR Doc. 98-24292 Filed 9-9-98; 8:45 am]

BILLING CODE 4310-94-P

**INTERNATIONAL TRADE COMMISSION**

[Inv. No. 337-TA-407]

**Certain Remodulating Channel Selectors and Systems Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION:** Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3107.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 10, 1998, based on a complaint filed by Ciena Corporation alleging that respondents Pirelli, S.p.A., Pirelli Cavi, S.p.A., and Pirelli Cables and Systems L.L.C. (collectively "Pirelli") violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing,

selling for importation, or selling within the United States after importation certain remodulating channel selectors and systems containing same that infringe certain claims of Ciena's U.S. Letters Patent 5,715,076.

On May 1, 1998, Ciena and Pirelli entered into a settlement agreement, which included an agreement to file a joint motion to terminate the investigation. On June 18, 1998, Ciena and Pirelli filed the joint motion to terminate the investigation, which was supported by the Commission investigative attorney ('IA').

On July 31, 1998, the ALJ issued an ID (Order No. 4) granting the joint motion to terminate the investigation on the basis of the settlement agreement. None of the parties filed a petition to review the subject ID. The Commission subsequently determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued: September 1, 1998.

By order of the Commission.

**Donna R. Koehnke,**

Secretary.

[FR Doc. 98-24270 Filed 9-9-98; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Proposed Termination of Judgment

Notice is hereby given that defendant, United Technologies Corporation ("UTC"), formerly United Aircraft Corporation ("UAC"), has filed with the United States District Court for the District of Connecticut, a motion to terminate the Final Judgment in United States v. United Aircraft Corporation,

Civil Action No. 14426, and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has tentatively consented to termination of the Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The Complaint in this case (filed May 24, 1971) alleged that UAC had attempted to monopolize fuel cell research and development in the United States.

On July 11, 1973, a Final Judgment was entered against UAC. The Final Judgment was entered by consent between the United States and UAC. In 1975, the name of United Aircraft Corporation became United Technologies Corporation. The Consent Decree applies to UTC's conduct with respect to the research, development and manufacture of fuel cells. Certain provisions of the Consent Decree have expired by their terms, or have been rendered moot because the subject patents have become public. Other provisions of the Judgment that continue to apply prohibit UTC from engaging in certain conduct. Specifically, those provisions enjoin and restrain UTC from entering into any exclusive fuel cell research and development joint venture with a U.S. corporation or citizen, and using its purchasing power to restrain competition in the research, development or manufacture of fuel cells or equipment specifically designed for use with fuel cells (including, but not limited to, pumps, heat exchangers and purging equipment).

The Department has filed with the Court a memorandum setting forth the reasons why the Government believes that termination of the Final Judgment would serve the public interest. Copies of UTC's motion papers, the stipulation containing the Government's consent, the Government's memorandum and all further papers filed with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, Room 215 North, 325-7th Street N.W., Liberty Place Building, Washington, D.C. 20530, and at the Office of the Clerk of the Court, United States District Court for the District of Connecticut, 450 Main Street, Hartford, CT 06103. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Government. Such comments must be

received by the Division within sixty (60) days and will be filed with the Court by the Government. Comments should be addressed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, Liberty Place Building, Suite 300, 325-7th Street N.W., Washington, D.C. 20530.

**Rebecca P. Dick,**

Director, Civil Non-Merger Enforcement.

[FR Doc. 98-24281 Filed 9-9-98; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 10, 1998, Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Co., 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143) .....	II
Hydrocodone (9193) .....	II
Oxymorphone (9652) .....	II

The firm plans to manufacture the listed controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: September 2, 1998.

**John H. King,**

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98-24297 Filed 9-9-98; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Manufacturer of Controlled Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 17, 1998, Guilford Pharmaceuticals, Inc., Attn: Ross S. Laderman, 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: September 2, 1998.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 98-24298 Filed 9-9-98; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated May 5, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27589), Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, New Jersey 07936, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylpenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylpenidate is consistent with the public interest at this time. DEA has investigated Novartis Pharmaceuticals Corp. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 2, 1998.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 98-24294 Filed 9-9-98; 8:45 am]

BILLING CODE 4410-09-M

0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1998.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 98-24295 Filed 9-9-98; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Importer of Controlled Substances Notice of Registration**

By Notice dated May 6, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27590), Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

The firm plans to import the propiram to manufacture for product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roberts Laboratories, Inc. to import propiram is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roberts Laboratories, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Manufacturer of Controlled Substances Notice of Registration**

By Notice dated January 21, 1998, and published in the **Federal Register** on February 12, 1998, (63 FR 7182), Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250) .....	II
Methadone-intermediate (9254) ...	II
levo-alphacetylmethadol (9648) ...	II

The firm plans to manufacture methadone and methadone-intermediate for production of LAAM.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Orpharm, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and

Dated: September 2, 1998.

**John H. King,**

Deputy Assistant Administrator, Office of  
Diversion Control, Drug Enforcement  
Administration.

[FR Doc. 98-24296 Filed 9-9-98; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF LABOR**

**Employment and Training  
Administration**

**Notice of Determinations Regarding  
Eligibility To Apply for Worker  
Adjustment Assistance and NAFTA  
Transitional Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of August, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations for Worker  
Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-34,711; Kellerman Logging Co.,  
Joseph, OR

TA-W-34,623; Pillowtex, Inc., Blanket  
Div., Monroe, NC

TA-W-34,764; Bibb Corp., Plant #2,  
Roanoke Rapids, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-34,779; Philadelphia, Bethlehem  
and New England Railroad,  
Bethlehem, PA

TA-W-34,741; Group Genesis, Inc.,  
Marion, OH

TA-W-34,769; Viva Optique, Inc.,  
Fairfield, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-34,699; Heinz Pet Product,  
Kankakee, IL

TA-W-34,601; The Sanibel Co & Arto,  
Hialeah, FL

TA-W-34,776; Guest Enterprises, LLC,  
Brownsville, TX

TA-W-34,800; Borg-Warner  
Automotive, Sterling Heights  
Operation, Sterling Heights, MI

TA-W-34,785; Hubbell Premise Wiring,  
Inc., Marion, NC

TA-W-34,765; Ball-Foster Glass  
Container, LLC, Port Allegany, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-34,662; General Electric Co., GE  
Lighting, Memphis, TN

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-34,794; Perry Manufacturing Co.,  
Mt. Airy, NC

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

**Affirmative Determinations for Worker  
Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-34,704; Bennett Uniform Mfg.,  
Inc., Greensboro, NC: June 19, 1997.

TA-W-34,682; Glencraft Lingerie, New  
York, NY: March 13, 1998.

TA-W-34,868; Hudson Mfg Co.,  
Newport, NC: August 8, 1997.

TA-W-34,793; Spray-Air USA, Inc./  
Alida Group, Inc., Grangeville, ID:  
July 16, 1997.

TA-W-34,482; American Cemwood  
Corp., Albany, OR: April 14, 1997.

TA-W-34,771; Addwest Minerals, Inc.,  
Oatman, AZ: July 8, 1997.

TA-W-34,777; Industrial Ceramics, Inc.,  
Lima, NY: July 3, 1997.

TA-W-34,775; Gurien Finishing Co.,  
Union City, TN: July 8, 1997.

TA-W-34,838; Walls Industries, Inc.,  
Anniston, AL: July 27, 1997.

TA-W-34,671; BASF Corp., Santa Ana,  
CA: June 5, 1997.

TA-W-34,722 & A; Robinson  
Manufacturing Co., Oxford, ME and  
Kezar Falls Woolen, Kezar Falls,  
ME: June 19, 1997.

TA-W-34,562; Boise Cascade, Emmett,  
ID: May 5, 1997.

TA-W-34,760; Athens Apparel, Inc.,  
Athens, AL: June 3, 1997.

TA-W-34,818; J.W. Gibson Well Service  
Co., Williston, ND: July 20, 1997.

TA-W-34,693; Teledyne Electronic  
Technologies, Scottsdale, AR: June  
17, 1997.

TA-W-34,747; Keptel, Inc., Div. Of  
Antec Co., Tinton Falls, NJ: July 6,  
1997.

TA-W-34,735; Bon Worth, Inc.,  
Spindale, NC: June 19, 1997.

TA-W-34,645; Celanese Acetate, Celco  
Plant, Narrows, VA: June 2, 1997.

TA-W-34,667; Brunswick Bicycles,  
Effingham, IL: June 9, 1997.

TA-W-34,697; Daniel Green Co.,  
Dolgeville, NY: June 15, 1997.

TA-W-34,737; Wirtz Manufacturing Co.,  
Inc., Rubber Mold Div., Port Huron,  
MI: June 20, 1997.

TA-W-34,664; Rod Ric Drilling Corp.,  
Headquartered in Midland, TX and  
Operating Throughout the State of  
Texas.

TA-W-34,627 TA-W-34,740; DMC  
Prints, New York, NY and  
Orangeburg, SC: May 19, 1997.

TA-W-34,647; The Wells Lamont Corp.,  
El Paso, TX: May 24, 1997.

TA-W-34,661; EJ Footwear Corp.,  
Glendale Plant, Endicott, NY: June  
8, 1997.

TA-W-34,752; Flagg Brass, Stowe, PA:  
June 28, 1997.

TA-W-34,763; Sara Lee Hosiery, Mesila  
Park, NM: July 1, 1997.

TA-W-34,555; ISP Van DYK, Belleville,  
IL: May 5, 1997.

TA-W-34,705; Stanly Knitting Mills,  
Inc., Tennessee Headwear Div.,  
Mountain City, TN: June 18, 1997.

TA-W-34,739; Johnson Controls, Inc.,  
Automotive System Group, Pulaski,  
TN: June 27, 1997.

TA-W-34,466; Beloit Corp., Blackhawk  
Facility, Rockton, IL: March 21,  
1997.

**TA-W-34,750; Bosch Automotive Motor Systems, Hendersonville, TN:** June 24, 1997.

**TA-W-34,757 A, B, & C; Kinney Shoe Corp. d/b/a Eagle Rock Footwear, Carlisle, PA:** June 25, 1997., Johnson Baillie Shoe Plant, Millersburg, PA: June 25, 1997., Bedford Shoe Plant, Production Div., Carlisle, PA: June 1, 1997, and Romney Shoe Plant, Romney, WV: June 25, 1997.

**TA-W-34,728; Vistal Electronic Devices, Inc., Kirkwwod, NY:** June 24, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of August, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely.

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

#### Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations.

There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

**NAFTA-TAA-02496; Bibb Corp., Plant #2, Roanoke Rapids, NC**

**NAFTA-TAA-02435; Allied Systems Co., Sherwood, OR**

**NAFTA-TAA-02480; Kodak Polychrome Graphics, Anitec Div., Binghamton, NY**

**NAFTA-TAA-02566; Huffy Bicycle Co., Celina, OH**

**NAFTA-TAA-02508; Guest Enterprises L.L.C., Brownsville, TX**

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

**NAFTA-TAA-02454; General Electric Company, GE Lighting, Memphis, TN**

**NAFTA-TAA-2379A; Boise Cascade, Idaho Lumber, Emmett Div., Emmett, ID**

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have not become totally or partially separated from employment.

#### Affirmative Determinations NAFTA-TAA

**NAFTA-TAA-02571; Walls Industries, Inc., Anniston, AL:** July 27, 1997.

**NAFTA-TAA-02523; Industrial Ceramics, Inc., Lima, NY:** July 3, 1997.

**NAFTA-TAA-02510; Bunn Manufacturing Co., Inc., aka Devil Dog Mfg. Co., Inc., Wilson, NC:** July 13, 1997.

**NAFTA-TAA-02477; Bosch Automotive Motor Systems, Hendersonville, TN:** June 24, 1997.

**NAFTA-TAA-02519; Keptel, Inc., Div. of Antec Co., Tinton Falls, NJ:** July 1, 1997.

**NAFTA-TAA-02445; Brunswick Bicycles, Effingham, IL:** June 9, 1997.

**NAFTA-TAA-02379; Boise Cascade, Emmett Plywood, Emmett, ID:** May 5, 1997.

**NAFTA-TAA-02335; American Cemwood Corp., Albany, OR:** April 14, 1997.

**NAFTA-TAA-02555; Hudson Mfg., Co., Newport, NC:** August 4, 1997.

**NAFTA-TAA-02525; Borg-Warner Automotive, Sterling Heights Operation, Sterling Heights, MI:** July 15, 1997.

**NAFTA-TAA-02503; Gurien Finishing Co., Union City, TN:** July 8, 1997.

**NAFTA-TAA-02506; Spray-Air USA, Inc./Alida Group, Inc., Grangeville, ID:** July 16, 1997.

I hereby certify that the aforementioned determinations were issued during the month of August 1998. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 27, 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98-24321 Filed 9-9-98; 8:45 am]

BILLING CODE 4510-30-M

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-34,498 and NAFTA-02347]

**Kunkle Foundry Company, Inc., Andrews, IN; Notice of Affirmative Determination Regarding Application for Reconsideration**

By letters of June 30, 1998 and July 8, 1998, the petitioners requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA-W-34,498, and NAFTA-Transitional Adjustment Assistance, petition NAFTA-02347. The denial notices were signed on June 12, 1998 and published in the **Federal Register** on July 13, 1998 (63 FR 37590-91).

The petitioners allege that the subject firm shifted production of certain castings and that such castings are currently being manufactured in Mexico and imported into the U.S.

#### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of August 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98-24320 Filed 9-9-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR	DEPARTMENT OF LABOR	DEPARTMENT OF LABOR
<b>Employment and Training Administration</b>	<b>Employment and Training Administration</b>	<b>Employment and Training Administration</b>
[TA-W-34,669]	[TA-W-34,854]	[TA-W-34,839]
<b>MKE Quantum Components, Wafer Fabrication Group, Shrewsbury, MA; Notice of Termination of Investigation</b>	<b>Oneita Mexicana, Clint, Texas; Termination of Investigation</b>	<b>Paulette Robes, Division of Lipson Brothers Inc., New York, NY; Notice of Termination of Investigation</b>
Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 22, 1998, in response to a petition filed by company officials on behalf of workers at MKE Quantum Components, Wafer Fabrication Group, Shrewsbury, Massachusetts. The officials submitting the petition have decided to withdraw it. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.	Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 17, 1998 in response to a worker petition which was filed on July 16, 1998 on behalf of workers at Oneita Mexicana, Clint, Texas. The investigation revealed that the workers' employment was located outside of the United States. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.	Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 10, 1998 in response to a worker petition which was filed July 27, 1998 on behalf of workers at Paulette Robes, Division of Lipson Brothers Inc., New York, New York (TA-W-34,839).
Signed in Washington, DC, this 27th day of August, 1998. <b>Grant D. Beale,</b> Acting Director, Office of Trade Adjustment Assistance. [FR Doc. 98-24319 Filed 9-9-98; 8:45 am] BILLING CODE 4510-30-M	Signed in Washington, DC, this 1st day of September, 1998. <b>Grant D. Beale,</b> Acting Director, Office of Trade Adjustment Assistance. [FR Doc. 98-24314 Filed 9-9-98; 8:45 am] BILLING CODE 4510-30-M	The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA-W-33,943A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.
<b>DEPARTMENT OF LABOR</b>	<b>DEPARTMENT OF LABOR</b>	<b>DEPARTMENT OF LABOR</b>
<b>Employment and Training Administration</b>	<b>Employment and Training Administration</b>	<b>Employment and Training Administration</b>
[TA-W-34,844]	[TA-W-34,496]	[TA-W-34,564]
<b>Modern Distributors, Inc., Somerset, Kentucky; Termination of Investigation</b>	<b>P&amp;H Mining Equipment, Milwaukee, Wisconsin; Dismissal of Application for Reconsideration</b>	<b>Penn-Tex Corp, Inc., West Hazelton, PA; Termination of Investigation</b>
Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 10, in response to a petition filed by a company official on behalf of workers at Modern Distributors, Inc., Somerset, Kentucky. The current petition is the hard copy of a petition submitted earlier by FAX by a company official covering the same group of workers. The workers are the subject of an ongoing investigation for which a determination has not yet been issued (TA-W-34,825). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.	Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at the P&H Mining Equipment, Milwaukee, Wisconsin. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued. TA-W-34,496; P&H Mining Equipment Milwaukee, Wisconsin (August 31, 1998)	Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 22, 1998, in response to a petition filed on behalf of workers at Penn-Tex Corp., Inc., West Hazelton, Pennsylvania.
Signed in Washington, DC, this 31st day of August, 1998. <b>Grant D. Beale,</b> Acting Director, Office of Trade Adjustment Assistance. [FR Doc. 98-24315 Filed 9-9-98; 8:45 am] BILLING CODE 4510-30-M	Signed at Washington, DC this 1st day of September, 1998. <b>Grant D. Beale,</b> Acting Director, Office of Trade Adjustment Assistance. [FR Doc. 98-24316 Filed 9-9-98; 8:45 am] BILLING CODE 4510-30-M	The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TAW-34,480). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.
		Signed in Washington, D.C. this 28th day of August, 1998. <b>Grant D. Beale,</b> Acting Director, Office of Trade Adjustment Assistance. [FR Doc. 98-24318 Filed 9-9-98; 8:45 am] BILLING CODE 4510-30-M

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-34,578]

**Lanier Litigation Services (d.b.a. Quorum/Lanier), Bloomington, Minnesota; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at the Lanier Litigation Services (d.b.a. Quorum/Lanier), Bloomington, Minnesota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-34,578; Lanier Litigation Services (d.b.a. Quorum/Lanier), Bloomington, Minnesota (August 31, 1998)

Signed at Washington, DC, this 1st day of September 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98-24312 Filed 9-9-98; 8:45 am]

BILLING CODE 4510-30-M

Signed in Washington, DC this 1st Day of September 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98-24311 Filed 9-9-98; 8:45 am]

BILLING CODE 4510-30-M

a.m. on September 17 and 8:30 a.m. on September 18.

The Commission will discuss case-mix classification systems in post-acute care, risk adjustment, graduate medical education, and care at the end of life. Several sessions will be devoted to quality measures by the Commission's work plan on quality in Medicare.

Final agendas will be mailed on Wednesday, September 9, 1998 and will be available on the Commission's web sites (WWW.MedPAC.GOV).

**ADDRESSES:** 1730 K Street, NW.; Suite 800; Washington, D.C. 20006. The telephone number is 202/653-7220.

**FOR FURTHER INFORMATION CONTACT:** Diane Ellison, Office Manager, 202/653-7220.

**SUPPLEMENTARY INFORMATION:** If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653-7220.

**Murray N. Ross,**  
*Executive Director.*

[FR Doc. 98-24310 Filed 9-9-98; 8:45 am]

BILLING CODE 6820-BW-M

**DEPARTMENT OF LABOR****Employment and Training Administration**

[NAFTA-002544]

**Oneita Mexicana, Clint, TX; Notice of Termination of Investigation**

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 6, 1998, in response to a petition filed on July 30, 1998 on behalf of a worker at Oneita Mexicana, Clint, Texas.

During the course of the investigation it was revealed that the workers' firm was located outside of the United States. Therefore, further investigation would serve no purpose and the investigation has been terminated.

**DEPARTMENT OF LABOR****Employment and Training Administration**

[NAFTA-002535]

**Proctor & Gamble Manufacturing Co., Greenville, NC; Notice of Termination of Investigation**

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-1) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on July 30, 1998, in response to a petition filed on behalf of workers at The Proctor & Gamble Manufacturing Company, Greenville, North Carolina. Workers produced catamenial products and adult incontinence products.

The petition has requested that the petition be withdrawn with the intent to resubmit the petition at a later date closer to the time when the shift in production of catamenial products to Canada occurs. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 28th day of August 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98-24317 Filed 9-9-98; 8:45 am]

BILLING CODE 4510-30-M

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-219]

**GPU Nuclear, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-16 issued to GPU Nuclear, Inc., the licensee) for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would remove the requirement for the Automatic Depressurization System (ADS) function of the Electromatic Relief Valves (EMRV) to be operable during Reactor Vessel Pressure Testing. Additionally, note h of Table 3.1.1 will be corrected due to a typographical error introduced in the issuance of Amendment 75.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no

**MEDICARE PAYMENT ADVISORY COMMISSION****Commission Meeting**

**AGENCY:** Medicare Payment Advisory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold its next public meeting on Thursday, September 17, 1998 and Friday, September 18, 1998 at the Embassy Suites Hotel, 1250 22nd Street NW, Washington, DC. The meeting is tentatively scheduled to begin at 11:00

significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. State the basis for the determination that the proposed activity will or will not increase the probability of occurrence or consequences of an accident.

As the ADS is not required to mitigate a [Loss of Coolant Accident] LOCA during reactor vessel pressure testing and this change will not affect the integrity of the reactor pressure vessel, bypassing the ADS during vessel pressure testing will not affect the probability of occurrence or the consequences of an accident previously evaluated in the [safety analysis report] SAR. Correcting the allowed out of service time for the relief function of the EMRVs does not impact any of the accidents previously evaluated by the SAR.

2. State the basis for the determination that the activity does or does not create the possibility of an accident or malfunction of a different type than any previously identified in the SAR.

This change does not change the ADS system or affect its function; therefore, it does not create the possibility for an accident or malfunction of a different type than previously identified in the SAR.

3. State the basis for the determination that the margin of safety is not reduced.

The effect of the unavailability of Primary Containment has been previously analyzed for Amendment 120 to the Technical Specifications. This analysis may be applied to bypassing ADS since Primary Containment is required for ADS to initiate. Therefore, the Margin of Safety is not reduced by this change. This Technical Specification change reestablishes the out of service time to the value originally established in Amendment 44.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 9, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference Department, Ocean County Library, 101 Washington Street, Toms River, NJ 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an

Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to

relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 21, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference Department, Ocean

County Library, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 3rd day of September 1998.

For the Nuclear Regulatory Commission.

**Ronald B. Eaton,**

*Senior Project Manager, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-24305 Filed 9-9-98; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

### Illinois Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to Illinois Power Company (IP, or the licensee) for operation of the Clinton Power Station (CPS), located in DeWitt County, Illinois.

The proposed amendment concerns the "ready-to-load" requirement for the Division 3 diesel generator (DG). The Division 3 DG requires operator action to reset the mechanical governor to meet the "ready-to-load" requirement.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the acceptance criteria for meeting the "ready-to-

load" requirement denoted by TS Surveillance Requirement (SR) 3.8.1.17 for the Division 3 Diesel Generator (DG). The proposed change also adds a discussion of this acceptance criterion to the USAR [updated safety analysis report] to clarify the intent of the requirement. The proposed change allows manual operator action to reset the governor upon receipt of an ECCS [emergency core cooling system] signal. Analyzed events are considered to be initiated by the failure of plant structures, systems, or components. The DGs are not considered as initiators of any analyzed event. The proposed change does not have a detrimental impact on the condition or performance of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of or otherwise increase the failure probability of any plant equipment that initiates an analyzed event. As such, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed event are dependent on the initial conditions assumed for the analysis, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The Division 3 DG continues to override the test mode and return the DG to a standby operation. The manual operator action to reset the governor following the receipt of an ECCS signal, continues to ensure that the equipment being powered by the DG will perform its intended function. The proposed change continues to ensure that the Division 3 DG will adequately support its design basis performance and mitigative function during an accident. Since the manual operator action performed during the test mode ensures that the governor is reset upon receipt of an ECCS signal, no analyses assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant structures, systems, or components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

Therefore, this change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the acceptance criteria for meeting the "ready-to-load" requirement denoted by TS SR 3.8.1.17 for the Division 3 DG. The proposed change also adds a discussion of this acceptance criterion to the USAR to clarify the intent of the requirement. The proposed change does not change the operating characteristics or the safety function of the DG. The DG performs a mitigative function. No new or

different equipment is being installed and no installed equipment, which might initiate an analyzed event, is being operated in a different manner. The proposed change does not impact core reactivity or the manipulation of fuel bundles. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change revises the acceptance criteria for meeting the "ready-to-load" requirement denoted by TS SR 3.8.1.17 for the Division 3 DG. The proposed change also adds a discussion of this acceptance criterion to the USAR to clarify the intent of the requirement. The proposed change allows manual operator action to reset the governor upon receipt of an ECCS signal. This ensures that appropriate frequency limits are obtained and that the Division 3 DG can perform its intended function. Thus, the proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. Additionally, the proposed change does not significantly impact any safety analysis assumptions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days of the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the

30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 13, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set

forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 24, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 2nd day of September 1998.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Senior Project Manager, Project Directorate III-3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-24303 Filed 9-9-98; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

### The Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Unit No. 1); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order approving, under 10 CFR 50.80, the transfer of Facility Operating License No. NPF-58 issued to The Cleveland Electric Illuminating Company, Centerior Service Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, OES Nuclear, Inc., and Duquesne Light Company (the licensees) with respect to operating authority under the license, for the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio, and considering issuance of a conforming amendment under 10 CFR 50.90.

#### Environmental Assessment

##### *Identification of the Proposed Action*

The proposed action would approve the transfer of operating authority under the license to a new operating company, called the FirstEnergy Nuclear Operating Company, to use and operate the Perry Nuclear Power Plant and to possess and use related licensed nuclear materials in accordance with the same conditions and authorizations included in the current operating license. The proposed action would also approve issuance of a license amendment reflecting the transfer of operating authority. The FirstEnergy Nuclear Operating Company would be formed by the FirstEnergy Corporation to become the licensed operator for the Perry Nuclear Power Plant and would have exclusive control over the operation and maintenance of the facility. After issuance of the transfer order and conforming license amendment, the owners will be authorized only to possess the facility and Centerior Service Company will be removed entirely from the license.

Under the proposed arrangement, ownership of the Perry Nuclear Power Plant will remain unchanged with each owner retaining its current ownership interest. The FirstEnergy Nuclear Operating Company will not own any portion of the Perry Nuclear Power Plant. Likewise, the owners' entitlement to capacity and energy from the Perry Nuclear Power Plant will not be affected by the proposed change in operating

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

### Illinois Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Illinois Power Company (the licensee) to withdraw its April 27, 1998, application for proposed amendment to Facility Operating License No. NPF-62 for the Clinton Power Station, located in DeWitt County, Illinois.

The proposed amendment would have changed the title "shift supervisor" to "shift manager" in the Technical Specifications.

The Commission had previously issued a proposed no significant hazards consideration determination published in the **Federal Register** on May 20, 1998 (63 FR 27762). However, by letter dated August 13, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 27, 1998, and the licensee's letter dated August 13, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 3rd day of September 1998.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Senior Project Manager, Project Directorate III-3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-24304 Filed 9-9-98; 8:45 am]

BILLING CODE 7590-01-P

responsibility for the Perry Nuclear Power Plant. The owners will continue to provide all funds for the operation, maintenance, and decommissioning of the Perry Nuclear Power Plant. The responsibility of the owners will include funding for any emergency situations that might arise at the Perry Nuclear Power Plant.

The proposed action is in accordance with the licensees' application dated June 30, 1998, for approval of the transfer of the license and issuance of a conforming amendment.

#### *Need for the Proposed Action*

The proposed action is needed to enable the licensees to transfer operating authority to the FirstEnergy Nuclear Operating Company as discussed above. The licensees have submitted that this will enable them to enhance the already high level of public safety, operational efficiency, and cost-effective operations at the Perry Nuclear Power Plant.

#### *Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that there will be no physical or operational changes to the Perry Nuclear Power Plant. The technical qualifications of the FirstEnergy Nuclear Operating Company to carry out its responsibilities under the operating license for the Perry Nuclear Power Plant will be equivalent to the present technical qualifications of the current operators. The FirstEnergy Nuclear Operating Company will assume responsibility for, and control over, operation and maintenance of the facility. The present plant organization, the oversight organizations, and the engineering and support organizations will be transferred essentially intact to the FirstEnergy Nuclear Operating Company. The technical qualifications of the FirstEnergy Nuclear Operating Company, therefore, will be at least equivalent to those of the existing organization.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological

environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

#### *Alternative to the Proposed Action*

Since the Commission concluded that there is no measurable environmental impact associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Perry Nuclear Power Plant, Units 1 and 2," dated August 1982.

#### *Agencies and Persons Contacted*

In accordance with its stated policy, on July 21, 1998, the staff consulted with the State official of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

#### *Finding of No Significant Impact*

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensees' application dated June 30, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 2nd day of September 1998.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.  
[FR Doc. 98-24302 Filed 9-9-98; 8:45 am]*

BILLING CODE 7590-01-P

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Nuclear Waste; Notice of Meeting**

The Advisory Committee on Nuclear Waste (ACNW) will hold its 104th meeting on October 20–22, 1998.

**Note:** On October 19, 1998, the Committee and its staff will tour the proposed site of the high-level waste repository at Yucca Mountain, Nevada, as guests of the Department of Energy. The Committee will also tour surrounding communities and natural settings.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

*Tuesday, October 20, 1998–8:30 A.M. until 6:00 P.M.*

The Committee will meet at the Longstreet Inn, Conference Room Colorado #2, Stateline 373, Amargosa Valley, Nevada. The following topics will be discussed:

*A. Planning Session*—The Committee will conduct a day long planning session. The Committee will do a self-evaluation of its performance over the past year. The Committee will examine steps it can take to improve its operational efficiency. The Committee will also examine and select priority issues for review in 1999 and beyond.

*B. Public Comments*—Time will be allocated at the end of the planning session for public comments and discussion.

*Wednesday and Thursday, October 21–22, 1998–8:30 A.M. until 6:00 P.M. each day.*

The Committee will meet at Bally's, 3645 Las Vegas Blvd. South, Las Vegas, Nevada, Conference Room Las Vegas #1, Las Vegas, Nevada. The Committee will discuss the following topics:

*A. Site Characterization*—The Committee will discuss Yucca Mountain site characterization activities for the proposed repository with the Department of Energy (DOE).

*B. Viability Assessment*—The Committee will discuss the status of DOE's Viability Assessment including design options, total systems performance assessment, cost estimates, and schedule.

*C. Format And Content Guide*—The Committee will review the NRC staff's

Format and Content Guide for Reactor License Termination.

**D. Public Comments**—The Committee will hear comments from members of the public, representatives from the State of Nevada and affected local counties, and Tribal Nations on concerns related to nuclear waste disposal.

**E. Preparation of ACNW Reports**—The Committee will discuss planned reports on the following topics: potential regulations for licensing the Yucca Mountain repository; proposed importance measures for evaluating nuclear waste repository performance; issues related to the regulatory guides and standard review plan for decommissioning; recent international experience; a report on priorities and planning; comments on site characterization and viability assessment; and other topics discussed during this and previous meetings as the need arises.

**F. Committee Activities/Future Agenda**—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

**G. Miscellaneous**—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for

ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415-7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Dated: September 3, 1998.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 98-24301 Filed 9-9-98; 8:45 am]

BILLING CODE 7590-01-P

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## NUCLEAR REGULATORY COMMISSION

### **Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment**

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on September 24, 1998, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, September 24, 1998—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss proposed options for developing a risk-informed approach to revising 10 CFR 50.59 (Changes, Tests and Experiments), and industry initiatives to certify probabilistic risk assessments (PRAs). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring

to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415-6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: September 4, 1998.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 98-24353 Filed 9-9-98; 8:45 am]

BILLING CODE 7590-01-P

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## OFFICE OF PERSONNEL MANAGEMENT

### **Proposed Collection; Comment Request for Review of a Revised Information Collection: Form DPRS-2809**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection, DPRS-2809, Request to Change FEHB Enrollment or to Receive Plan Brochures, is used by former spouses and Temporary Continuation of Coverage recipients who are eligible to elect, cancel, or change health benefits enrollment during open season.

Comments are particularly invited on: Whether this collection of information

is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 DPRS-2809 forms are completed annually. We estimate it takes approximately 15 minutes to complete the form. The annual burden is 625 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov)

**DATES:** Comments on this proposal should be received on or before November 9, 1998.

**ADDRESSES:** Send or deliver comments to—Ellen Tunstall, Chief, Insurance Planning & Evaluation Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415.

#### FOR INFORMATION REGARDING

**ADMINISTRATIVE COORDINATION—CONTACT:** Donna Lease, Budget & Administrative Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 98-24196 Filed 9-9-98; 8:45 am]

BILLING CODE 6325-01-P

#### OFFICE OF PERSONNEL MANAGEMENT

##### Federal Salary Council

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the fifty-fifth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting, the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

**DATE:** September 28, 1998, at 2:00 p.m.

**ADDRESSES:** Office of Personnel Management, 1900 E Street NW., Room

1350 (OPM Conference Center), Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Ruth O'Donnell, Chief, Salary and Wage Systems Division, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415-0001. Telephone number: (202) 606-2838.

For The President's Pay Agent

**Janice R. Lachance,**

*Director.*

[FR Doc. 98-24210 Filed 9-9-98; 8:45 am]

BILLING CODE 6325-01-P

#### THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

##### The Twentieth Meeting of the President's Council on Sustainable Development (PCSD) in Pittsburgh, PA

**Summary:** The President's Council on Sustainable Development (PCSD), a Presidential Commission with representation from industry, government, environmental, and Native American organizations, will convene its twentieth meeting in Pittsburgh, Pennsylvania on Monday, September 28, 1998.

Under its current charter from the Clinton Administration, the Council is (1) continuing to forge consensus on policy, (2) demonstrating implementation, (3) getting the word out about sustainable development, and (4) evaluating progress. The Council will advise the President in four specific areas: domestic implementation of policy options to reduce greenhouse gas emissions, next steps in building the new environmental management system of the 21st century, promoting multi-jurisdictional and community cooperation in metropolitan and rural areas, and policies that foster the United States' leadership role in sustainable development internationally.

At the Council's last meeting in Washington, DC., on June 4th, the members deliberated among themselves and listened to and questioned invited experts on a variety of issues which included:

- *National Town Meeting for a Sustainable America.* Progress on the goals, vision, audiences, anchor events, and overall planning for this seminal event taking place in Detroit and in communities across America on May 2-5, 1999.
- Benefits and opportunities for community-based greenhouse gas emissions reduction strategies.
- Progress of the Pacific Northwest Regional Council and Metropolitan and Rural Strategies Task Force.

- Presentations "The Importance of Incentives for Early Action on Climate Change".

- Priority Climate Technologies and Barriers.

- Environmental Management Task Force's "Proposed Environmental Management Framework."

- Public Comment.

At the Council's meeting in Pittsburgh, PA on September 28-29, 1998, the Council will address a variety of issues.

*On Monday, September 28, the Council will:*

- Discuss Pittsburgh's initiatives on Sustainable Development.
- Deliberate on Sustainable Communities Recommendations.
- Discuss the National Town Meeting scheduled for May, 1999.
- Public Comment.

*On Tuesday, September 29, the Council's discussions will include:*

- Deliberate on recommendations for innovative technologies to reduce greenhouse gas emissions.
- Deliberate on principles for early action to reduce greenhouse gas emissions.

- Discuss opportunities to work with the Financial Community on climate change issues.

- Public Comment.

*Specifically, the Council is interested in hearing from the public in the following areas:*

- What opportunities are available to advance multi-jurisdictional collaboration in the Pittsburgh region?
- What are the local opportunities to increase participation in the National Town Meeting?
- How can the Council improve its proposed sustainable communities recommendations?

- How can the Council do more to engage the public, leaders from all sectors, and the financial community in a discussion of the opportunities and challenges we face in addressing climate change?

The Council's previous recommendations to the President may be found in two reports: Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future (March 1996) and Building on Consensus: A Progress Report on Sustainable America (January 1997). Copies of both reports can be ordered by calling 1-800-363-3732 or downloaded off the Internet at "<http://www.whitehouse.gov/PCSD>". For more information about PCSD, please E-mail: "[infopcsd@aol.com](mailto:infopcsd@aol.com)", log onto PCSD's web site, or call the contact listed below.

**Dates/Times:** Monday, September 28, 1998 from 1 p.m. to 4:30 p.m. and Tuesday, September 29, 1998 from 8:30 a.m. to 11:45 a.m.

**Place:** The Westin William Penn, Grand Ball Room, located on the 17th floor, 530 William Penn Place, Downtown, Pittsburgh, Pennsylvania, Phone: 412-553-5028.

**Status:** Open to the public. Public comments are welcome and may be submitted orally on Monday, September 28, 1998 or Tuesday, September 29, or in writing any time prior to or during the meeting. Please submit written comments prior to the meeting to: PCSD, Public Comments, 730 Jackson Place, NW, Washington, DC 20503, or fax to: 202/408-6839.

**Contact:** Paul Flaim, Administrative Assistant, at 202/408-5296.

**Sign Language Interpreter:** Please notify the contact if you will need a sign language interpreter.

**Martin A. Spitzer,**  
Executive Director, President's Council on Sustainable Development.

[FR Doc. 98-24193 Filed 9-9-98; 8:45 am]  
BILLING CODE 3125-01-P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**Summary:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s)

(1) **Collection title:** Railroad Service and Compensation Reports.

(2) **Form(s) submitted:** BA-3a, BA-4.

(3) **OMB Number:** 3220-0008.

(4) **Expiration date of current OMB clearance:** 12/31/1998.

(5) **Type of request:** Extension of a currently approved collection.

(6) **Respondents:** Business or other for profit.

(7) **Estimated annual number of respondents:** 669.

(8) **Total annual responses:** 1,159.

(9) **Total annual reporting hours:** 50,893.

(10) **Collection description:** Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, employers are required to report service and compensation for each employee to update Railroad Retirement Board records for payment of benefits.

**Additional Information or Comments:** Copies of the form and supporting

documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**  
Clearance Officer.

[FR Doc. 98-24324 Filed 9-9-98; 8:45 am]  
BILLING CODE 7905-01-M

## 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:

Rule 17a-5, Form X-17A-5—SEC File No. 270-155—OMB Control No. 3235-0123  
Rule 17a-5(c)—SEC File No. 270-199—  
OMB Control No. 3235-0199  
Rule 17a-7—SEC File No. 270-147—OMB  
Control No. 3235-0131

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 (“OMB”) a request for extension of the previously approved collection of information discussed below.

Rule 17a-5 under the Securities Exchange Act of 1934 (“Exchange Act”) (“Act”) is the basic reporting rule for brokers and dealers, and Form X-17A-5, the Financial and Operational Combined Uniform Single Report, is the basic document for reporting the financial and operational condition of securities brokers and dealers.

The staff estimates that approximately 7,765 respondents respond to this collection of information 39,895 times annually, with a total burden of 12 hours for each response, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 17a-5 is 478,740 hours. The average cost per hour is \$100. Therefore, the total cost of compliance for the respondents is \$47,874,000.

Rule 17a-5 does not contain record retention requirements. Compliance

with the rule is mandatory. Responses are kept confidential pursuant to paragraph 17a-5(a)(3).

Rule 17a-5(c) under the Exchange act requires certain brokers and dealers to provide statements of financial condition to their customers. It is estimated that approximately 750 broker and dealer respondents incur an average burden of 294,444 hours per year to comply with this rule.

Rule 17a-5(c) does not contain record retention requirements. Compliance with the rule is mandatory. Responses are not confidential.

Rule 17a-7 under the Exchange Act requires non-resident brokers or dealers to maintain in the United States complete and current copies of books and records required to be maintained under any rule adopted under the Act. Alternatively, Rule 17a-7 provides that the non-resident broker or dealer may sign a written undertaking to furnish the requisite books and records to the Commission upon demand.

There are approximately 86 non-resident brokers and dealers. Based on the Commission’s experience in this area, it is estimated that the average amount of time necessary to preserve the books and records in the United States as required by Rule 17a-7 is one hour per year. Accordingly, the total burden is 86 hours per year.

There are no individual record retention periods in Rule 17a-7. Compliance with the rule is mandatory, however, non-resident brokers and dealers may opt to provide the information upon request rather than store it in the United States.

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.

General comments regarding the estimated burden hours should be directed to the 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 Office Building, Washington, DC 20549; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 2, 1998.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 98-24204 Filed 9-9-98; 8:45 am]  
BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. IC-23426, 812-11260]

**The Evergreen International Trust, et al.; Notice of Application**

September 2, 1998.

**AGENCY:** Securities and Exchange Commission ("SEC").**ACTION:** Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants, Evergreen International Trust (the "Trust") and First Union National Bank ("FUNB"), request an order to permit a series of the Trust to acquire all of the assets and certain stated liabilities of another series of the Trust. Because of certain affiliations, Applications may not rely on rule 17a-8 under the Act.

**FILING DATES:** The application was filed on August 11, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1998, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Robert N. Hickey, Esq., Sullivan & Worcester LLP, 1025 Connecticut Avenue, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** John K. Forst, Attorney Advisor, at (202) 942-0569, or Edward P. Macdonald, Branch Chief, at (202) 942-0564, (Division of Investment Management, Office of Investment Company Regulation.)

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth

Street, NW., Washington, DC 20549 (tel. 202-942-8090).

**Applicants' Representations**

1. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Evergreen International Equity Fund (the "Selling Fund") and the Evergreen International Growth Fund (the "Acquiring Fund"), are each series of the Trust. FUNB, a subsidiary of First Union Corporation ("First Union"), is a national banking association. The Capital Management Group, a division of FUNB, is the investment adviser to the Selling Fund. FUNB is not required to register under the Investment Advisers Act of 1940 ("Advisers Act"). Keystone Investment Management Company ("Keystone"), an indirect, wholly owned subsidiary of FUNB, is the investment adviser to the Acquiring Fund. Keystone is registered under the Advisers Act. FUNB, as a fiduciary for its customers, owns of record more than 25% of the outstanding voting securities of each Fund.

2. On June 26, 1998, the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons" under section 2(a)(19) of the Act (the "Independent Trustees"), approved a plan of reorganization (the "Plan") under which the Acquiring Fund will acquire the assets, and assume certain stated liabilities, of the Selling Fund in exchange for shares of the Acquiring Fund (the "Reorganization"). As a result of the Reorganization, each Selling Fund shareholder will receive Acquiring Fund shares having an aggregate net asset value equal to the aggregate net asset value of the corresponding Selling Fund's shares held by that shareholder calculated as of the close of business immediately prior to the date on which the Reorganization will occur.

Applicants expect that the Reorganization will occur on or about October 26, 1998 (the "Closing Date").

3. Each Fund offers four classes of shares: Classes A, B, C, and Y shares. Holders of shares of each class of the Selling Fund will receive shares of the corresponding class of the Acquiring Fund. Class A shares are subject to a front-end sales charge and an asset-based distribution fee. Class B and Class C shares are subject to a contingent deferred sales charge and an asset-based distribution fee. Class Y shares are not subject to any front-end sales charge or asset-based distribution or service fee. No initial sales charge will be imposed in connection with Class A shares of the Acquiring Fund received by the Selling

Fund shareholders and no contingent deferred sales charge will be imposed with respect to receipt of Class B or C shares.

4. The investment objectives of the Selling Fund and Acquiring Fund (collectively, the "Funds") are substantially similar. The investment restrictions and limitations of the Funds also are substantially similar.

5. The Board, including a majority of Independent Trustees, approved the Reorganization as in the best interests of shareholders and determined that the interests for existing shareholders will not be diluted as a result of the Reorganization. The Board considered, among other things, (a) the terms and conditions of the Reorganization; (b) whether the Reorganization would result in the dilution of shareholders' interests; (c) expense ratios, fees and expenses of the Funds; (d) the comparative performance records of the Funds; (e) compatibility of the Funds' investment objectives and policies; (f) the investment experience, expertise and resources of Keystone; (g) the service and distribution resources available to the Acquiring Fund and the broad array of investment alternatives to shareholders of the respective Funds; (h) the personnel and financial resources of First Union and its affiliates; (i) the fact that FUNB will bear the expenses incurred by the Selling Fund in connection with the Reorganization; (j) the fact that the Acquiring Fund will assume the identified liabilities of the Selling Fund; and (k) the expected federal income tax consequences of the Reorganization. FUNB will pay the expenses of the Reorganization older than the Acquiring Fund's federal and state registration fees.

6. The Plan may be terminated by the Selling or Acquiring Fund at or prior to the Closing Date if the other party breaches any provision of the Plan that was to be performed and the breach is not cured within 30 days or a condition precedent to the terminating party's obligations has not been met and it appears that the condition precedent will not or cannot be met.

7. A registration statement on Form N-14 containing the preliminary combined prospectus/proxy statement for the Reorganization, was filed with the SEC on August 4, 1998. A final prospectus/proxy will be mailed to shareholders of the Selling Fund on or about September 3, 1998. A special meeting of the Selling Fund's shareholders will be held on or about October 16, 1998, to approve the Reorganization.

8. The consummation of the Reorganization under the Plan is subject to a number of conditions precedent, including: (a) the Plan has been approved by the Board and the Selling Fund's shareholders in the manner required by applicable law; (b) management of the Selling Fund solicits proxies from its shareholders seeking approval of the Reorganization; (c) the Funds have received opinions of counsel stating, among other things, that the Reorganization will not result in federal income taxes for the Funds or their shareholders; and (d) Funds have received from the SEC an order exempting the Reorganization from the provisions of section 17(a) of the Act. Applicants agree not to make any material changes to the Plan that affect the application without prior SEC approval.

#### Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, knowingly from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (d) if the other person is an investment company, any investment adviser of the person.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants believe that they cannot rely on rule 17a-8 under the Act because the Funds may be affiliated for reasons other than those set forth in the rule. The Funds may be affiliated persons of each other because FUNB, as fiduciary for its customers, owns of record 25% or more of the outstanding securities of each Fund.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence

establishes that (a) the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of the person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the provisions of section 17(b) of the Act. Applicants state that the Board has determined that the transaction is in the best interests of the Funds' shareholders and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, Applicants state that the exchange of the Selling Fund's shares for shares of the Acquiring Fund will be based on the relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-24205 Filed 9-9-98; 8:45 am]

BILLING CODE 8010-01-M

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#### SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23424; File No. 812-11200]

#### Integrity Life Insurance Company, et al.; Notice of Application

September 2, 1998.

**AGENCY:** Securities and Exchange Commission ("SEC" or 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 OF APPLICATION:** The Applicants seek an order pursuant to Section 6(c) of the 1940 Act exempting the Applicants, and other separate accounts of the Companies or affiliated insurance companies that support materially similar investment divisions, from the provisions of Section 12(d)(3) of the 1940 Act, to the extent necessary to permit the divisions of Separate Account Ten and the Select Ten Plus Division to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

**APPLICANTS:** Integrity Life Insurance Company ("Integrity"), Separate Account Ten of Integrity Life Insurance Company ("Separate Account Ten"), National Integrity Life Insurance Company ("National Integrity," together with Integrity, the "Companies"), and Select Ten Plus Division of Separate Account II of National Integrity Life Insurance Company (Select Ten Plus Division") (collectively, the "Applicants").

**FILING DATE:** The application was filed on June 26, 1998.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and servicing Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 28, 1998, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the 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 SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20459. Applicants, c/o ARM Financial Group, Inc., 515 West Market Street, Louisville, Kentucky 40202-3319.

**FOR FURTHER INFORMATION CONTACT:** Megan L. Dunphy, Attorney, or Mark C. Amorosi, 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 SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

#### Applicants' Representations

1. Integrity is a stock life insurance company and is authorized to sell life insurance and annuities. Integrity is an indirect, wholly-owned subsidiary of ARM Financial Group, Inc., ("ARM").

2. Separate Account Ten is a separate account of Integrity and is a funding vehicle for variable annuity contracts. The account is registered with the SEC as an open-end management investment company and is divided into four non-diversified investment divisions, Select Ten Plus Division—March, Select Ten Plus Division—June, Select Ten Plus Division—September, and Select Ten

Plus Division—December (each a "Division" and collectively, with the Select Ten plus Division of National Integrity, the "Divisions").

3. National Integrity is a stock life insurance company and is authorized to sell life insurance and annuities. National Integrity is a wholly-owned subsidiary of Integrity and an indirect, wholly-owned subsidiary of ARM.

4. Separate Account II is a separate account of National Integrity and is a funding vehicle for variable annuity contracts. The account is registered with the SEC as a unit investment trust. The Select Ten Plus Division is a non-diversified investment division of Separate Account II that is registered with the Commission as an open-end management investment company. Additional similar investment divisions may be established in the future at the discretion of National Integrity.

5. The business and affairs of Separate Account Ten and the Select Ten Plus Division, respectively, are under the direction of a Board of Managers, currently consisting of five members. Integrity Capital Advisors, Inc. serves as the investment adviser (the "Adviser") and National Asset Management Corporation serves as the sub-adviser (the "Sub-Adviser") to both Separate Account Ten and the Select Ten Plus Division.

6. Applicants state that each of the Divisions will invest approximately 10% of its total assets in the common stock of each of the ten companies in the Dow Jones Industrial Average (the "DJIA") that have the highest dividend yield calculated as of the day preceding the applicable specified Investment Date (the last business day of each calendar year for the Select Ten Plus Division and the last business day of the appropriate calendar quarter for the Divisions of Separate Account Ten).

7. The DJIA is composed of thirty stocks chosen by the editors of The Wall Street Journal as representative of the New York Stock Exchange and of American industry. The DJIA is the property of the Dow Jones & Company, Inc., which is not affiliated with the Applicants and has not participated in any way in the creation of Separate Account Ten or the Select Ten Plus Division or in the selection of their stocks.

8. Applicants state that the Divisions seek total return by acquiring the ten highest dividend yielding common stocks in the DJIA in equal weights and holding them for approximately twelve months. At the end of each Division's twelve-month period, the Division's portfolio is restructured to again hold the ten highest yielding stocks in the

DJIA in equal weights for the next twelve months. The term "highest yielding stocks" means the yield for each stock calculated by annualizing the last quarterly or semi-annual ordinary dividend distributed on that stock and dividing the result by the market value of that stock as of the close of the New York Stock Exchange on the business day prior to the applicable specified Investment Date.

9. Applicants state that the weights of the individual stock positions will not be rebalanced during the year, nor will new or additional contributions or transfers be accepted during any Division's twelve-month holding period. Rather, new or additional contributions or transfers will be invested on the next available Investment Date. Dividends from stocks in each Division's portfolio will be reinvested on the day the dividend is received in additional shares of the stock that paid the dividend. Upon the receipt of a withdrawal request, approximately equal dollar amounts of shares of each of the ten stocks will be sold, such that the total dollar amount sold equals the amount of the withdrawal.

10. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that in order for a variable contract which is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by such account must be "adequately diversified" in accordance with Treasury regulations. The Treasury regulations issued under Section 817(h) (Tres. Reg. § 1.817-5) apply a diversification requirement to each of the Divisions ("Section 817(h) diversification requirements"). To qualify as "adequately diversified," each Division must have: (i) no more than 55% of the value of its total assets represented by any one investment; (ii) no more than 70% of the value of its total assets represented by any two investments; (iii) no more than 80% of the value of its total assets represented by any three investments; and (iv) no more than 90% of the value of its total assets represented by any four investments.

11. Applicants state that the Divisions intend to comply with the Section 817(h) diversification requirements. Separate Account Ten and the Select Ten Plus Division have each entered into an agreement with the Adviser, who in turn has entered into an agreement with the Sub-Adviser, that requires the Divisions be operated in compliance with the Treasury regulations. Therefore, the Adviser and the Sub-Adviser may depart from the Divisions' investment strategy, if

necessary, in order to meet these Section 817(h) diversification requirements.

12. Applicants represent that under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each Division will be chosen solely according to the formula described in the application and summarized in this notice, and will not be based on the research opinions or buy or sell recommendations of the Adviser or Sub-Adviser. The Adviser and Sub-Adviser have no discretion as to which common stocks are purchased.

13. Applicants state that securities purchased for each of the Divisions may include securities of issuers in the DJIA that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities. To the extent any of the ten highest yielding stocks qualifying for a Division are reasonably believed to receive 15% or more of their revenues from securities related activities, the Division will allocate a maximum of 5% of its assets to each of those stocks, and will allocate the remainder of its assets among the remaining stocks not so limited unless and until the exemptive relief from this limitation has been granted by the SEC.

#### Applicants' Legal Analysis

1. Section 12(d)(3) of the 1940 Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3-1 under the 1940 Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter or their affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer.

2. Section 6(c) of the 1940 Act provides that the Commission may exempt any person, transaction, or class of persons or transaction from any provision of the 1940 Act or any rule thereunder if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the 1940 Act.

3. Applicants request that the Commission exempt Separate Account

Ten and the Select Ten Plus Division from the provisions of Section 12(d)(3) in order to permit the Divisions to acquire securities of an issuer that derives more than 15% of its gross revenues from securities related activities, provided that (i) those securities are included in the DJIA as of the day preceding the applicable specified Investment Date, (ii) those securities represent one of the ten companies in the DJIA that have the highest dividend yield as of the day preceding the applicable specified Investment Date, and (iii) as of the day preceding the applicable specified Investment Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any Division's total assets, but in no event more than 10.5% of the value of the Division's total assets.

Applicants state that the use of the term "approximately" is intended to allow for such deviation from a precise 10% as to permit the purchase of round lots of 50 or 100 shares of stock. The 10.5% standard will be used on the prices of the common stock as of the close of business on the day preceding the applicable specified Investment Date.

4. Each of the Divisions undertakes to comply with all of the requirements of Rule 12d3-1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

5. Applicants represent that Section 12(d)(3) was intended (i) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (ii) to prevent potential conflicts of interest, (iii) to eliminate certain reciprocal practices between investment companies and securities related businesses, and (iv) to ensure that investment companies maintain adequate liquidity in their portfolios.

6. A potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit.

Applicants maintain that this concern does not arise in this situation since neither the Adviser, Sub-Adviser, nor any Division has discretion in choosing the common stock or amount purchased. The stock must first be included in the DJIA (which is unaffiliated with the Applicants, Adviser, Sub-Adviser or the Boards of Managers). In addition, the securities must also qualify as one of the ten companies in the DJIA that has the

highest dividend yield as of the day preceding the applicable specified Investment Date.

7. Applicants state that prior Section 12(d)(3) relief has been granted to applicants which were unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolio securities to the extent necessary to meet redemptions. The Adviser and Sub-Adviser are obligated to follow the investment formula described in the application and summarized in this notice as nearly as practicable. Securities purchased for each Division will be chosen with respect to the specified formulas and not at the Adviser's or Sub-Adviser's discretion.

8. The Adviser or Sub-Adviser would be permitted to deviate from the formula only where circumstances are such that the investment of a particular Division would fail to be "adequately diversified" under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as an annuity contract under the Code. In such a situation, the Adviser and Sub-Adviser must be permitted to deviate from the investment strategy in order to meet the 817(h) diversification requirements and then only to the extent necessary to do so. Applicants state that this limited discretion does not raise the concerns that Section 12(d)(3) is designed to prevent.

9. Applicants represent that the liquidity of a Division's portfolio is not a concern here since each common stock selected is a component of the DJIA, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

10. Applicants also represent that the effect of a Division's purchase of the stock of parents of broker-dealers would be de minimis. The common stocks of securities related issuers represented in the DJIA are widely held and have active markets. Potential purchases by a Division would represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers.

11. Applicants state that a possible conflict of interest could occur if broker-dealers are influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Because of the large market capitalization of the DJIA issuers and the small portion of these issuers' common stock and trading volume that would be purchased by a Division, however, Applicants maintain that it is extremely unlikely that any

advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a Division would be invested in the broker-dealer or parent thereof.

12. Finally, Applicants state that another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even through the broker-dealer may not offer the best price and execution. To preclude this type of conflict, the Applicants agree, as a condition of the application, that no company whose stock is held in any Division, nor any affiliate of such company, will act as broker or dealer for any Division in the purchase or sale of any security for its portfolio.

13. Applicants seek relief not only with respect to Separate Account Ten and the Select Ten Plus Division, but also with respect to (i) other separate accounts of the Companies or affiliated insurance companies that support materially similar investment divisions, and (ii) other materially similar investment divisions of Separate Account II of National Integrity Life Insurance Company as may be created in the future. Applicants represent that the terms of relief requested are consistent with the standards set forth in Section 6(c) of the 1940 Act.

#### **Applicants' Conditions**

Applicants agree to the following conditions:

1. The common stock is included in the DJIA as of the day preceding the applicable specified Investment Date;

2. The common stock represents one of the ten companies in the DJIA that have the highest dividend yield as of the day preceding the applicable specified Investment Date;

3. As of the day preceding the Investment Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any Division's total assets, but in no event more than 10.5% of the value of the Division's total assets; and

4. No company whose stock is held in any Division, nor any affiliate thereof, will act as broker or dealer for any Division in the purchase or sale of any security for the Division.

#### **Conclusion**

For the reasons summarized above, Applicants assert that the requested exemptions 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.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 98-24206 Filed 9-9-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23425; File No. 812-11110]

### Scudder Spain and Portugal Fund, Inc. and Scudder Kemper Investments, Inc.; Notice of Application

September 2, 1998.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

**ACTION:** Notice of application for an order under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants, Scudder Spain and Portugal Fund, Inc. ("Fund") and Scudder Kemper Investments, Inc. ("Adviser"), seek an order that would permit an in-kind redemption of shares of the Fund held by affiliated persons of the Fund.

**FILING DATES:** The application was filed on April 20, 1998, and an amendment to the application was filed on September 2, 1998.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Robert W. Helm, Esq., Dechert Price & Rhoads, 1775 Eye Street, N.W., Washington, D.C. 20006.

**FOR FURTHER INFORMATION CONTACT:** Brian T. Hourihan, Senior Counsel, at (202) 942-0526, or Mary Kay Frech, Branch Chief, at (202) 942-0564, (Division of Investment Management,

Office of Investment Company Regulation.)

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

#### Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as a close-end management investment company. The Adviser, a Delaware corporation, is registered under the Investment Adviser's Act of 1940 as an investment adviser and serves as investment adviser to the Fund. The Fund has one class of shares outstanding which is traded on the New York Stock Exchange. At April 20, 1998, three stockholders of the Fund each owned more than 5% of the Fund's outstanding shares.<sup>1</sup>

2. The board of directors of the Fund ("Board") has approved a plan under which the Fund will offer its stockholders the right to demand a one-time in-kind redemption of their shares at net asset value ("NAV"). The redemption right will be offered pursuant to section 23(c)(2) of the Act and will be registered as a tender offer under the Securities Exchange Act of 1934. The redemption right will give each stockholder of the Fund the right to demand that the Fund repurchase all, but not less than all, of his or her shares of the Fund in exchange for portfolio securities of the Fund. The portfolio securities of the Fund to be exchanged for shares of the Fund will be selected in accordance with guidelines established by the Board. No more than 75% of the Fund's outstanding shares will be redeemed. If more than 75% of the Fund's shares are tendered for repurchase, there will be a *pro rata* reduction in the number of shares repurchased from each stockholder who has tendered shares. Each redeeming stockholder will pay the transaction costs associated with the redemption of his or her shares of the Fund.

3. The redemption is designed to permit a significant amount of the Fund's shares to be redeemed in-kind at NAV without changing the closed-end structure of the Fund, and to ensure that only those stockholders of the Fund who desire to redeem their shares recognize at tax liability under the Internal Revenue code of 1986, as amended. Applicants request relief to

permit the Fund to satisfy redemption requests on any stockholder of the Fund who, at the time of the redemption request, is an "affiliated person" of the Fund by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares ("Affiliated Stockholders").

#### Applicants' Legal Analysis

1. Section 17(a)(2) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing any security or other property from the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities or the other person. Applicants also state that to the extent that the proposed in-kind redemption would constitute the purchase of securities by an Affiliate stockholder, the redemption would be prohibited by Section 17(a)(2).

Accordingly, applicants request an exemption from section 17(a) of the Act to permit the proposed in-kind redemption by affiliated Stockholders.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of Section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act.

3. Applicants assert that the terms of the proposed in-kind redemption meet the requirements of section 17(b) of the Act. Applicants assert that neither the Fund nor the Affiliated Stockholders has any choice as to the portfolio securities to be received as redemption proceeds. Instead, stockholders will receive their *pro rata* portion of each of the Funds' portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 ("Securities Act"), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals (other than qualified investment vehicles such as the Fund), as well as certain portfolio assets which involves the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterpart) to the transaction. Moreover, applicants state that the portfolio securities to be distributed in

<sup>1</sup> Bankgesellschaft Berlin AG 9.6% Deep Discount Advisors, Inc. owned 12.1% and Ron Olin Investment Management Company owned 9.7% of the outstanding shares of the Fund.

the proposed in-kind redemptions will be valued according to an objective, verifiable standard, and the redemption is consistent with the divestment policies of the Fund. Applicants also believe that the proposed in-kind redemption is consistent with the general purposes of the Act because the Affiliated Stockholders would not receive any advantage not available to any other redeeming stockholder.

#### Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities distributed to the Affiliated Stockholders and non-affiliated stockholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed on a *pro rata* basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act, (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund, and (c) certain portfolio positions (such as forward foreign currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributed (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to the Affiliated Stockholders and non-affiliated stockholders will be valued in the same manner as they would be valued for the purposes of computing the Fund's NAV, which, in the case of securities traded on a public securities market for which quotations are

available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

4. The fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each redemption that includes a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-24207 Filed 9-9-98; 8:45 am]

BILLING CODE 8010-01-M

Dated: August 28, 1998.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98-24326 Filed 9-9-98; 8:45 am]

BILLING CODE 8025-01-P

#### SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3125]

#### State of Texas

As a result of the President's major disaster declaration on August 26, 1998, I find that Val Verde County in the State of Texas constitutes a disaster area due to damages caused by Tropical Storm Charley beginning on August 22, 1998, and continuing. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on October 24, 1998, and for loans for economic injury until the close of business on May 26, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Crockett, Edwards, Kinney, Sutton, and Terrell in the State of Texas may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with Credit Available Elsewhere .....	6.875
Homeowners without Credit Available Elsewhere .....	3.437
Businesses with Credit Available Elsewhere .....	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere .....	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere .....	7.125
For Economic Injury	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere ...	4.000

The number assigned to this disaster for physical damage is 312506 and for economic injury the number is 998300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 28, 1998.

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 98-24327 Filed 9-9-98; 8:45 am]

BILLING CODE 8025-01-P

#### SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9980]

#### Commonwealth of Massachusetts (And a Contiguous County in the State of New Hampshire)

Essex County and the contiguous counties of Middlesex and Suffolk in the Commonwealth of Massachusetts, and Rockingham County in the State of New Hampshire constitute an economic injury disaster loan area as a result of a fire that occurred on August 16, 1998 at the Fisherman's Wharf in the City of Gloucester. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 28, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The numbers assigned for economic injury for this disaster are 998000 for Massachusetts and 998100 for New Hampshire.

(Catalog of Federal Domestic Assistance Program No. 59002)

**SMALL BUSINESS ADMINISTRATION**

[Declaration of Disaster #3101, Amdt. #4]

**State of Vermont**

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on June 17, 1998 and continuing through August 17, 1998, and to extend the deadline for filing applications for physical damages as a result of this disaster to September 29, 1998.

All other information remains the same, i.e., the deadline for filing applications for economic injury is March 30, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 26, 1998.

**Herbert L. Mitchell,**  
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98-24328 Filed 9-9-98; 8:45 am]

BILLING CODE 8025-01-P

**SOCIAL SECURITY ADMINISTRATION****Information Collection Activities:  
Proposed Collection Requests and  
Comment Requests**

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104-13 effective October 1, 1995. The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

**1. Modified Benefits Formula Questionnaire, Employer—0960-0477.**

The information collected on Form SSA-50 is used by the Social Security Administration (SSA) to verify that a pension based on noncovered employment after 1956 was allegedly received by the claimant. The form also shows whether or not the individual became eligible for that pension before 1985. The respondents are persons who are eligible for both Social Security benefits and a pension from noncovered employment after 1985.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Average Burden:* 10,000 hours.

**2. Report of Continuing Disability Interview—0960-0072.** SSA uses the information collected on Form SSA-454 to determine whether a person who receives Social Security Disability benefits is still unable to work because of an existing disability. The form will also be used to make a determination as to whether the disability benefits should continue or be terminated. The respondents are Social Security Disability benefit recipients.

*Number of Respondents:* 830,175.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Average Burden:* 415,088 hours.

**3. Statement by School Official About Student's Attendance; Statement to U.S. Social Security Administration by School Outside the U.S. About Student's Attendance—0960-0090.** The information collected on Forms SSA-1371 and SSA-1371-FC is used by SSA to verify a student's alleged full-time attendance at an educational institution, in order to determine the student's eligibility for Social Security student benefits. The respondents are the school officials who provide the information on these forms.

*Number of Respondents:* 5,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Average Burden:* 833 hours.

**4. Reconsideration Disability Report—0960-0144.** SSA uses the information collected on Form SSA-3441 to determine if the claimant's medical or vocational situation changed after the initial disability determination, when the claimant requests a reconsideration of a denied disability claim. The form also elicits additional sources of medical and vocational evidence, which was not considered in the initial determination. The respondents are disability beneficiaries who request a reconsideration.

*Number of Respondents:* 400,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Average Burden:* 200,000 hours.

**5. Agreement to Sell Property—0960-0127.** The information on Form SSA-8060-U3 is used by SSA field office personnel to authorize payment of conditional benefits to individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) benefits (but whose resources exceed the allowable limit), and at the end of the conditional payment period, to institute overpayment recovery procedures. Form SSA-8060-U3

documents this agreement and ensures that the individuals understand their obligations. The respondents are applicants for and recipients of SSI benefits.

*Number of Respondents:* 20,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Average Burden:* 3,333 hours.

**6. Modified Benefit Formula**

**Questionnaire—0960-0395.** The information collected on Form SSA-150 is needed by SSA to determine the correct formula to use in computing Social Security benefits for someone who also receives benefits from employment not covered by Social Security. The respondents consist of claimants for Social Security benefits who are also entitled to benefits not covered by Social Security.

*Number of Respondents:* 90,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 4 minutes.

*Estimated Average Burden:* 6,000 hours.

**7. Application for Survivors**

**Benefits—0960-0062.** SSA collects the information on Form SSA-24 to determine whether insured status exists in order for the claimant to complete the appropriate SSA survivor application. If entitlement does not exist, SSA may disallow the claim. If an SSA survivor application has already been filed, Form SSA-24 is treated as a duplicate application. The respondents are survivors of military service veterans filing for Social Security benefits.

*Number of Respondents:* 3,200.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Average Burden:* 800 hours.

**8. Medical Report (Individual With Childhood Impairment)—0960-0102.**

The information collected on Form SSA-3827 is used by SSA to determine whether an individual with a childhood impairment medically qualifies for benefits or payments under the provisions of the Social Security Act, based on the medical aspects of an individual's claim or application. The respondents are attending physicians/medical sources.

*Number of Respondents:* 12,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Average Burden:* 6,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this

publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

*Reporting Events—SSI—0960–0128.*

The information collected on Form SSA–8150–EV is used by SSA to determine eligibility for SSI payments and to determine correct payment amounts. The respondents are SSI applicants and recipients.

*Number of Respondents:* 33,200.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Average Burden:* 2,767 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: September 3, 1998.

**Frederick W. Brickenkamp,**  
Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–24267 Filed 9–9–98; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF STATE

[Public Notice No. 2881]

### Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Notice of Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 11 a.m. on Monday, September 21, 1998, in Room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This meeting will discuss the upcoming 42nd Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on February 8–12, 1999, at the IMO Headquarters in London, England.

Items of discussion will include the following:

- a. Review of results from SLF 41,
- b. Harmonization of damage stability provisions in the IMO instruments,
- c. Safety aspects of ships engaged in a ballast water exchange,
- d. Revision of the High Speed Craft Code,
- e. Development of the damage consequence diagrams for inclusion in damage control plan guidelines, and
- f. Upcoming requirements and future actions with respect to Bulk Carrier Safety—results of SOLAS Conference and MSC 69.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: August 21, 1998.

**Susan K. Bennett,**

Chairman, Shipping Coordinating Committee.  
[FR Doc. 98–24277 Filed 9–9–98; 8:45 am]

BILLING CODE 4710–70–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Meeting of the Industry Sector Advisory Committee on Retailing and Wholesaling (ISAC–17)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice that the September 16, 1998, meeting of the Industry Sector Advisory Committee on Retailing and Wholesaling will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 12:00 p.m. and open to the public from 1:00 p.m. to 2:00 p.m.

**SUMMARY:** The Industry Sector Advisory Committee on Retailing and Wholesaling will hold a meeting on September 16, 1998 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 12:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. Trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:00 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during the part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

**DATES:** The meeting is scheduled for September 16, 1998, unless otherwise notified.

**ADDRESSES:** The meeting will be held at the Department of Commerce, Room 1867, located at 14th and Constitution Avenue, NW, Washington, D.C., unless otherwise notified.

### FOR FURTHER INFORMATION CONTACT:

Bill Daley, Office of the United States Trade Representative, (202) 395–6120.

**Pete Felts,**

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.  
[FR Doc. 98–24268 Filed 9–9–98; 8:45 am]

BILLING CODE 3190–01–M

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****[Notice No. 98-8]****Revision of the North American Emergency Response Guidebook; Notice of Public Meetings; Request for Comments****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of public meetings; request for comments.

**SUMMARY:** This notice advises interested persons that RSPA will conduct public meetings to discuss the development and publication of the year 2000 North American Emergency Response Guidebook (NAERG2000). NAERG2000 will supersede the 1996 North American Emergency Response Guidebook (NAERG96). The development of NAERG2000 is a joint effort involving the transportation agencies of the United States, Canada and Mexico. This notice solicits comments on the development of NAERG2000, particularly from those who have experience using NAERG96 during hazardous materials incidents.

**DATES: Public Meetings.** The first public meeting will be held on October 29, 1998, in Room 2230 of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590-0001. The second meeting will be February 4, 1999, in the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590-0001. The room number will be posted in the lobby of the Nassif Building on the day of the meeting. Meeting times are from 9:30 a.m. to 5 p.m. The public is invited to attend without advance notification.

**Comments.** Written comments should be submitted on or before November 23, 1998, to the Office of Hazardous Materials Initiatives and Training (DHM-50), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001; comments may be faxed to (202) 366-7342; or e-mailed via the Internet to WELISTEN@rspa.dot.gov

**FOR FURTHER INFORMATION CONTACT:** David Henry or Gigi Corbin, Research and Special Programs Administration (DHM-50), 400 Seventh Street, SW, Washington, DC 20590-0001; (202) 366-4900; Internet e-mail to David.Henry@rspa.dot.gov or Gigi.Corbin@rspa.dot.gov

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Scott Holland at (202) 366-0002 as soon as possible.

**SUPPLEMENTARY INFORMATION:****Background**

The Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, empowers the Secretary of Transportation to issue and enforce regulations deemed necessary to ensure the safe transport of hazardous materials. In addition, the law directs the Secretary of Transportation to provide law enforcement and fire fighting personnel with technical information and advice for meeting emergencies connected with the transportation of hazardous materials.

The Emergency Response Guidebook (ERG) was developed by RSPA for use by emergency services personnel to provide guidance for initial response to hazardous materials incidents. Since 1980, it has been the goal of RSPA for all emergency response vehicles, including fire fighting, police and rescue squad vehicles, to carry a copy of the ERG. To accomplish this, RSPA has published six editions of the ERG and has distributed over six million copies to emergency services agencies, without charge.

NAERG2000 is being jointly developed by RSPA, Transport Canada and the Secretary of Communication and Transport of Mexico. NAERG2000 will supersede NAERG96 and will be published in English, French and Spanish for use by emergency response personnel throughout North America. Publication of NAERG2000 will facilitate transport of hazardous materials through North America and increase public safety by providing consistent emergency response procedures for hazardous materials incidents in North America. In order to continually improve the NAERG, RSPA actively solicits comments from interested parties, especially those who have experience using the NAERG during hazardous materials incidents.

**Request for Comments**

Comments are solicited on NAERG user concerns and on the following questions:

1. Have emergency responders experienced a problem of inconsistent guidance between NAERG96 and other sources of technical information? If so, in what way could NAERG2000 be revised to reduce inconsistencies?

2. Have emergency responders experienced confusion or difficulty in

understanding the scope or purpose of NAERG96? If so, in what way could NAERG2000 be revised to reduce this difficulty?

3. Have emergency responders experienced confusion or difficulty in understanding the application of NAERG96? If so, in what way could NAERG2000 be revised to reduce this difficulty?

4. How could the "Table of Initial Isolation and Protective Action Distances" or its introduction be made easier to comprehend and use?

5. In the "Table," does the distinction between day and night protective action distances add useful information for the first responder? How could the distinction be improved?

6. Could the "List of Dangerous Water-Reactive Materials" introduced in NAERG96 be enhanced or improved?

7. Have emergency responders experienced difficulty understanding the capabilities of chemical protective clothing, and the limitations of structural fire fighter's protective clothing in hazardous materials incidents? If so, in what way can NAERG2000 be revised to improve understanding?

8. Have any identification numbers (ID No.) been incorrectly assigned to a material (Name of Material)?

9. Has any identification number/material been assigned to the "wrong" guide? If so, please identify the material and the guide.

10. Are the responses on each guide appropriate for the material assigned to the guide?

11. Have emergency responders experienced difficulty with legibility of NAERG96's print style, format, or durability?

12. Have emergency response agencies experienced difficulty in obtaining copies of NAERG96 for their vehicles?

13. Besides the Table of Placards, should other pictorial information be included?

14. Are the terms listed in the Glossary defined satisfactorily?

15. Should additional terms be added to the Glossary?

Supporting data and analyses will enhance the value of comments submitted.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 98-24288 Filed 9-9-98; 8:45 am]

BILLING CODE 4910-60-P

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****Notice of Public Information Collection Submitted to OMB for Review**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Extension of a Currently Approved Collection.

**SUMMARY:** The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. Chapter 35).

**Title:** Application to open an account for billing purposes.

**OMB Form Number:** 2140-0006.

**No. of Respondents:** 20.

**Total Burden Hours:** 1.60.

**DATES:** Persons wishing to comment on this information collection should submit comments by October 9, 1998.

**ADDRESSES:** Direct all comments to Case Control, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Anthony Jacobik, Jr. 202 565-1713. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565-1654.

**SUPPLEMENTARY INFORMATION:** The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. This form is for use by applicants who wish to open an account with the Board. Charges to the account would be posted for filing fees and services rendered. The account holder would be billed on a monthly basis for payment of accumulated fees. The form requests information as required by OMB and Treasury regulations for the collection of fees.

Dated: September 3, 1998.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98-24287 Filed 9-9-98; 8:45 am]

**BILLING CODE 4915-00-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Citizen Advocacy Panel Meeting**

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

**ACTION:** Notice of open meeting of Citizen Advocacy Panel.

**SUMMARY:** An open meeting of the Citizen Advocacy Panel will be held in Sunrise, Florida.

**DATES:** The meeting will be held Friday, September 25, 1998 and Saturday, September 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Nancy Ferree at 1-888-912-1227, or 954-572-6231.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, September 25, 1998 from 6:00pm to 9:00pm and Saturday, September 26, 1998 from 9:00am to 12 Noon, in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments from 10:00am to 11:00am on Saturday, September 26, 1998. If you would like to have the CAP consider a written statement, please call 1-888-912-1227 or 954-572-6231, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the Meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1-888-912-1227 or 954-572-6231.

The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 3, 1998.

**Mary Ellen Ledger,**

*Designated Federal Official.*

[FR Doc. 98-24452 Filed 9-9-98; 8:45 am]

**BILLING CODE 48301-01-U**

**UNITED STATES INFORMATION AGENCY****Culturally Significant Objects Imported for Exhibition Determinations: "Mary Cassatt: Modern Woman"**

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, "Mary Cassatt: Modern Woman" (see list), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed objects at the Art Institute of Chicago from on or about October 13, 1998 to on or about January 10, 1999, the Museum of Fine Arts, Boston, Massachusetts from on or about February 14 to on or about May 9, 1999, and the National Gallery of Art, Washington, DC from on or about June 2 to on or about September 6, 1999 is in the national interest.

Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, 202/619-6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547-0001.

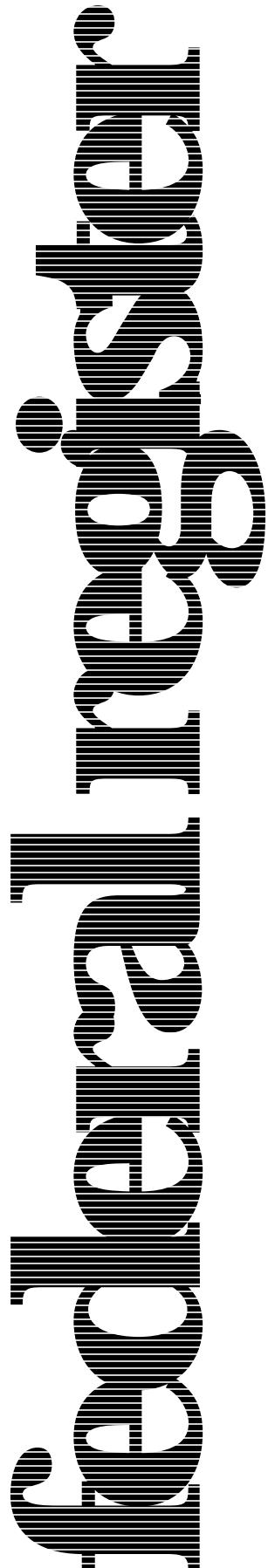
Dated: September 3, 1998.

**Les Jin,**

*General Counsel.*

[FR Doc. 98-24275 Filed 9-9-98; 8:45 am]

**BILLING CODE 8230-01-M**



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Thursday  
September 10, 1998

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## Part II

# Department of Housing and Urban Development

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Section 8 Rental Voucher and Certificate  
Programs and Section 8 Management  
Assessment Program (SEMAP)  
Establishment; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 985**

[Docket No. FR-3986-F-02]

RIN 2577-AB60

**Section 8 Rental Voucher and Certificate Programs and Establishment Section 8 Management Assessment Program (SEMAP)****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Final rule.

**SUMMARY:** This rule establishes the Section 8 Management Assessment Program (SEMAP) to objectively measure public housing agency (HA) performance in key Section 8 tenant-based assistance program areas. SEMAP enables HUD to ensure program integrity and accountability by identifying HA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance. HAs can use the SEMAP performance analysis to assess their own program operations.

**DATES:** This rule is effective October 13, 1998, Sections 985.102 (SEMAP profile), 985.103 (SEMAP score and overall performance rating), 985.105(a), 985.105(b), 985.105(d) and 985.105(e) (HUD SEMAP responsibilities) and 985.107 (Required actions for HA with troubled performance rating) are stayed as of October 13, 1998, until further notice.

**FOR FURTHER INFORMATION CONTACT:** Gerald Benoit, Acting Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708-4594 or 1-800-877-8399 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:****I. History and Scope of Rule**

On December 2, 1996, at 61 FR 63930, HUD published a proposed rule to establish SEMAP for the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), and for certain aspects of the project-based component of the certificate program and the Section 8 family self-

sufficiency (FSS) program. The proposed rule described 15 performance indicators that the Department planned to use to assess HA performance; the annual HA SEMAP certification and HUD review process; HUD scoring procedures and procedures for designating high, standard and troubled performers; and requirements for corrective action plans for improving performance.

HUD received 160 comments on the proposed rule which generally approve the broad purpose of the rule. Comments object to particular aspects of the proposed rule, and especially to inclusion of the proposed indicators for welfare to work and deconcentration. As a result of comments, the Department has revised the deconcentration indicator to measure HA efforts to expand housing opportunities rather than actual dispersal of Section 8 families. A deconcentration bonus indicator has also been added which awards up to 5 bonus points based on measurement of actual outcomes of HA actions as they impact on families choosing housing in low poverty areas. The Department has eliminated two (2) of the proposed indicators (time from request for lease approval to housing quality standards (HQS) inspection and welfare to work), and has added one indicator (utility allowance schedule). A new component has also been added to the FSS enrollment indicator to measure the percent of FSS participants with escrow account balances).

The SEMAP rule does not apply to Indian housing authority (IHA) administration of the tenant-based Section 8 programs. SEMAP does not cover the Section 8 moderate rehabilitation program (24 CFR 882, subparts D and E).

**II. Program Operation**

The basic SEMAP procedures have been modeled on the performance indicators for the assessment of public housing management required by section 6(j) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)). These public housing management indicators constituted the core of the former Public Housing Management Assessment Program (PHMAP), which has been replaced by the new Public Housing Assessment System (PHAS) implemented by a final rule published September 1, 1998. The PHAS is a much broader assessment system which places substantial weight on the physical condition of Public Housing. Although this SEMAP final rule does not include a physical assessment component, it is HUD's intention to develop a physical inspection system for Section 8 tenant-

based assistance once the Department and the industry have gained experience with the new PHAS system. Subpart C has been reserved in this rule for a future physical assessment component.

**A. SEMAP Certification**

Section 985.101 requires an HA administering a Section 8 tenant-based assistance program to submit annually a SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification form requires short answers from HAs concerning HA performance under the 14 SEMAP indicators and assures HUD that HA responses are accurate and that there is no evidence of seriously deficient performance. The HA board of commissioners approves, and the board chairperson and HA executive director sign, the certification. An HA must submit its first annual SEMAP certification form within 60 days after its first fiscal year end that follows the effective date of this final rule.

**B. SEMAP Score and Overall Performance Rating****1. HUD Assessment and Verification of SEMAP Certification**

Upon receipt of the annual HA SEMAP certification, HUD will independently assess each HA's performance under SEMAP using annual audit reports, family data reported by HAs on Forms HUD-50058 and HUD-50058-FSS and maintained in the HUD Multifamily Tenant Characteristics System (MTCS), and other available information to verify the HA responses. HUD may also conduct an on-site confirmatory review to verify an HA certification under any indicator. Based upon this HUD review and verification, HUD will prepare a SEMAP profile for each HA, assigning a rating for each SEMAP indicator in accordance with the regulation.

The final rule provides at § 985.3, that if the HUD verification method for a SEMAP indicator relies on data in MTCS, and HUD determines those data are insufficient to verify the HA's certification on the indicator due to the HA's failure to adequately report family data, HUD will assign a zero rating for the indicator. The Department expects that no less than 75 percent of an HA's rental voucher and certificate program participants must be reported for the MTCS data to be sufficient for assigning ratings under SEMAP. HUD, in its discretion, may increase the required level of MTCS reporting for SEMAP rating purposes at any time to a standard higher than 75 percent. HAs are reminded that the regulations in

force since 1995, at 24 CFR 982.158 and 908.104, require 100 percent reporting of participant data to MTCS in accordance with HUD instructions.

Comments question whether MTCS data are reliable for rating HAs under the SEMAP indicators and whether independent auditors (IAs) have sufficient capability to understand program rules to provide accurate assessments of compliance. Comments also express concern that auditors will vary in their audit procedures and that the cost of the audit will increase as a result of the auditor's added responsibilities under this rule.

The Department will not rate indicators under this rule until it is confident that MTCS data are reliable and auditor guidance has been issued to help auditors understand program requirements and consistently measure compliance. Therefore, until HUD determines that the independent verification methods for the SEMAP indicators stated in § 985.3 are properly implemented, the Department will accept the HA certification and will continue to depend on confirmatory reviews to the extent they are performed to measure performance and compliance.

Initially, the Department will not assign overall performance ratings. When independent verification methods for the indicators are properly implemented, the Department will publish a **Federal Register** notice of the effective date for the full implementation of SEMAP, including ratings under the indicators and issuance of overall performance ratings, which is expected early in calendar year 2000. Consequently, implementation of §§ 985.102 (SEMAP profile), 985.103 (SEMAP score and overall performance rating), 985.105(a), (b), (d) and (e) (HUD SEMAP responsibilities), and 985.107 (Required actions for HA with troubled performance rating) will be deferred until further notice.

Several comments expressed concern that the audit report to be used for independent verification of performance will not be available to HUD until as much as 13 months after the HA fiscal year for which performance is assessed. The Single Audit Act amendments of 1996, shortened to 9 months the amount of time between the end of an audit period and the submission of the audit report. Nonetheless, the Department recognizes that there is still a lag between the end of the HA fiscal year and the Department's receipt of the audit report. The Department plans to use the latest available audit report to rate those indicators for which the audit is the method of verification. The

performance indicators measured by the auditor are mostly fundamental program responsibilities which HAs have been performing for many years and for which there has been long-standing guidance. In general, there ought not be substantial variance in an HA's administration of these functions from year to year. However, to the extent that the HA has improved performance under an indicator after the audit, the HA may describe to HUD any corrective action taken since the audit (see § 985.101(a)(3)) and, if HUD deems it appropriate, HUD may adjust the HA's overall performance rating accordingly.

The Department recognizes that the cost of the audit may increase due to additional compliance testing which may be required as a result of this rule, and due to the requirement for explicit statements in the audit report concerning compliance related to the SEMAP indicators. The Department has determined to bear the added cost in return for the increased information about how well HAs administer the aspects of the program measured by the audit.

## 2. Small Housing Agencies

Several HAs commented that SEMAP is an undue administrative burden and should not apply to HAs that administer fewer than 250 units. SEMAP was designed to minimize any new recordkeeping burden. Under the final rule, an HA that is not already doing so will need to begin maintaining documentation of its 5 percent HQS quality control inspections. HAs with FSS programs will need to track the number of FSS families with escrow accounts. Initial HAs that deal with FSS families who have moved under portability but continue in the FSS program of the initial HA will also have a minimal extra record-keeping burden. For all other SEMAP indicators, the Department expects that all HAs already keep records that will demonstrate performance in conformity with longstanding program requirements. Consequently, the Department does not agree that there is any significant administrative burden associated with SEMAP that should preclude its implementation for small HAs.

The Single Audit Act requires non-Federal entities that expend \$300,000 or more a year in Federal awards to have an audit made for that year. HAs that expend less than \$300,000 a year in Federal awards are exempt from Federal audit requirements. Therefore, the final rule provides that HAs that expend less than \$300,000 a year in Federal awards and whose Section 8 programs are not audited by an IA, will not be rated

under the SEMAP indicators for which HUD uses the audit report as the method of verification of HA performance. For these small HAs, the SEMAP score and overall performance rating will be determined based only on the remaining 7 SEMAP indicators, including lease-up and those indicators for which HUD uses MTCS as the method of verification. Although the SEMAP performance rating will not be determined using the indicators for which the audit report is the verification method, HAs not subject to Federal audit requirements must still complete the SEMAP certification for these indicators and performance under the indicators is still subject to HUD confirmatory reviews to the extent they are performed.

## 3. Determination of SEMAP Score and Overall Performance Rating

Comments objected to the proposed rating of several indicators for which 100 percent compliance was required in order to achieve highest points under the indicator. Comments said rating should be less stringent to allow for human error or circumstances beyond the HA's control. In the final rule, the rating on several indicators has been relaxed to not require 100 percent compliance to achieve highest points. Notwithstanding that some room for error is allowed in the SEMAP ratings, HAs are reminded that they are responsible for full compliance with program requirements.

Several HA comments requested the opportunity to review a preliminary SEMAP score before HUD issues a final score. The Department does not find the extra administrative procedures involved in issuing preliminary SEMAP scores worthwhile, since assignment of scores under SEMAP will be highly systematized, and the scores will generally be easily determinable from the IA audit report and from MTCS reports which HAs may obtain from HUD.

HUD will sum its ratings for the individual indicators and divide by the potential maximum number of points to arrive at an overall HA SEMAP score. Points awarded under the deconcentration bonus indicator will be added to the sum of the ratings for the individual indicators, but will not be included in the potential maximum number of points. HAs with SEMAP scores of at least 90 percent will receive an overall performance rating of high performer; HAs with SEMAP scores of 60 to 89 percent will receive an overall performance rating of standard; and HAs with scores of less than 60 percent will receive an overall performance

rating of troubled. HUD may modify an HA's overall performance rating when warranted by circumstances that have bearing on the SEMAP indicators such as an HA's appeal of its overall rating, adverse litigation, fair housing and equal opportunity compliance concerns, fraud or misconduct, audit findings, or substantial noncompliance with program requirements. HUD will provide the HA a written explanation of any modified overall performance rating.

As indicated above, the Department will not rate indicators under this rule until it is confident that MTCS data are reliable and audit guidance has been issued to help auditors understand program requirements and consistently measure compliance.

#### 4. HUD Notification to HA of SEMAP Ratings

**SEMAP Profile.** The final rule provides that within 120 days of the HA's fiscal year end, HUD will complete an HA SEMAP profile and will notify the HA in writing of its rating on each SEMAP indicator, the HA's overall SEMAP score and its overall performance rating (high performer, standard, or troubled). HUD will also provide an HA's SEMAP ratings to the chief executive officer of the unit of local government where the HA has jurisdiction, and SEMAP ratings will be made available as public information over the Internet. As noted above, however, HUD will not assign an overall performance rating until HUD publishes the effective date for full implementation of SEMAP. The HUD notification letter will identify and require correction of any program management deficiencies within 45 days.

**Modifications, Exclusions, Appeals.** Several comments urged that there be provision for modifications or exclusions of certain indicators as in the Public Housing Management Assessment Program (PHMAP), and that there be detailed appeal procedures.

HUD finds the performance indicators in SEMAP so essential to adequate performance for any Section 8 tenant-based program that provision for modification or exclusion of any indicator is not warranted. Since appeals of SEMAP scores and ratings may be made for a variety of reasons in a variety of circumstances, the Department finds little practicality for a prescribed appeal process. The rule provides that the HA may appeal its overall performance rating to HUD by providing justification of the reasons for its appeal and that HUD must provide a final written determination to an HA

on its appeal. An appeal made to a HUD hub or program center or to the HUD Troubled Agency Recovery Center and denied, may be further appealed to the Assistant Secretary.

#### C. Required Actions for SEMAP Deficiencies

Section 985.106 requires that the HA improve its Section 8 program management for any SEMAP indicator that is rated zero (a "SEMAP deficiency"), and must send HUD a written report of the corrective action taken on the SEMAP deficiency within 45 days of receipt of its SEMAP ratings from HUD. If an HA fails to correct SEMAP deficiencies as required, HUD will require that the HA prepare and submit a written corrective action plan for the deficiency within 30 days.

HUD must, under § 985.107, review on-site any HA that is assigned an overall performance rating of troubled. HUD will issue a written report of its on-site review findings and recommendations. Upon receipt of the HUD report, the HA must write a corrective action plan and submit it to HUD for approval. Both the HA and HUD must monitor implementation of a corrective action plan to ensure targets for improved performance are met.

Any HA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)). In these cases, HUD may require use of the administrative fee reserve for specific administrative improvements in areas where administration is found deficient.

#### D. HAs Under the Jurisdiction of More Than One HUD Office

For any HA with jurisdiction under the jurisdiction of more than one HUD office (e.g., a state agency), the HUD office with the greatest amount of funding obligated under ACCs will assume all responsibility for administration of SEMAP for the HA.

#### E. Default Under ACC

An HA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD may constitute a default under the ACC as determined by HUD. The ACC provides for HUD notice of a determination of default to the HA and authorizes HUD to take possession of all or any HA property, rights, or interests in connection with a program if HUD determines that the HA has failed to comply with obligations under the ACC, including compliance with all HUD regulations and other requirements (including the final SEMAP regulation),

or with obligations under a housing assistance payments (HAP) contract.

### III. SEMAP Indicators

#### A. Proposed Indicators for Deconcentration and Welfare to Work

Comments nearly unanimously objected to inclusion of the proposed SEMAP indicators for deconcentration and welfare to work. The deconcentration indicator would have measured the extent to which Section 8 families with children leased units in census tracts of relatively low poverty, among metropolitan census tracts containing housing priced at or below the fair market rent (FMR), both within the HA's jurisdiction and within the entire metropolitan area. Comments state that deconcentration of assisted families is largely outside HA control, since the tenant-based program design gives families the right to choose their own housing. Comments also indicate that a performance requirement and the added costs to administer a mobility program which would produce significant results constitute an unfunded mandate. Some comments stated that the indicator is too complicated and confusing, and that the 1990 data used to determine areas with FMR-priced housing and poverty rates may be out of date.

In light of the comments, the Department has decided to revise the deconcentration indicator. The revised indicator has been renamed "expanding housing opportunities" (§ 985.3(g)) and measures an HA's efforts to encourage participation by owners of units located outside areas of poverty or minority concentration and to inform rental voucher and certificate holders of the full range of areas where they may lease housing, both inside and outside the HA's jurisdiction. The revised indicator measures HA actions required by program regulations at 24 CFR 982.54(d)(5), 982.301(a) and 982.301(b)(5) and 982.301(b)(13), and so does not require an HA to take action that is not funded by the administrative fee. The expanding housing opportunities indicator applies only to HAs with jurisdiction in metropolitan FMR areas.

The revised "expanding housing opportunities" indicator does not measure where families ultimately choose to lease housing. However, the Department continues to believe that it is important to develop a reasonable measure of the extent to which the HA's actions to expand housing opportunities actually result in family choices to lease housing in low poverty areas. The Department plans to issue a new

proposed rule which will present and seek comment on a potential new SEMAP deconcentration indicator to measure outcomes that is less complicated than the deconcentration indicator in the December 2, 1996 proposed rule.

To acknowledge the effectiveness of HA actions in achieving deconcentration until a new SEMAP deconcentration outcome measure is developed, the Department has added a 5-point deconcentration bonus indicator to this final rule (§ 985.3(h)). The deconcentration bonus indicator will give HAs with jurisdiction in metropolitan FMR areas the option of providing data on the percent of Section 8 families with children who choose housing in low poverty census tracts in the HA's principal operating area. Bonus points may be awarded if half or more of all Section 8 families with children live in low poverty areas in the HA's principal operating area, or if the percent of Section 8 mover families with children who choose housing in low poverty areas exceeds by at least 2 percentage points the percent of all the HA's Section 8 families with children who live in low poverty areas. For example, if 20 percent of all assisted families with children are in low poverty tracts, and 22 percent of mover families with children locate in low poverty tracts, the HA would be awarded 5 bonus points. Because an HA might make progress that varies year by year, bonus points may also be awarded if the percent of families moving to low poverty tracts over a 2-year period is 2 percentage points greater than the percent of all assisted families with children.

State and regional HAs that provide Section 8 rental assistance in more than one metropolitan area within a State or region make these determinations separately for each metropolitan area or portion of a metropolitan area where the HA assists at least 20 families with children during the HA fiscal year. The separate metropolitan area ratings will then be weighted by the number of assisted families with children in each area and averaged to determine bonus points to be awarded to the State or regional HA.

Low poverty census tracts are defined as those where the poverty rate in the tract is at or below 10 percent, or at or below the overall poverty rate for the principal operating area of the HA, whichever is greater. This definition of low poverty census tract is intended to be a relative measure that may differ for the inner city and suburban portions of a metropolitan area, and that is consistent with variations in the

availability of affordable housing offered at or below HUD FMRs.

The Department does not intend that the bonus indicator for deconcentration should cause any HA with jurisdiction in a metropolitan FMR area to directly or indirectly reduce a family's opportunity to select among available units, including those in high-poverty areas. Rather, HUD intends, by including the extent to which Section 8 families with children choose housing in low poverty areas as a measure of performance for bonus points, that HAs will be encouraged to provide more outreach to owners in all areas of their jurisdictions and more counseling and assistance to motivate and increase housing choice on the part of families.

The proposed welfare to work indicator would have measured the percent of Section 8 families whose primary source of income was welfare, who moved from welfare to work over the course of a year. Comments state that movement of families from welfare to work is not under the HA's control, but rather depends on state work incentives, family skills, the local economy, and the quality of job training and placement programs. Comments state that moving families from welfare to work is not an HA responsibility at all and is unrelated to federal housing laws and regulations. Several comments state that HAs should not be expected to coordinate social services without funds to pay the costs. The final rule eliminates the proposed welfare to work indicator, but retains the FSS indicator which has basis in federal housing law.

#### B. Remarks on Particular Indicators

##### 1. Selection From the Waiting List

This indicator measures whether the HA has written policies in its administrative plan for selecting applicants from the waiting list and follows these policies when selecting applicants for admission. The final rule raises the maximum points for the waiting list indicator (§ 985.3(a)) to 15 points from 10 points as had been proposed, based on comments which stressed the importance of this indicator.

##### 2. Reasonable Rent

The final rule requires, for maximum points under the reasonable rent indicator (§ 985.3(b)), that the HA document for at least 98 percent of units leased that the rent to owner is reasonable based on current rents for comparable unassisted units, at the time of initial leasing; if there is any increase in the rent to owner; and at the HAP contract anniversary if there is a 5

percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. This is changed from the proposed indicator which required that reasonable rent be documented at the time of initial leasing and "at least annually". The change corresponds to the current requirement in the Section 8 certificate and voucher programs conforming rule.

Comments asked HUD to clarify what is required as a method for the HA to determine reasonable rent. The Section 8 certificate and voucher programs conforming rule at § 982.503, requires that the HA determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination the HA must consider location, quality, size, type, and age of the contract unit, and any amenities, housing services, maintenance and utilities to be provided by the owner under the lease. The Department plans to issue guidance concerning the determination of reasonable rent that will be substantially similar to guidance previously issued in paragraph 6-5 of Handbook 7420.7, *Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program*.

Some comments questioned why reasonable rent is included as a SEMAP indicator since, with fair market rents (FMRs) set at the 40th percentile rents for the area, it is not worth an HA's effort to determine that rent is reasonable.

FMRs are set for entire metropolitan areas and for entire nonmetropolitan counties. Within these broad FMR areas it is normal for rents to vary considerably within submarkets. Within any broad FMR area, there are likely to be neighborhoods where prevailing rents are significantly below the HUD-published FMRs as well as neighborhoods with prevailing rents significantly above the HUD-published FMRs. In addition, any particular unit may command a lesser rent than the FMR due to its location, quality, size, type, age and amenities. Consequently, to ensure that rents paid under the Section 8 programs are not excessive in the local submarket, it is of utmost importance for the HA to make a determination of reasonable rent based on comparable unassisted units in the submarket determined by unit location, age, quality, size, type and amenities.

##### 3. Determination of Adjusted Income

The proposed rule included an indicator for income determination and utility allowances. Comments urged HUD not to combine the standard for

the utility allowance schedule with the income determination indicator. Accordingly, the final rule includes a separate utility allowance schedule indicator.

The proposed rule provided that, to score points on the income determination indicator, the HA must obtain third party verification of family income, assets, and composition or document why independent verification is not possible. Some comments pointed out that third party verification of family composition is not generally required.

The final rule clarifies at § 985.3(c)(3), that the HA must obtain third party verification of adjusted income. This includes verification of annual income, the value of assets totalling more than \$5,000, expenses related to deductions from annual income, and other factors that affect the determination of adjusted income and consequently the amount of assistance (e.g., full-time student status, custody). In general, the family's self-declaration of the numbers of its members, their ages, and their relationship to the head does not require third party verification unless there is HA uncertainty concerning these factors. For further clarification of verification requirements, HAs may use the guidance in paragraph 4–5 of Handbook 7420.7.

#### 4. Utility Allowance Schedule

The final rule establishes a separate utility allowance schedule indicator (§ 985.3(d)) worth 5 points. The indicator measures whether the HA maintains an up-to-date utility allowance schedule.

#### 5. HQS Quality Control Inspections

Comments asked for clarification of which inspections were subject to the 5 percent quality control reinspection and over what period of time the quality control reinspections must be performed. The final rule clarifies at § 985.3(e) that to obtain the 5 points under this indicator, an HA supervisor or other qualified person must reinspect a sample of units during the HA fiscal year, numbering at least 5 percent of the number of units under contract during the last completed HA fiscal year. In addition, the indicator has been modified to also require the reinspected sample to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

A small HA with only 1 or 2 employees may arrange with a nearby

HA to have a qualified HQS inspector perform the required quality control inspections.

#### 6. FMR Limit and Payment Standards

The Department had requested specific comment on whether the FMR limit and payment standards indicator (§ 985.3(i)) should be retained as a SEMAP indicator in the final rule. Comments approved of the inclusion of this indicator in the final rule.

**FMR Limit.** Many comments expressed confusion over the FMR standard which allows only 10 percent of newly leased certificate units to exceed the FMR/exception rent limit. HAs did not understand how the indicator accommodated their authority to exceed the FMR by up to 10 percent for 20 percent of certificate units, as well as HUD's authority to approve area exception rents and case-by-case exception rents up to 120 percent of FMR.

Under the conforming rule, the HA's broad authority to exceed the FMR by up to 10 percent for 20 percent of certificate units, as well as HUD's authority to approve case-by-case exception rents up to 120 percent of FMR have been eliminated. However, the conforming rule retains provisions for HUD-approved area exception rents and provides for HA approval of exception rents if needed as reasonable accommodation for persons with disabilities.

The FMR indicator in the proposed rule was written to accommodate the new over-FMR tenancy option in the rental certificate program. Under the conforming rule, an HA may approve an initial gross rent that exceeds the FMR or HUD-approved exception rent (an over-FMR tenancy) for up to 10 percent of its incremental certificates under budget. The SEMAP proposed rule standard to have at least 90 percent of newly leased certificate units with initial rents at or below the FMR was meant to allow for up to 10 percent of all units to be leased under over-FMR tenancies. In this final rule the indicator has been modified for accuracy. The final rule standard excepts over-FMR tenancies from the measure entirely, and requires that at least 98 percent of units newly leased under the certificate program, other than over-FMR tenancies, have initial gross rents at or below the applicable FMR or approved exception rent limit.

**Payment Standards.** In addition to measuring whether the HA's voucher payment standards do not exceed the applicable FMR or HUD-approved exception rent limits, the final rule modifies the payment standard aspect of

the proposed indicator to also measure whether the HA's payment standards are not less than 80 percent of the applicable FMR or HUD-approved exception rent limits.

#### 7. Annual Reexaminations

The Department had requested specific comment on whether the annual reexaminations indicator should be retained as a SEMAP indicator in the final rule. Comments approved of the inclusion of this indicator.

Many comments recommended that the SEMAP indicator require the annual reexamination to be completed "annually before the HAP contract anniversary" rather than "at least every 12 months". Comments indicated that many HAs view the annual reexamination as an annual process that involves not only reexamination of the family's adjusted income, but also the annual HQS inspection and the owner's annual rent adjustment in the certificate program. Many HAs expressed concern about delays in rent negotiations or in HQS inspections impacting the timeliness of the HA's annual reexamination.

The program requirement is that the results of the annual reexamination of the family's adjusted income take effect at least every 12 months. The annual reexamination of adjusted income does not entail the annual HQS inspection or the owner's rent adjustment, although HAs may, nevertheless, find it convenient to coordinate these annual processes.

Some comments indicated that, when an HA knows a family move is imminent, the HA will intentionally delay the annual reexamination so that its effective date will coincide with the HQS inspection and the HAP contract anniversary for the family's new unit. The law and regulations do not permit a delay in the annual reexamination for this reason. However, HUD recognizes that it is administratively convenient for HAs to coordinate the timing of the annual reexamination, HQS inspection and owner's rent adjustment processes. When a family moves to a new unit and thereby establishes a new HQS inspection date and HAP contract anniversary date, if the family's latest annual reexamination took effect within 4 months prior to the new HAP contract anniversary, the HA may simply ascertain whether there has been any change in the family's adjusted income since the last annual reexamination and, if so, obtain third party verification of only the change. The HA must then use any new verified information together with information from the last annual reexamination to redetermine the family

share of rent and the housing assistance payment. The HA may consider and report that income redetermination, upon a move within 4 months of the effective date of the last annual reexamination, as a new annual reexamination. This will establish a new annual reexamination date that coincides with the date of the HQS inspection and HAP contract anniversary at the new unit.

The ratings for the annual reexaminations indicator at § 985.3(j) indicate that annual reexaminations may not be more than 2 months overdue. This 2-month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual reexamination on Form HUD-50058, and to allow the processing of the data into the MTCS. The Form HUD-50058 data are used to measure performance under this indicator. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual reexaminations is ever permitted.

#### 8. Correct Tenant Rent Calculations

This indicator shows whether the HA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program. The final rule (§ 985.3(k)) clarifies that the MTCS report used to verify performance under this indicator will cover only rent calculation discrepancies for regular certificate and voucher program tenancies, and will not include rent calculation discrepancies for over-FMR tenancies in the rental certificate program, for manufactured home owner rentals of manufactured home spaces, or for proration of assistance under the noncitizen rule.

#### 9. Annual HQS Inspections

The ratings for the annual HQS inspections indicator (§ 985.3(m)) indicate that annual HQS inspections may not be more than 2 months overdue. This 2-month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual HQS inspections on Form HUD-50058, and to allow the processing of the data into the MTCS. The Form HUD-50058 data are used to measure performance under this indicator. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual HQS inspections is ever permitted.

#### 10. Lease-up

The proposed rule required that 98 percent or more of units budgeted for the last completed HA fiscal year be contracted to receive maximum points under the lease-up indicator. Comments state that it is unreasonable to expect 98 percent lease-up with the required 3-month delay in reissuance of turnover and that this indicator should be excluded from SEMAP until the 3-month delay on reissuance is revoked.

The final rule at § 985.3(n) does not address the 3-month delay on reissuance of turnover. However, in the event future legislation impacts the lease-up indicator, or any other SEMAP indicator, the Department will publish a **Federal Register** notice to temporarily modify SEMAP standards as may be required by future legislative provisions.

Many comments recommended that the lease-up indicator account for circumstances which affect leasing such as rental market factors, economic conditions, and HA termination of assistance for violations of family obligations. Other comments recommended that allocations for special use, such as in connection with public housing demolition or for litigation, should be excluded from measurement of performance under this indicator.

The lease-up indicator under the final rule measures units leased during the last HA fiscal year as a percent of units budgeted for the last HA fiscal year. The number of units budgeted on Form HUD-52672, Supporting Data for Annual Contributions Estimates, is the number of units estimated to be leased during the fiscal year and should account for local market conditions, the HA's experience concerning terminations for violation of family obligations, as well as for anticipated leasing of units under special allocations. Therefore, the indicator has not been modified to further consider these factors.

The proposed HUD verification method for lease-up has been modified to measure the number of units leased during the last HA fiscal year by using the number of unit months under contract as reported on the HUD-approved Form HUD-52681, Voucher for Payment of Annual Contributions and Operating Statement, divided by 12 months, and then dividing by the number of units budgeted for the last HA fiscal year as shown on the HUD-approved Form HUD-52672. Comments indicate this method which measures lease-up over the course of the fiscal year is preferred over use of the Program

Utilization Report which measures lease-up at a point in time.

#### 11. FSS Enrollment and Escrow Accounts

The final rule lowers the maximum points for FSS enrollment (§ 985.3(o)) to 5 points from 10 points as had been proposed; however, another 5-point FSS component has been added to the FSS indicator. Comments indicate that the SEMAP indicator for FSS should be fashioned to measure FSS results, not just to count families enrolled in FSS. The final rule includes a new 5-point FSS component which measures the percent of current FSS participants with FSS progress reports entered in MTCS who have had increases in earned income since enrollment and consequently, have built escrow account balances.

The HUD method of verification for the FSS indicator is an MTCS report which shows the number of the HA's Section 8 families that are currently enrolled in the HA's FSS program and the percent of the HA's current FSS participants that have established escrow account balances. Occasionally, an FSS participant may move under portability to another HA's jurisdiction, but remains in the FSS program of the initial HA. When the family's FSS participation is properly reported by the receiving HA, MTCS will incorrectly report this family as enrolled and with an escrow account in the receiving HA's FSS program rather than in the initial HA's FSS program. Therefore, until the Form HUD-50058-FSS and MTCS are modified to show the FSS enrollment and escrow account in the initial HA's program, if the initial HA wishes to be given credit for the family's FSS enrollment and escrow account, it will be necessary for the initial HA to manually report on its SEMAP certification the number of its current FSS families enrolled and the number of its current FSS families with escrow accounts who have exercised portability and whose Section 8 assistance is administered and reported by the receiving HA.

The FSS indicator at § 985.3(o) applies only to HAs with mandatory FSS programs (i.e., HAs that received FY 1992 FSS incentive award Section 8 funding or that received FY 1993 and later year Section 8 funding, excluding Section 8 funding in conjunction with Section 8 and Section 23 contract terminations; public housing demolition, disposition and replacement; HUD multifamily property sales; prepaid or terminated mortgages under section 236 or section 221(d)(3); and Section 8 renewal funding).

### C. Comments on Possible Additional Indicators

The Department specifically invited comment on whether SEMAP should include performance indicators on rent burden and portability. Comments do not support and the final rule does not include performance indicators for these areas. However, note that the new expanding housing opportunities indicator (§ 985.3(g)) covers certain aspects of portability.

The Department also invited comment on whether SEMAP should include a performance indicator on timeliness of housing assistance payments to owners. There was relatively light commenting on this potential indicator in response to the proposed rule; approximately 20 of 160 comments addressed whether to add an indicator for timeliness of housing assistance payments—4 comments were supportive and 10 were opposed. Given the light response, the Department plans to issue a new proposed rule which will provide further detail concerning a possible indicator for timeliness of housing assistance payments and will seek further comment on whether to add this as a SEMAP indicator. Timeliness of housing assistance payments is not included as a SEMAP indicator in this final rule.

The Department also plans to include in the forthcoming proposed rule another SEMAP indicator for HA implementation of certain HA screening and termination policies. On March 31, 1997, the Department issued a proposed rule for implementation of provisions under the Housing Opportunity Program Extension Act of 1996. The March 31, 1997 proposed rule would require that an HA deny eligibility for families who were evicted from housing assisted under the 1937 Act for drug-related criminal activity or for serious violation of the lease; terminate assistance for a family that was evicted from housing assisted under the program for serious violation of the lease; and establish standards for denying and terminating assistance if a family member is illegally using a controlled substance or has a pattern of abuse of alcohol that interferes with peaceful enjoyment of the premises by other residents. The new proposed SEMAP indicator would measure HA performance in implementing the requirements of the forthcoming final rule concerning these admissions and occupancy policies. The new SEMAP proposed rule will also revise the HQS quality control inspection sample size to require statistically significant sample sizes

based on the size of the HA's tenant-based program.

The Department noted in the preamble to the proposed rule that it plans to add a SEMAP indicator in the next 2 years to measure an HA's performance in analyzing computer matching results under the Tenant Eligibility Verification System (TEVS) and in taking appropriate administrative actions (e.g., resolving reported income discrepancies and tracking amount of money recovered). Comments indicate it is premature to include an indicator on HA action in support of computer matching since TEVS needs further development to ensure accuracy and completeness. The Department acknowledges that it is too early to include a SEMAP indicator related to TEVS, but plans to add a TEVS indicator in the future when the system is fully functional.

Finally, the Department is considering adding two additional SEMAP indicators in the future: one to measure HA performance in enforcing HQS based on results of inspections performed by an auditing entity for a sample of units, and the second to measure customer satisfaction. Both of these measures of HA performance will be used for Public Housing under a revised public housing assessment system administered by the Department's Real Estate Assessment Center. After a period of testing the new public housing assessment system measures in these areas, the Department anticipates publishing a proposed rule to seek comment on similar indicators for SEMAP.

## IV. Findings and Certifications

### Paperwork Reduction Act Statement

The information collection requirements contained in §§ 985.101, 985.107(c), and 985.106 in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0215. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

### Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection

between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

### Regulatory Planning and Review

This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

### Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. The rule establishes management assessment criteria for HAs. HUD does not anticipate a significant economic impact on a substantial number of small entities, since the rule establishes management assessment criteria which will be utilized by State/Area Offices for monitoring purposes and the provision of technical assistance to HAs.

### Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

### Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule is intended to promote good management practices by including, in HUD's relationship with HAs, continuing review of HAs' compliance with already existing requirements. The rule does not create any new significant requirements of its own. As a result, the

rule is not subject to review under the Order.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers are 14.855 and 14.857.

#### List of Subjects in 24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR, chapter IX is amended as follows:

1. A new part 985 is added to read as follows:

### PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

#### Subpart A—General

Sec.

985.1 Purpose and applicability.

985.2 Definitions.

985.3 Indicators, HUD verification methods and ratings.

#### Subpart B—Program Operation

985.101 SEMAP certification.

985.102 SEMAP profile.

985.103 SEMAP score and overall performance rating.

985.104 HA right of appeal of overall rating.

985.105 HUD SEMAP responsibilities.

985.106 Required actions for SEMAP deficiencies.

985.107 Required actions for HA with troubled performance rating.

985.108 SEMAP records.

985.109 Default under the Annual Contributions Contract (ACC).

#### Subpart C—Physical Assessment Component [Reserved]

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

#### Subpart A—General

##### § 985.1 Purpose and applicability.

(a) **Purpose.** The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost. SEMAP also establishes an objective system for HUD to measure HA performance in key Section 8 program areas to enable the Department to ensure program integrity and accountability. SEMAP provides procedures for HUD to identify HA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. HAs can use the SEMAP performance analysis to assess and improve their own program operations.

(b) **Applicability.** This rule applies to HA administration of the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), the project-based component (PBC) of the certificate program (24 CFR part 983) to the extent that PBC family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under the family self-sufficiency program (FSS) (24 CFR part 984).

##### § 985.2 Definitions.

(a) The terms *Department*, *Fair Market Rent*, *HUD*, *Secretary*, and *Section 8*, as used in this part, are defined in 24 CFR 5.100.

(b) The definitions in 24 CFR 982.4 apply to this part. As used in this part:

*Corrective action plan* means a HUD-required written plan that addresses HA program management deficiencies or findings identified by HUD through remote monitoring or on-site review, and that will bring the HA to an acceptable level of performance.

*HA* means a Housing Agency.

*MTCS* means Multifamily Tenant Characteristics System. MTCS is the Department's national database on participants and rental units in the Section 8 rental certificate, rental voucher, and moderate rehabilitation programs and in the Public and Indian Housing programs.

*Performance indicator* means a standard set for a key area of Section 8 program management against which the HA's performance is measured to show whether the HA administers the program properly and effectively. (See § 985.3.)

*SEMAP certification* means the HA's annual certification to HUD, on the form prescribed by HUD, concerning its performance in key Section 8 program areas.

*SEMAP deficiency* means any rating of 0 points on a SEMAP performance indicator.

*SEMAP profile* means a summary prepared by HUD of an HA's ratings on each SEMAP indicator, its overall SEMAP score, and its overall performance rating (high performer, standard, troubled).

##### § 985.3 Indicators, HUD verification methods and ratings.

This section states the performance indicators that are used to assess HA Section 8 management. HUD will use the verification method identified for each indicator in reviewing the accuracy of an HA's annual SEMAP certification. HUD will prepare a SEMAP profile for

each HA and will assign a rating for each indicator as shown. If the HUD verification method for the indicator relies on data in MTCS and HUD determines those data are insufficient to verify the HA's certification on the indicator due to the HA's failure to adequately report family data, HUD will assign a zero rating for the indicator. Similarly, if the HUD verification method for the indicator relies on the HA's annual audit report and HUD does not receive the audit report within the nine month reporting period, HUD may assign a zero rating for the indicator.

An HA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor (IA), will not be rated under the SEMAP indicators in paragraphs (a) through (g) of this section for which the annual IA audit report is the HUD verification method. For those HAs, the SEMAP score and overall performance rating will be determined based only on the remaining indicators in paragraphs (i) through (o) of this section as applicable. Although the SEMAP performance rating will not be determined using the indicators in paragraphs (a) through (g) of this section, HAs not subject to Federal audit requirements must still complete the SEMAP certification for these indicators and performance under the indicators is subject to HUD confirmatory reviews.

(a) *Selection from the Waiting List.* (1) This indicator shows whether the HA has written policies in its administrative plan for selecting applicants from the waiting list and whether the HA follows these policies when selecting applicants for admission from the waiting list. (24 CFR 982.54(d)(1) and 982.204(a))

(2) **HUD verification method:** The latest independent auditor (IA) annual audit report.

(3) **Rating:** (i) The latest IA audit report states that:

(A) The HA has written waiting list selection policies in its administrative plan and,

(B) Based on randomly selected samples of applicants and admissions, documentation shows that at least 98 percent of the families in the samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection. 15 points.

(ii) The latest IA audit report does not support the statement in paragraph (a)(3)(i) of this section. 0 points.

(b) *Reasonable Rent.* (1) This indicator shows whether the HA has and implements a reasonable written

method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units: at the time of initial leasing; if there is any increase in the rent to owner; and at the HAP contract anniversary if there is a 5 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary. The HA's method must take into consideration the location, size, type, quality and age of the units, and the amenities, housing services, and maintenance and utilities provided by the owners in determining comparability and the reasonable rent. (24 CFR 982.4, 24 CFR 982.54(d)(15), 982.158(f)(7) and 982.503)

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that:

(A) The HA has a reasonable written method to determine reasonable rent which considers location, size, type, quality and age of the units and the amenities, housing services, and maintenance and utilities provided by the owners; and

(B) Based on a randomly selected sample of tenant files, the HA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with § 982.503 for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner and, at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(ii) The latest IA audit report includes the statements in paragraph (b)(3)(i) of this section, except that the HA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 15 points.

(iii) The latest IA audit report does not support the statements in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. 0 points.

(c) *Determination of adjusted income.*  
(1) This indicator shows whether, at the time of admission and annual reexamination, the HA verifies and correctly determines adjusted annual income for each assisted family and, where the family is responsible for utilities under the lease, the HA uses the appropriate utility allowances for the unit leased in determining the gross

rent. (24 CFR part 5, subpart F and 24 CFR 982.516)

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that, based on a randomly selected sample of tenant files, for at least 90 percent of families:

(A) The HA obtains third party verification of reported family annual income, the value of assets totalling more than \$5,000, expenses related to deductions from annual income, and other factors that affect the determination of adjusted income, and uses the verified information in determining adjusted income, and/or documents tenant files to show why third party verification was not available;

(B) The HA properly attributes and calculates allowances for any medical, child care, and/or disability assistance expenses; and

(C) The HA uses the appropriate utility allowances to determine gross rent for the unit leased. 20 points.

(ii) The latest IA audit report includes the statements in paragraph (c)(3)(i) of this section, except that the HA obtains and uses independent verification of income, properly attributes allowances, and uses the appropriate utility allowances for only 80 to 89 percent of families. 15 points.

(iii) The latest IA audit report does not support the statements in either paragraph (c)(3)(i) or (c)(3)(ii) of this section. 0 points.

(d) *Utility Allowance Schedule.* (1) This indicator shows whether the HA maintains an up-to-date utility allowance schedule. (24 CFR 982.517)

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the auditor has determined that the HA reviewed utility rate data within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. 5 points.

(ii) The latest IA audit report does not support the statement in paragraph (d)(3)(i) of this section. 0 points.

(e) *HQS quality control inspections.*

(1) This indicator shows whether an HA supervisor or other qualified person reinspects a sample of units under contract during the HA fiscal year, numbering at least 5 percent of the number of units under contract during the last completed HA fiscal year (as determined by taking unit months under HAP contract as shown on the HA's latest approved year end operating statement divided by 12), for quality

control of HQS inspections. The HA supervisor's reinspected sample is to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and is to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. (24 CFR 982.405(b))

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the auditor has determined that an HA supervisor or other qualified person performed quality control HQS reinspections during the HA fiscal year for a sample of units under contract numbering at least 5 percent of the number of units under contract during the last HA fiscal year. The audit report also states that the reinspected sample was drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding the quality control reinspection) and was drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. 5 points.

(ii) The latest IA audit report does not support the statements in paragraph (e)(3)(i) of this section. 0 points.

(f) *HQS enforcement.* (1) This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening HQS deficiencies are corrected within 24 hours from the inspection and all other cited HQS deficiencies are corrected within no more than 30 calendar days from the inspection or any HA-approved extension. In addition, if HQS deficiencies are not corrected timely, the indicator shows whether the HA stops (abates) housing assistance payments beginning no later than the first of the month following the specified correction period or terminates the HAP contract or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. (24 CFR 982.404)

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the review of a randomly selected sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, for at least 98 percent of cases sampled, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any HA-approved extension, or, if any life-threatening HQS deficiencies were not corrected

within 24 hours and all other HQS deficiencies were not corrected within 30 calendar days or any HA-approved extension, the HA stopped (abated) housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce family obligations. 10 points.

(ii) The latest IA audit report does not support the statement in paragraph (f)(3)(i) of this section. 0 points.

**(g) Expanding housing opportunities.**

(1) This indicator applies only to HAs with jurisdiction in metropolitan FMR areas. The indicator shows whether the HA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs rental voucher and certificate holders of the full range of areas where they may lease units both inside and outside the HA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration. (24 CFR 982.54(d)(5), 982.301(a) and 982.301(b)(5) and 982.301(b)(13))

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that:

(A) The HA has a written policy in its administrative plan which includes actions the HA will take to encourage participation by owners of units located outside areas of poverty or minority concentration, and which clearly delineates areas in its jurisdiction that the HA considers areas of poverty or minority concentration;

(B) HA documentation shows that the HA has taken actions indicated in its written policy to encourage participation by owners of units located outside areas of poverty or minority concentration;

(C) The HA has prepared maps that show various areas with housing opportunities outside areas of poverty or minority concentration both within its jurisdiction and neighboring its jurisdiction; has assembled information about the characteristics of those areas which may include information about job opportunities, schools, transportation and other services in these areas; and can demonstrate that it uses the maps and area characteristics information when briefing rental voucher and certificate holders about the full range of areas where they may look for housing;

(D) The HA's information packet for rental voucher and certificate holders contains either a list of owners who are

willing to lease (or properties available for lease) under the rental voucher or certificate programs; or a current list of other organizations that will help families find units and the HA can demonstrate that the list(s) includes properties or organizations that operate outside areas of poverty or minority concentration;

(E) The HA's information packet includes an explanation of how portability works and includes a list of portability contact persons for neighboring housing agencies, with the name, address and telephone number of each, for use by families who move under portability; and

(F) HA documentation shows that the HA has analyzed whether rental voucher and certificate holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, if such difficulties have been found, HA documentation shows that the HA has analyzed whether it is appropriate to seek approval of area exception rents in any part of its jurisdiction and has sought HUD approval of exception rents when necessary. 5 points.

(ii) The latest audit report does not support the statement in paragraph (g)(3)(i) of this section. 0 points.

**(h) Deconcentration bonus.** (1)

Additional SEMAP points are available to HAs that have jurisdiction in metropolitan FMR areas and that choose to submit with their SEMAP certifications certain data, in a HUD-prescribed format, on the percent of their tenant-based Section 8 families with children who live in, and who have moved during the HA fiscal year to, low poverty census tracts in the HA's principal operating area. For purposes of this indicator, the HA's principal operating area is the geographic entity for which the Census tabulates data that most closely matches the HA's geographic jurisdiction under State or local law (e.g., city, county, metropolitan statistical area) as determined by the HA, subject to HUD review. A low poverty census tract is defined as a census tract where the poverty rate of the tract is at or below 10 percent, or at or below the overall poverty rate for the principal operating area of the HA, whichever is greater. The HA determines the overall poverty rate for its principal operating area using the most recent available decennial Census data. Family data used for the HA's analysis must be the same information as reported to MTCS for the HA's tenant-based Section 8 families with children. If HUD determines that the quantity of MTCS data is insufficient for adequate

analysis, HUD will not award points under this bonus indicator. Bonus points will be awarded if:

(i) Half or more of all Section 8 families with children assisted by the HA in its principal operating area at the end of the last completed HA fiscal year reside in low poverty census tracts;

(ii) The percent of Section 8 mover families with children who moved to low poverty census tracts in the HA's principal operating area during the last completed HA fiscal year is at least 2 percentage points higher than the percent of all Section 8 families with children who reside in low poverty census tracts at the end of the last completed HA fiscal year; or

(iii) The percent of Section 8 families with children who moved to low-poverty census tracts in the HA's principal operating area over the last two completed HA fiscal years is at least 2 percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the second to last completed HA fiscal year.

(iv) State and regional HAs that provide Section 8 rental assistance in more than one metropolitan area within a State or region make these determinations separately for each metropolitan area or portion of a metropolitan area where the HA has assisted at least 20 Section 8 families with children in the last completed HA fiscal year.

(2) HUD verification method: HA data submitted for the deconcentration bonus and latest IA annual audit report.

(3) Rating: (i) The data submitted by the HA for the deconcentration bonus shows that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section, and the latest IA audit report states that the auditor has determined that the HA has on file documentation of its analysis of data which supports its submission to HUD for bonus points under this indicator. 5 points.

(ii) The data submitted by the HA for the deconcentration bonus does not show that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section, or the latest IA audit report does not state that the auditor has determined that the HA has on file documentation of its analysis of data which supports its submission to HUD for bonus points under this indicator. 0 points.

(iii) HUD will rate metropolitan areas within State or regional HA jurisdictions separately and the separate metropolitan area ratings will then be weighted by the number of assisted families with children in each area and

averaged to determine bonus points to be awarded to the State or regional HA.

(i) *Fair market rent (FMR) limit and payment standards.* (1) This indicator shows whether: at least 98 percent of the units newly leased under the rental certificate program, other than over-FMR tenancies, have initial gross rents at or below the applicable FMR or approved exception rent limit; and whether the HA has adopted current payment standards for the rental voucher program by unit size for each FMR area in the HA jurisdiction, and, if applicable, for each HUD-approved exception rent area within an FMR area, which payment standards do not exceed the current applicable FMR or HUD-approved exception rent limits and which are not less than 80 percent of the current FMR/exception rent limit (unless a lower percent is approved by HUD). If the HA administers either the rental certificate program or the rental voucher program but not both, only the standard for the program which the HA administers applies. (24 CFR 982.508(a) and 982.505(b)(3)).

(2) *HUD verification method:* HA data submitted on the SEMAP certification form concerning payment standards and MTCS report—Shows newly leased certificate units' gross rents (excluding over-FMR tenancies) compared to the FMR or approved exception rent.

(3) *Rating:* (i) Excluding over-FMR tenancies, at least 98 percent of the units newly leased under the rental certificate program have initial gross rents at or below the applicable FMR or approved exception rent limits, and the HA's current rental voucher program payment standards do not exceed the current applicable FMR or HUD-approved exception rent limits and are not less than 80 percent of the current FMR/exception rent limit (unless a lower percent is approved by HUD). 5 points.

(ii) Excluding over-FMR tenancies, more than 2 percent of rental certificate program units have been newly leased at initial gross rents that exceed the applicable FMR/exception rent limits, or the HA's rental voucher program payment standards exceed the FMR/exception rent limits or are less than 80 percent of the current FMR/exception rent limit (unless a lower percent is approved by HUD). 0 points.

(j) *Annual reexaminations.* (1) This indicator shows whether the HA completes a reexamination for each participating family at least every 12 months. (24 CFR 5.617).

(2) *HUD verification method:* MTCS report—Shows percent of reexaminations that are more than 2 months overdue. The 2-month

allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual reexamination on Form HUD-50058 and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual reexaminations is permitted.

(3) *Rating:* (i) Fewer than 5 percent of all HA reexaminations are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all HA reexaminations are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all HA reexaminations are more than 2 months overdue. 0 points.

(k) *Correct tenant rent calculations.*

(1) This indicator shows whether the HA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program. (24 CFR 982 subpart K).

(2) *HUD verification method:* MTCS report—Shows percent of tenant rent and family's share of the rent to owner calculations that are incorrect based on data sent to HUD by the HA on Forms HUD-50058. The MTCS data used for verification cover only regular certificate and voucher program tenancies and do not include rent calculation discrepancies for over-FMR tenancies in the rental certificate program, for manufactured home owner rentals of manufactured home spaces, or for proration of assistance under the noncitizen rule.

(3) *Ratings:* (i) 2 percent or fewer of HA tenant rent and family's share of the rent to owner calculations are incorrect. 5 points.

(ii) More than 2 percent of HA tenant rent and family's share of the rent to owner calculations are incorrect. 0 points.

(l) *Pre-contract housing quality standards (HQS) inspections.* (1) This indicator shows whether newly leased units pass HQS inspection on or before the beginning date of the assisted lease and HAP contract. (24 CFR 982.305).

(2) *HUD verification method:* MTCS report—Shows percent of newly leased units where the beginning date of the assistance contract is before the date the unit passed HQS inspection.

(3) *Rating:* (i) 98 to 99 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 5 points.

(ii) Fewer than 98 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 0 points.

(m) *Annual HQS inspections.* (1) This indicator shows whether the HA inspects each unit under contract at least annually. (24 CFR 982.405(a))

(2) *HUD verification method:* MTCS report—Shows percent of HQS inspections that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual HQS inspection on Form HUD-50058, and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual HQS inspections is permitted.

(3) *Rating:* (i) Fewer than 5 percent of annual HQS inspections of units under contract are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 0 points.

(n) *Lease-up.* (1) This indicator shows whether the HA enters HAP contracts for the number of units under budget for at least one year.

(2) *HUD verification method:* Percent of units leased during the last completed HA fiscal year as determined by taking unit months under HAP contract as shown on HA's latest approved year-end operating statement divided by 12, and dividing by the number of units budgeted as shown on the HA's approved budget for the same HA fiscal year.

(3) *Rating:* (i) The percent of units leased during the last HA fiscal year was 98 percent or more. 20 points.

(ii) The percent of units leased during the last HA fiscal year was 95 to 97 percent. 15 points.

(iii) The percent of units leased during the last HA fiscal year was less than 95 percent. 0 points.

(o) *Family self-sufficiency (FSS) enrollment and escrow accounts.* (1) This indicator applies only to HAs with mandatory FSS programs. The indicator consists of 2 components which show whether the HA has enrolled families in the FSS program as required, and the extent of the HA's progress in supporting FSS by measuring the percent of current FSS participants with FSS progress reports entered in MTCS that have had increases in earned income which resulted in escrow account balances. (24 CFR 984.105 and 984.305)

(2) *HUD verification method:* MTCS report—Shows number of families currently enrolled in FSS. This number

is divided by the number of mandatory FSS slots based on funding reserved for the HA through the second to last completed Federal fiscal year or based on a reduced number of mandatory slots under a HUD-approved exception. An MTCS report also shows the percent of FSS families with FSS progress reports who have escrow account balances. HUD also uses information reported on the SEMAP certification by initial HAs concerning FSS families enrolled in their FSS programs but who have moved under portability to the jurisdiction of another HA.

(3) Rating: (i) The HA has filled 80 percent or more of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 10 points.

(ii) The HA has filled 60 to 79 percent of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 8 points.

(iii) The HA has filled 80 percent or more of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 5 points.

(iv) 30 percent or more of FSS families have escrow account balances, but fewer than 60 percent of the HA's mandatory FSS slots are filled. 5 points.

(v) The HA has filled 60 to 70 percent of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 3 points.

(vi) The HA has filled fewer than 60 percent of its mandatory FSS slots and less than 30 percent of FSS families have escrow account balances. 0 points.

## **Subpart B—Program Operation**

### **§ 985.101 SEMAP certification.**

(a) An HA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

(1) The certification must be approved by HA board resolution and be signed by the board of commissioners chairperson and by the HA executive director. If the HA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director and by the chief executive officer of the unit of government or his or her designee.

(2) An HA that subcontracts administration of its program to one or more subcontractors shall require each subcontractor to submit the subcontractor's own SEMAP certification on the HUD-prescribed form to the HA in support of the HA's SEMAP certification to HUD. The HA

shall retain subcontractor certifications for 3 years.

(3) An HA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the HA in providing its certification.

(b) Failure of an HA to submit its SEMAP certification within 60 calendar days after the end of its fiscal year will result in an overall performance rating of troubled and the HA will be subject to the requirements at § 985.107.

(c) An HA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time. (Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

### **§ 985.102 SEMAP profile.**

Upon receipt of the HA's SEMAP certification, HUD will rate the HA's performance under each SEMAP indicator in accordance with § 985.3. HUD will then prepare a SEMAP profile for each HA which shows the rating for each indicator, sums the indicator ratings, and divides by the total possible points to arrive at an HA's overall SEMAP score. SEMAP scores shall be rounded off to the nearest whole percent.

### **§ 985.103 SEMAP score and overall performance rating.**

(a) *High performer rating.* HAs with SEMAP scores of at least 90 percent shall be rated high performers under SEMAP. HAs that achieve an overall performance rating of high performer may receive national recognition by the Department and may be given competitive advantage under notices of fund availability.

(b) *Standard rating.* HAs with SEMAP scores of 60 to 89 percent shall be rated standard.

(c) *Troubled rating.* HAs with SEMAP scores of less than 60 percent shall be rated troubled.

(d) *Modified or withheld rating.* (1) Notwithstanding an HA's SEMAP score, HUD may modify or withhold an HA's overall performance rating when warranted by circumstances which have bearing on the SEMAP indicators such as an HA's appeal of its overall rating, adverse litigation, a conciliation agreement under Title VI of the Civil Rights Act of 1964, fair housing and equal opportunity monitoring and compliance review findings, fraud or misconduct, audit findings or substantial noncompliance with program requirements.

(2) Notwithstanding an HA's SEMAP score, if the latest IA report submitted

for the HA under the Single Audit Act indicates that the auditor is unable to provide an opinion as to whether the HA's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principals, or an opinion that the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole, the HA will automatically be given an overall performance rating of troubled and the HA will be subject to the requirements at § 985.107.

(3) When HUD modifies or withholds an overall performance rating for any reason it shall explain in writing to the HA the reasons for the modification or for withholding the rating.

### **§ 985.104 HA right of appeal of overall rating.**

An HA may appeal its overall performance rating to HUD by providing justification of the reasons for its appeal. An appeal made to a HUD hub or program center or to the HUD Troubled Agency Recovery Center and denied may be further appealed to the Assistant Secretary.

### **§ 985.105 HUD SEMAP responsibilities.**

(a) *Annual review.* HUD shall assess each HA's performance under SEMAP annually and shall assign each HA a SEMAP score and overall performance rating.

(b) *Notification to HA.* No later than 120 calendar days after the HA's fiscal year end, HUD shall notify each HA in writing of its rating on each SEMAP indicator, of its overall SEMAP score and of its overall performance rating (high performer, standard, troubled). The HUD notification letter shall identify and require correction of any SEMAP deficiencies (indicator rating of zero) within 45 calendar days from date of HUD notice.

(c) *On-site confirmatory review.* HUD may conduct an on-site confirmatory review to verify the HA certification and the HUD rating under any indicator.

(d) *Changing rating from troubled.* HUD must conduct an on-site confirmatory review of an HA's performance before changing any annual overall performance rating from troubled to standard or high performer.

(e) *Appeals.* HUD must review, consider and provide a final written determination to an HA on its appeal of its overall performance rating.

(f) *Corrective action plans.* HUD must review the adequacy and monitor implementation of HA corrective action plans submitted under § 985.106(c) or § 985.107(c) and provide technical

assistance to help the HA improve program management. If an HA is assigned an overall performance rating of troubled, the HA's corrective action plan must be approved in writing by HUD.

**§ 985.106 Required actions for SEMAP deficiencies.**

(a) When the HA receives the HUD notification of its SEMAP rating, an HA must correct any SEMAP deficiency (indicator rating of zero) within 45 calendar days from date of HUD notice.

(b) The HA must send a written report to HUD describing its correction of any identified SEMAP deficiency.

(c) If an HA fails to correct a SEMAP deficiency within 45 calendar days as required, HUD may then require the HA to prepare and submit a corrective action plan for the deficiency within 30 calendar days from the date of HUD notice.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

**§ 985.107 Required actions for HA with troubled performance rating.**

(a) *Required on-site review.* Upon assigning an overall performance rating of troubled, HUD must conduct an on-site review of HA program management to assess the magnitude and seriousness of the HA's noncompliance with performance requirements.

(b) *HUD written report.* HUD must provide the HA a written report of its on-site review containing HUD findings of program management deficiencies, the apparent reasons for the deficiencies, and recommendations for improvement.

(c) *HA corrective action plan.* Upon receipt of the HUD written report on its on-site review, the HA must write a corrective action plan and submit it to HUD for approval. The corrective action plan must:

- (1) Specify goals to be achieved;
- (2) Identify obstacles to goal achievement and ways to eliminate or avoid them;
- (3) Identify resources that will be used or sought to achieve goals;
- (4) Identify an HA staff person with lead responsibility for completing each goal;
- (5) Identify key tasks to reach each goal;
- (6) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task; and
- (7) Provide for regular evaluation of progress toward improvement.

(8) Be signed by the HA board of commissioners chairperson and by the HA executive director. If the HA is a unit of local government or a state, the corrective action plan must be signed by the Section 8 program director and by the chief executive officer of the unit of government or his or her designee.

(d) *Monitoring.* The HA and HUD must monitor the HA's implementation of its corrective action plan to ensure performance targets are met.

(e) *Use of administrative fee reserve prohibited.* Any HA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)).

(f) *Upgrading poor performance rating.* HUD shall change an HA's overall performance rating from

troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved HA performance and an improved SEMAP score.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

**§ 985.108 SEMAP records.**

HUD shall maintain SEMAP files, including certifications, notifications, appeals, corrective action plans, and related correspondence for at least 3 years.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

**§ 985.109 Default under the Annual Contributions Contract (ACC).**

HUD may determine that an HA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC.

**Subpart C—Physical Assessment Component [Reserved]**

2. Sections 985.102, 985.103, 985.105(a), (b), (d) and (e), and 985.107 are stayed until further notice.

Dated: August 28, 1998.

**Deborah Vincent,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

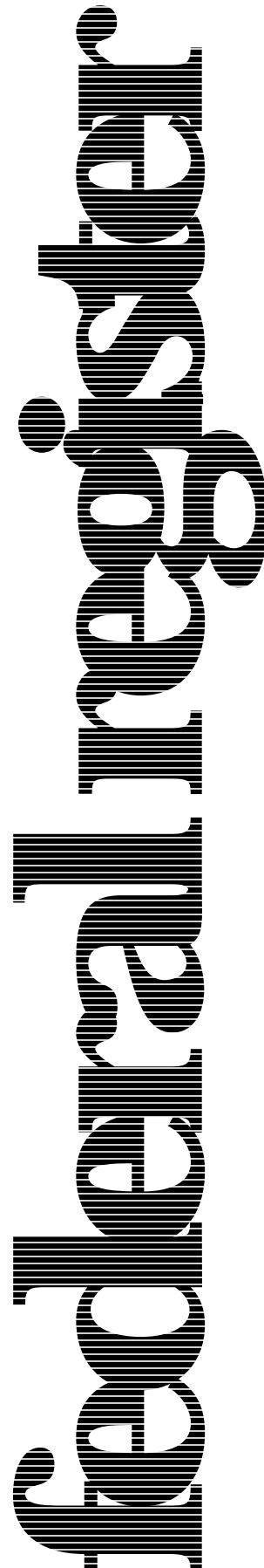
[FR Doc. 98-23820 Filed 9-9-98; 8:45 am]

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**Thursday**  
**September 10, 1998**



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### **Part III**

## **Department of Education**

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**Office of Special Education and  
Rehabilitative Services: List of  
Correspondence (January 2, 1998–March  
31, 1998); Notice**

**DEPARTMENT OF EDUCATION****List of Correspondence—Office of Special Education and Rehabilitative Services**

**AGENCY:** Department of Education.  
**ACTION:** List of correspondence from January 2, 1998 through March 31, 1998

**SUMMARY:** The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** "a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act."

**FOR FURTHER INFORMATION CONTACT:** JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205-5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-5465 or the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205-8113.

**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued between January 2, 1998 and March 31, 1998.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

**Part A—General Provisions****Section 602 Definitions**

**Topic Addressed:** Disability Categories

- Letter dated January 12, 1998 to an individual, (personally identifiable information redacted), regarding provision of special education services

to a child with a sexually transmitted disease.

- Letter dated March 31, 1998 to U.S. Congressman Thomas C. Sawyer regarding eligibility of children with Attention Deficit Disorder under the "other health impairment" category.

**Section 607 Requirements for Prescribing Regulations**

**Topic Addressed:** Applicable Regulations

- Letter dated February 20, 1998 to Ms. Larisa Cummings, Esq., Oakland, California, regarding applicability of current regulations while publication of final regulations is pending.

**Part B—Assistance for Education of All Children With Disabilities****Section 612 State Eligibility**

**Topic Addressed:** Free Appropriate Public Education

- Letter dated January 8, 1998 to Ms. Margie Best, Esq., Chicago, Illinois, regarding which school district is obligated to provide special educational services to a disabled child whose parents are divorced, if the child lives in a school district other than where the mother resides, and the father's whereabouts are unknown.

- Letter dated January 8, 1998 to Mrs. Faanati Penitusi, American Samoa Parent Network, regarding when charging of incidental fees is permissible.

- Letter dated February 11, 1998 to an individual, (personally identifiable information redacted), regarding a school district's obligation to continue to make a free appropriate public education (FAPE) available to a disabled student who breaks a student behavior contract.

- Letter dated February 23, 1998 to an individual, (personally identifiable information redacted), regarding school district's obligation to ensure the provision of FAPE despite lack of adequate personnel or resources.

**Topic Addressed:** Free Appropriate Public Education for Eligible Youth With Disabilities Incarcerated in Adult Prisons

- Letter dated March 11, 1998 to an individual, (personally identifiable information redacted), regarding flexibility afforded to States in meeting their obligations to provide FAPE to this population of disabled students.

**Topic Addressed:** Least Restrictive Environment

- Letter dated February 4, 1998 to William R. Bauer, Director, The Day School, Pittsburgh, Pennsylvania,

regarding the requirement in the IDEA Amendments of 1997 addressing a funding mechanism by which a State distributes State funds based on the setting in which a disabled child is receiving services.

**Topic Addressed:** Children With Disabilities Placed in Private Schools by Their Parents

- Letter dated January 29, 1998 to U.S. Congressman Richard Burr, regarding the applicability to public agencies, not personnel of private schools or facilities, of the Part B requirements governing services to children with disabilities placed in private schools by their parents.

- Letter dated February 26, 1998 to Dr. James F. McKethan, Director, Exceptional Children's Program, Cumberland County Schools, Fayetteville, North Carolina, regarding the nature and extent of school districts' obligations to this class of disabled students.

**Topic Addressed:** General Supervision

- Letter dated January 7, 1998 to Dr. Ora Spann, Director, Office of Programs for Children with Disabilities, South Carolina Department of Education, regarding State education standards.

- Letter dated January 8, 1998 to Dr. Bill East, Assistant Director, Division of Special Education Services, Alabama Department of Education, and letter dated January 8, 1998 to an individual, (personally identifiable information redacted), regarding State complaint procedures and State educational agency responsibility to ensure timely resolution of State complaints.

**Topic Addressed:** Participation of Children With Disabilities in State and District-Wide Assessments

- Letter dated February 2, 1998 to Ms. Patti J. Muhlenkamp, Wyoming Department of Education, regarding importance of compliance with this requirement.

**Section 614 Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements**

**Topic Addressed:** Evaluations

- Letter dated February 25, 1998 to Ms. Linda Maron, Acting Assistant Executive Director for Unified Services, Minneapolis Public Schools, Minneapolis, Minnesota, regarding requirements applicable to evaluations and reevaluations of children suspected of having learning disabilities and mental impairments.

- Letter dated March 3, 1998 to an individual (personally identifiable

information redacted), regarding additional protections in IDEA Amendments of 1997 to address over-identification of minority students in special education.

**Topic Addressed:** Individualized Education Programs

- Letter dated January 23, 1998 to John B. Heskett, Assistant Commissioner, Division of Special Education, Department of Elementary and Secondary Education, Jefferson City, Missouri, regarding participation on IEP teams of individuals invited at the request of parents.
- Letter dated March 31, 1998 to U.S. Senator Tom Harkin regarding use of positive behavioral interventions, strategies, and supports.

**Section 615 Procedural Safeguards**

**Topic Addressed:** Notice to Parents

- Letter dated March 31, 1998 to an individual, (personally identifiable information redacted), regarding the types of information parents are entitled to receive about their child's educational program.

**Topic Addressed:** Due Process Hearings

- Letter dated March 6, 1998 to an individual, (personally identifiable information redacted), regarding the Department's lack of jurisdiction over decisions reached in a due process hearing or subsequent court action, and the Department's inability to grant relief to parties involved in such proceedings.

**Topic Addressed:** Discipline Procedures

- Letter dated January 20, 1998 to U.S. Senator Thad Cochran and letter dated March 13, 1998 to an individual, (personally identifiable information redacted), regarding options available to school authorities in disciplining disabled students.
- Letter dated February 23, 1998 to an individual, (personally identifiable information redacted), regarding educational services for disabled students expelled from school.

**Part C—Infants and Toddlers With Disabilities [Previously Part H]**

**Sections 631–641**

**Topic Addressed:** General Information About Statutory Changes Made to Part C by IDEA Amendments of 1997

- OSEP Memorandum 98-1 dated January 7, 1998 to interested parties, entitled "Information Related to Statutory Changes to Part H of IDEA."

**Section 632 Definitions**

**Topic Addressed:** Provision of Early Intervention Services at No Cost

- Letter dated March 4, 1998 to Maureen Greer, Assistant Deputy Director, Bureau of Child Development, Family and Social Services Administration, Indianapolis, Indiana, regarding when States can access Medicaid and private insurance in ensuring the provision of appropriate early intervention services.

**Section 634 Eligibility**

**Topic Addressed:** Obligation to Serve All Infants and Toddlers With Disabilities in the State and Their Families

- Letter dated January 7, 1998 to Mr. Carlos Flores, Manager, Prevention and Children Services Branch, Department of Developmental Services, Sacramento, California, regarding the relationship between the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and Part H, now Part C.

**Section 635 Requirements for Statewide System**

**Topic Addressed:** Personnel Standards

- Letter dated March 6, 1998 to Ouida Holder, Coordinator, Early Intervention Program, Alabama Department of Rehabilitation Services, regarding personnel standards for providers of special instruction.

**Part D—National Activities to Improve Education of Children With Disabilities**

**Section 652 Eligibility and Collaborative Process, Section 653 Applications, Section 654 Use of Funds**

**Topic Addressed:** State Program Improvement Grants for Children With Disabilities

- OSEP Memorandum 98-4 dated February 24, 1998 to interested parties, entitled "Guidance Related to State Program Improvement Grants to Improve Education for Children with Disabilities."

**Electronic Access to This Document**

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>  
<http://www.ed.gov/news.html>

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 at (202) 512-1530 or, toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 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**.

Dated: September 3, 1998.  
(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

**Curtis L. Richards,**  
*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

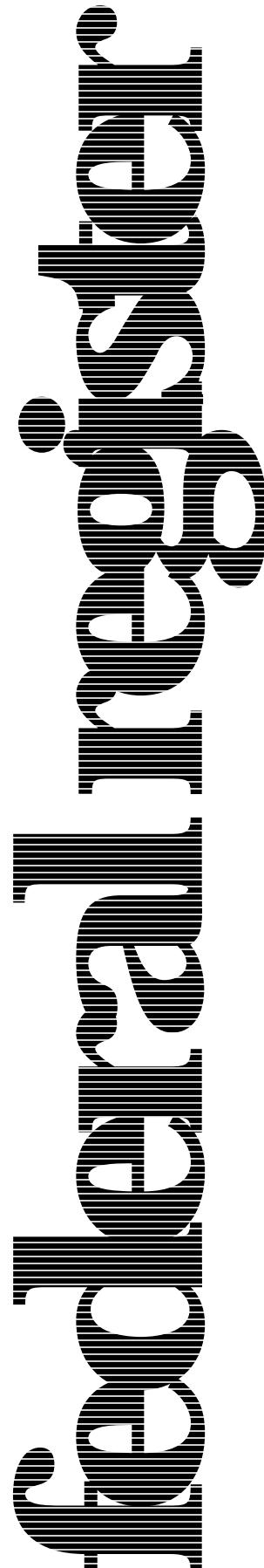
[FR Doc. 98-24239 Filed 9-9-98; 8:45 am]

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**Thursday**  
**September 10, 1998**



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## **Part IV**

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# **Department of Transportation**

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**Research and Special Programs  
Administration**

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**49 CFR Parts 172, 173, et al.  
Hazardous Materials: Withdrawal of  
Radiation Protection Program  
Requirement; Final Rule**

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 172, 173, 174, 175, 176 and 177**

[Docket No. RSPA-97-2850 (HM-169B)]

RIN 2137-AD14

**Hazardous Materials: Withdrawal of Radiation Protection Program Requirement****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** RSPA is removing regulations on "Radiation Protection Program" and related modal provisions that require persons who offer, accept for transportation, or transport radioactive materials to develop and maintain a written radiation protection program. This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as evidenced by comments received from the radioactive material transportation industry and other interested parties.

**DATE:** Effective date: September 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366-4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366-8553, RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

On September 28, 1995, RSPA published a final rule in the **Federal Register** under Docket No. HM-169A (60 FR 50292). The changes made in HM-169A were part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) with international standards and to improve radiation safety for workers and the public during the transportation of radioactive materials.

One of the substantive regulatory changes under HM-169A was a requirement to develop and maintain a written radiation protection program (RPP). The RPP requirements are found in subpart I of part 172 of the HMR. Implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP

requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. Compliance with the RPP requirements was required after October 1, 1997.

Following publication of the September 28, 1995 final rule, many comments were received concerning technical difficulties in implementing the RPP requirements. Subsequently, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements (Notice 96-7; 61 FR 17349). In Notice 96-7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

RSPA received 23 comments in response to Notice 96-7. After considering these comments, RSPA decided that the concerns expressed could not all be resolved through guidance; new rulemaking was required in order to adequately address many of the issues raised in the comments. RSPA determined that the current RPP requirements in subpart I of part 172, and §§ 173.441, 174.705, 175.706, 176.703 and 177.827 should be withdrawn, because the RPP could not be corrected without significant review and a further rulemaking action. Accordingly, RSPA published a direct final rule on September 2, 1997 (62 FR 46214), withdrawing the RPP requirements effective September 30, 1997, unless an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. Because RSPA received two adverse comments the direct final rule was revoked in a separate rulemaking action. As a result of the direct final rule revocation, on December 22, 1997 (62 FR 66898), RSPA published a notice of proposed rulemaking (NPRM) (HM-169B; 62 FR 66903) proposing to amend the Hazardous Materials Regulation by removing subpart I of 49 CFR part 172, "Radiation Protection Program" and related modal provisions that require persons who offer, accept for transportation or transport radioactive materials to develop and maintain a written radioactive protection program.

In a final rule published under HM-169B (62 FR 66900), RSPA also extended until October 1, 1999, the date for compliance with the RPP requirements, because RSPA believed that requiring compliance with requirements, which in the NPRM are being proposed to be withdrawn, would be inappropriate.

**II. Comments Received**

A total of 14 comments were received in response to the December 22, 1997 NPRM. Commenters represented electric power utilities, radiopharmaceutical manufacturers, and other offerors and carriers of radioactive materials.

Thirteen of the fourteen commenters agreed with the proposal in the NPRM, citing modal differences as a factor which makes application of the RPP requirements difficult. Examples given by commenters include difficulties in tracking doses to railroad workers and ship crews because rail cars are generally transferred between carriers during transport, and because most ships are registered under foreign flags and also operate in foreign ports. Several commenters also stated that personnel involved in bulk or containerized transport of radioactive material by highway, rail, or vessel usually receive much lower doses of radioactivity than workers that handle non-bulk shipments.

Additional comments pointed to ambiguities in the RPP requirements. These commenters stated that the regulations do not make clear whether the 200 transport index (TI) threshold to qualify for an exception is to be applied over an entire company or at each site; that concepts such as "approved by a Federal or state agency" and "occupationally exposed hazmat worker" are vague; and that the requirement to monitor occupationally exposed hazmat workers appears to be too inclusive and may be interpreted to cover workers whose doses would be expected to be below the limit of detection of the dosimeters. Most commenters noted the difficulty of being able to assure compliance with the requirements cited in the regulations for dose and dose rate limits for members of the general public.

Several commenters cited inconsistencies with other regulations. For example, in contrast to the HMR, the Nuclear Regulatory Commission (NRC) regulations and Environmental Protection Agency guidelines do not include a quarterly occupational dose limit, or a weekly dose or a dose rate limit for members of the public; the HMR criteria for determining whether monitoring is required differ appreciably from those in the International Atomic Energy Agency (IAEA) regulations; the HMR annual limit for members of the public is different from that of the NRC and the IAEA regulations; the HMR recordkeeping requirements are different from the NRC's; and the HMR require monitoring of occupationally

exposed hazmat workers, while the NRC requires monitoring adult workers with personal dosimetry only if their annual dose is likely to exceed 5 millisieverts.

One commenter additionally noted that entities with an RPP are required to comply with the stated dose limits for members of the general public, while entities which qualify for an exception are not. Commenters also stated that implementation of the RPP requirements would force affected shippers and carriers to adopt the most conservative approach, leading to unnecessarily high costs and potentially causing some carriers to no longer carry radioactive materials.

One commenter stated that RSPA should not remove the RPP requirements from the HMR. The commenter stated that all shippers and consignees of radioactive materials already have formal, approved, written procedures for the handling of radioactive material and exposure monitoring for their personnel and as a result, all shippers and consignees already meet the RPP requirements. The commenter did not provide information on how those current formal, written procedures align with the provisions of the HMR's RPP requirements for shippers and how they could be implemented by carriers. For example, no information was provided on how a shipper or carrier could determine or measure exposure to the general public, which has been stated by other commenters to be a significant problem with the current RPP requirements. The commenter also stated that any such difficulties and complexities with the HMR's RPP can and should be dealt with in a combination of: (a) Amending the RPP; (b) issuing more detailed guidelines or other means; and (c) flexible cooperative enforcement. The commenter did not support this position by providing specific recommendations relative to revisions to the current RPP, the type of guidelines that could be developed, and did not explain what was meant by "flexible and cooperative enforcement."

RSPA agrees with commenters that the current RPP program is not clear in its application and is not fully compatible with other regulations, such as those issued by the EPA and NRC. RSPA further believes that certain aspects of the current RPP requirements are not able to be practically implemented, such as those addressing public exposure.

RSPA does believe that hazmat workers and the public should be protected from exposure to radiation. RSPA reminds hazmat employers that the training requirements in subpart H

of part 172, require that each hazmat employer train each of its hazmat employees prior to performing any hazmat function under the HMR. Such training must provide a general awareness of the requirements of the HMR, including meanings of package markings and labels. A hazmat employee must receive function specific training applicable to their performance of specific regulatory requirements under the HMR. For example a hazmat employee that handles and transports packages of radioactive materials should receive specific training that includes: properly determining the Transport Index (TI) of a radioactive material package; determining the maximum TI allowed on a transport vehicle; and procedures that address the storage, segregation, and separation requirements for radioactive materials packages. Additionally, a hazmat employee must receive safety training that provides information regarding the hazards presented by radioactive materials, use of appropriate safety and monitoring equipment, and how to protect themselves from unnecessary exposure to radioactive materials (e.g., "Do not sit on a package containing radioactive materials."). The intent of the radioactive materials requirements of the HMR is to minimize radiation hazards to workers and the public. These provisions include: limits on the amount of radioactive materials that may be transported in a package; shielding requirements for packagings to limit surface radiation; specific testing of Type A packagings to ensure that they can survive conditions normally incident to transportation; testing of Type B packages for radioactive materials for both normal and accident conditions during transportation; hazard communication, including shipping paper information, labels, and markings to provide identification of the hazards of the material being transported; package surface contamination limits; and requirements addressing the segregation and separation of packages from passengers and hazmat employees. RSPA also notes that many radioactive material shippers, specifically Department of Energy contractors or NRC or Agreement State licensees, are already subject to RPP requirements, though not identical with the HMR's RPP. In addition, several carriers who transport radioactive materials under exemptions issued by RSPA are required to have an RPP in place which includes use of a qualified health physicist to monitor employee exposure. RSPA believes that the requirements in the HMR and the other

agencies RPP's ensure an acceptable level of safety for both hazmat employees and the public.

RSPA will continue to review and evaluate criteria for developing RPP's, such as the Recommendations Approved by the President entitled "Radiation Protection Guidance to Federal Agencies for Occupational Exposure," and criteria adopted by the IAEA Safety Standards Series No. ST-1. RSPA may propose a revised RPP as a means of incrementally improving safety for hazmat workers and the public in the future.

Based on the foregoing discussion and as proposed, RSPA is removing subpart I of 49 CFR part 172, "Radiation Protection Program" and related modal provisions that require persons who offer, accept for transportation or transport radioactive materials to develop and maintain a written radioactive protection program.

#### **Regulatory Analyses and Notices**

##### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule provides relief to persons who offer for transportation, accept for transportation, or transport Class 7 (radioactive) materials by eliminating the need to develop and maintain a radiation protection program. This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979).

RSPA has prepared a regulatory evaluation in support of the final rule that specifically addresses the issue of withdrawing requirements for a radiation protection program.

RSPA concludes that the benefits of removing the radiation protection program requirement are, at a minimum, the \$6.6 million per year that the RPP requirements would cost to implement, as estimated by RSPA in the regulatory evaluation prepared in support of the final rule issued under Docket No. HM-169A. At that time, RSPA did not have sufficient data to quantitatively assess benefits to be derived from the radiation protection program requirements. However, the regulatory evaluation considered the health benefits to the transportation community of limiting radiation exposures to be significant.

RSPA now considers that the RPP requirements are so overly restrictive, ambiguous, and inconsistent with the requirements of other Federal agencies

that they would tend to cause affected parties to adopt the most conservative approach, leading to greater costs than previously estimated. Therefore, RSPA concludes that the costs of implementation of RPP requirements will exceed their benefits and that withdrawing the requirements is cost-effective.

#### B. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law, (49 U.S.C. 5101–5127) contains express preemption provisions at 49 U.S.C. 5125.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by a withdrawal of the RPP requirements. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

#### C. Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule would not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. In the regulatory evaluation originally prepared to consider requirements for a radiation protection program, RSPA estimated a total of 497 carriers (primarily motor carriers) would be subject to those requirements. All but a certain few of those carriers are thought to meet criteria of the Small Business Administration as "small business," e.g., motor freight carriers with annual revenue of less than \$18.5 million. The effect of withdrawing requirements for a radiation protection program is to allow those carriers to continue to transport radioactive materials without having to develop and implement a written plan that goes beyond what is now required of them by the HMR, by a RSPA exemption, or by other Federal departments and agencies.

Based upon the above, I certify that this final rule will not have a significant

economic impact on a substantial number of small entities.

#### E. Unfunded Mandates Reform Act of 1995

This final 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.

#### F. Paperwork Reduction Act

There are no information collection requirements in this final rule.

#### G. 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### List of Subjects

#### 49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

#### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

#### 49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

#### 49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

#### 49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

#### 49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172, 173, 174, 175, 176, and 177 are amended as follows:

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 49 CFR 1.53.

### § 172.801—172.807 (Subpart I) [Removed]

2. In part 172, subpart I consisting of §§ 172.801 through 172.807, is removed.

## PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 49 CFR 1.45 and 1.53.

4. In § 173.441, paragraph (b)(4) is revised to read as follows:

### § 173.441 Radiation level limitations.

\* \* \* \* \*

(b) \* \* \*

(4) 0.02 mSv/h (2mrem/h) in any normally occupied space, except that this provision does not apply to carriers if they operate under the provisions of a State or federally regulated radiation protection program and if personnel under their control who are in such an occupied space wear radiation dosimetry devices.

\* \* \* \* \*

## PART 174—CARRIAGE BY RAIL

5. The authority citation for part 174 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 49 CFR 1.53.

### § 174.705 [Removed]

6. Section 174.705 is removed.

## PART 175—CARRIAGE BY AIRCRAFT

7. The authority citation for part 175 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 49 CFR 1.53.

### § 175.706 [Removed]

8. Section 175.706 is removed.

## PART 176—CARRIAGE BY VESSEL

9. The authority citation for part 176 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 49 CFR 1.53.

### § 176.703 [Removed]

10. Section 176.703 is removed.

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

11. The authority citation for part 177 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 49 CFR 1.53.

- § 177.827 [Removed]**  
12. Section 177.827 is removed.

Issued in Washington, DC on September 4, 1998, under authority delegated in 49 CFR part 1.

**Stephen D. Van Beek,**

*Deputy Administrator.*

[FR Doc. 98-24343 Filed 9-9-98; 8:45 am]

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